



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/10105/2014

THE IMMIGRATION ACTS

Heard at Field House
On 29 March 2016

Decision & Reasons Promulgated
On 29 July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

ENTRY CLEARANCE OFFICER - SRI LANKA

Appellant

and

JEYASUTHA NAVARATHINARASA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Presenting Officer
For the Respondent: None

DECISION AND REASONS

1. In this decision the Appellant is referred to as the ECO and the Respondent is referred to as the Claimant. The Claimant, a national of Sri Lanka, date of birth 28

February 1981, appealed against the ECO's decision to refuse to grant entry clearance under paragraph 319L of the Immigration Rules HC 395 (the Rules). On 20 August 2014 her out of country appeal came before First-tier Tribunal Judge A C Moler (the judge) who, in a decision dated 3 July 2015, allowed the appeal under the Immigration Rules on the basis that the Claimant had satisfied the criteria for entry clearance under paragraph 319L of the Rules.

2. Accordingly, the ECO sought permission to appeal the judge's decision and on 25 September 2015 First-tier Tribunal Judge Fisher gave permission to appeal. For reasons given by me in a decision on 13 November 2015 I found that the Original Tribunal's decision could not stand and that the judge had erred in finding that the Claimant had met the requirements of paragraph 319L of the Rules.
3. At that hearing on 4 November 2015 it became apparent that there had been a residual claim with reference to Article 8. In the circumstances I decided that there may be exceptional circumstances enabling the case to be looked at outside the Rules under Article 8 ECHR. My conclusion was not intended to be encouraging so much as reflecting the position which had actually arisen albeit the judge had decided not to deal with it.
4. Accordingly, I gave directions that any further documents, bearing in mind that it was an out of country appeal and the relevant date for consideration was the date of the ECO's decision, that further documents could be served and should be served not less than 10 working days before the further hearing on that Article 8 ECHR issue.
5. No such material has been forthcoming from either the Claimant or the ECO.
6. I, for my own part, considered the papers and did not find evidence to support an out of country application in effect based on Article 8 for entry into the United Kingdom, in particular I had regard to the case of *SS (Nigeria)* [2013] EWCA Civ 550. On the case file in a letter sent by fax dated 15 March 2016 in which the Tamil

Welfare Association (Newham) wrote to the Tribunal in terms that they were seeking to withdraw their appeal. It is unclear whether the representatives had confused the fact that the Claimant was not now the Appellant but rather the Respondent to the ECO's appeal or whether it was essentially seeking to withdraw the appeal against the original decision of the ECO.

7. In any event, I caused enquiries to be made by the Tribunal of the Claimant's representatives who confirmed that they were not attending, that the Claimant was aware of the hearing but they did not think would be attending and when the case was called for hearing it is clear the Claimant had not attended for the hearing today.
8. The Tribunal on receiving the request to withdraw the appeal by the Claimant's representative wrote drawing attention to the fact that it was the ECO's appeal and not the Claimant's and indicating how the case might be dealt with.
9. In the circumstances, having looked at the papers I do not find that there was either at the date of decision or even now, material which went to show that Article 8 ECHR was engaged. In those circumstances absence of submissions and evidence relating to the same I was satisfied that this aspect of the case should have been dismissed by the Original Tribunal and in any event on the material before me has no substance.

Decision

10. Accordingly the ECO's appeal is allowed against the original Tribunal's decision. The appeal by Mr Navarathinarasa (the Claimant) with reference to Article 8 ECHR grounds is dismissed.

Fee Award

11. A fee had been paid in the sum of £140 and the appeal ultimately having been lost by the Claimant no award is appropriate.

Anonymity

12. No anonymity order has previously been made nor is one necessary or required.

Signed

Date 27 July 2016

Deputy Upper Tribunal Judge Davey

P.S. I regret the delay in promulgation due to the file being miss-located.