



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/12867/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 August 2017**

**Decision & Reasons Promulgated  
On 23 August 2017**

**Before**

**Upper Tribunal Judge Southern**

**Between**

**NAKULAN NAGENTHIRAN**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr N. O'Brien, counsel instructed by Solidum, Solicitors

For the Respondent: Ms Z. Ahmad, Senior Home Office Presenting Officer

**DECISION**

1. The appellant, who is a citizen of Sri Lanka, arrived in the United Kingdom in 2009, then aged 15 years of age, and claimed asylum. That was refused but he was granted discretionary leave, presumably on the basis of his age, until March 2012, by which time he would be approaching his 18<sup>th</sup> birthday. Since his arrival in the United Kingdom he has largely been living with his brother, who has acquired German citizenship. There has, though, been an interruption in the continuity of those living arrangements, which, as we shall see, has a particular

significance in the context of this appeal to the Upper Tribunal against the decision of First-tier Tribunal Judge Mace who, by a determination promulgated on 2 June 2016, dismissed the appellant's appeal against refusal of his claim founded upon rights protected by article 8 of the ECHR.

2. The judge set out this succinct summary of the issues to be addressed in determining the appeal, although I recognise that Mr O'Brien, who appeared before the First-tier Tribunal also, does not accept that the summary adequately sets out the case he sought to present to the judge:

#### "The Appellant's Case

... In summary, he is a young man who lives with his family. He receives material and emotional support from them. He has a long history of depression and post-traumatic stress disorder. He needs family support and cannot expect assistance in Sri Lanka. The standard of treatment there is inferior. There is family life and his removal would be disproportionate. It would be degrading and inhuman to require him to leave.

#### The Refusal Decision

There is no partner or dependent child in the UK and so the requirements for family life under the rules are not met. Consideration has been given to paragraph 276ADE. He does not meet the age or residence requirements. It is not accepted that there would be very significant obstacles to his integration into Sri Lanka. He lived there for the first 15 years of his life. He is familiar with the culture and customs. In September 2014 the Immigration Judge stated "He has parents and siblings still living in Sri Lanka and he still maintains ties with family members there, is still able to speak the language of his community." His family would be able to offer help and support."

The judge noted also that in the refusal letter the respondent said that she did not accept that the family bonds between the appellant and his brother and his brother's family went beyond "ordinary emotional ties" and that any treatment he needed for mental health difficulties would be available also in Sri Lanka. Pausing there, it seems to me that it is not clear whether the judge correctly understood the position of the appellant's relatives in the United Kingdom. There were two family units. The appellant has lived for most of his time in the United Kingdom with his brother, who is now a German national, and his family and he has a sister who lives with her husband, both of whom are British citizens and who live nearby and whom he visits regularly. The judge said that:

"While the appellant currently resides with his sister and brother-in-law he has not always done so while in the United Kingdom. A letter

dated May 2014 from Supported Housing states that he had been referred due to becoming homeless....”

3. The judge did not accept that the appellant was as dependent upon his brother and his brother’s family as was claimed. She gave two key reasons for reaching that conclusion. First, that a letter dated May 2014 from Supported Housing stated that he had been referred due to being homeless, which the judge plainly considered indicated that he was not then reliant upon those relatives and that those relatives were not willing or able to accommodate him. The second key reason for doubting the asserted dependency upon those relatives was that the documentary evidence clearly established that the appellant had a propensity to miss appointments with mental health professionals. The judge said:

“I also find that this impacts on the level of support the appellant states that he requires from his family. I do not accept that were he to have the level of need for such care and intervention as is claimed, that his family would not have done more to ensure that he attended more of these appointments and referrals.”

The judge then referred to the evidence of the appellant’s brother which was to the effect that:

“his mental health has to be looked after and that can only be done through the involvement of our two families in the UK with whom he has been living for the past 8 years”

And concluded:

“Given the evidence that the appellant has been homeless and has required the support of a charity with housing, I question the degree of that support.”

4. Having found that treatment for the mental health difficulties experienced by the appellant was available in Sri Lanka, she concluded that the appellant would be able to access that care. She rejected the submission that the appellant would face very significant obstacles to integration on return to Sri Lanka, saying:

“I do not find that is the case. The appellant has spent the majority of his life in Sri Lanka. He has continued to live with family members during part of the time he has been in the United Kingdom and as such he has remained closely linked with people who share his background and culture. He has close family members remaining in Sri Lanka, in the form of parents. I note the documentary evidence as to their health issues. However, that which has been put before me is of some considerable age. In any event, I do not accept that his parents would be unwilling or unable to offer emotional support to the appellant....”

