



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05520/2016

THE IMMIGRATION ACTS

Heard at Field House
On 23 April 2018

Decision & Reasons Promulgated
On 5 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR RANASINGHA ARACHCHIGE BUDDHIMA SILVA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr N Bramble, Senior Presenting Officer

For the Respondent: Mr D Sellwood, counsel instructed by Wilson Solicitors LLP

DECISION AND REASONS

1. In this Decision and Reasons the Appellant is referred to as “the Secretary of State” and the Respondent is referred to as “the Claimant”.
2. The Claimant, a national of Sri Lanka, date of birth 2 July 1967, appealed against the Secretary of State’s decision dated 4 February 2016 to refuse leave to remain. His appeal was made on human rights grounds against the Secretary of State’s decision

and the matter came before First-tier Tribunal Judge Eames (the Judge) who, on 16 June 2017, promulgated his decision (D) in which he allowed the appeal on Article 8 ECHR grounds. Permission to appeal was granted by First-tier Tribunal Judge F Farrelly on 23 August 2018.

3. The matter came before me on 10 November 2017 in which, at that stage I concluded that there had not been power to grant permission, given the absence of an application on the appropriate matters submitted. On reflection I concluded that in fact once the Judge had given permission to appeal it was not a decision which was open to me to amend or vary. Accordingly, the matter was restored for rehearing on 23 April 2018. At that hearing Mr Bramble has carefully presented the arguments in relation to the grounds which were not drafted by him and which perhaps might have been more concisely summarised on the critical points.
4. The long and the short of it is that it is said that the Judge erred in that first he evidently applied the wrong standard of proof, namely to something lower than the balance of probabilities, and the findings made infected the conclusion that the Judge reached that there were very significant obstacles to the Claimant's integration on return to Sri Lanka; and in relation to Article 8 proportionality findings.
5. Mr Sellwood has through the Rule 24 response essentially argued that the findings that the Judge made were substantially unchallenged and uncontested, in particular as set out at paragraph D44(a), (b), (c), (d) and (e). He, I think, accepts to a limited extent that under (f), in terms of the Secretary of State's knowledge, the claim the Secretary of State was asserting before the Judge was that the Claimant had been involved in fraud and intention to deceive. The Judge in that respect on that narrow issue could be said the conclusions were affected by the wrong standard of proof being applied. Ultimately the question was whether or not in the light of all those matters and the submissions made whether the Judge was entitled to conclude that