5. Unfortunately, the judge was simply wrong about that. Whilst there was some documentary evidence concerning the appellant's parents in Sri Lanka that was of some age, there was also very recent medical evidence. In particular, there was before the judge a letter from the doctor treating the appellant's father in Sri Lanka dated 28 April 2017 confirming that he was now in an advanced state of dementia, and:

“[his] medical condition has poor prognosis given the nature of the disease and the lack of the kind support he is supposed to be getting further deterioration of his medical condition is inevitable and he could require twenty-four hour care in two-three years time.”

There was also recent medical evidence concerning the appellant's mother, that appears not to have been considered by the judge. This was in the form of a letter dated 12 June 2017 from the hospital treating the appellant's mother in Sri Lanka. This spoke of Diabetes Mellitus, Osteoarthritis and long standing coronary condition. This evidence was perhaps not as stark as that concerning the appellant's father but required to be considered together with that evidence, given the additional burden that would inevitably be faced by the appellant's mother as his father's condition continues to deteriorate.

6. I am satisfied also that the judge simply misunderstood the circumstances leading to the appellant being referred to SHP Supported Housing. The judge considered that this was evidence of a lack of support from the appellant's relatives in the United Kingdom and so indicative of a lack of dependence upon them. For the appellant, Mr O'Brien submitted that as this was not a matter raised by or relied by the respondent in refusing the appellant's application and so, if the judge was minded to hold this against the appellant, she should have raised it at the hearing. Had she done so she would have been told what actually happened, which is in fact disclosed in the written evidence anyway and, further, accepted to be the case by the judge who had dismissed an appeal in 2014. The appellant had lived with his brother's family until March 2012. The only reason for that arrangement being interrupted was that the owner of the house in which he had been living with his brother and his brother's family evicted his tenants because he was to be married and wanted the house for himself. Thus, the need for the appellant to spend a period in temporary accommodation was brought about not by any unwillingness of his brother to accommodate him but because he no longer had a house in which to do so. The appellant spent a period living in temporary accommodation provided by SHP Supported Housing before moving to his sister's home until he was able to return to live with his brother in the accommodation he was by then occupying.
7. There is real difficulty also with the reasoning of the judge concerning the appellant's propensity to miss appointments. The evidence before the judge, including the oral evidence given by the appellant's brother as recorded in the record of proceedings, was to the effect that the

appellant's brother was very much aware that the appellant regularly missed appointments and that he did what he could to deal with this problem, He said in oral evidence that on occasion he would accompany the appellant to appointments but half way there the appellant would come back home. The appellant's oral evidence was also that sometimes on the way to appointments he would become fearful and come back home and he said that sometimes "people at home" would call an ambulance to take him. I do not accept that on the basis of that evidence, which was not discussed in the determination, it was reasonably open to the judge to conclude that the missed appointments were a consequence of a lack of support or concern from the appellant's relatives.

8. Drawing all of this together, I am satisfied that the assessment made by the judge of the nature of the relationship between the appellant and his relatives and the extent to which he was dependent upon them was made on a mistaken understanding of the evidence before her. I am satisfied also that the judge left out of account material evidence relied upon by the appellant in her assessment of the family support available in Sri Lanka. There has been mention of siblings in Sri Lanka as well as the appellant's parents but the judge made no finding as to whether or not there were siblings living in Sri Lanka and if there were, their circumstances and whether they were able to provide any support. I cannot be satisfied that the outcome would have been the same but for those errors and that is sufficient to establish that the judge has made an error of law material to the outcome of the appeal. Therefore, the decision of Judge Mace cannot stand.
9. Mr O'Brien pursued other grounds in challenging the decision of the judge but, given what I have said, it is not necessary to address them.

Summary of decision:

10. First-tier Tribunal Judge Macdonald made a material error of law and her decision to dismiss the appeal is set aside
11. The appeal to the Upper Tribunal is allowed to the extent that the appeal is remitted to the First-tier Tribunal to be determined afresh.

Signed



Upper Tribunal Judge Southern  
Date: 22 August 2017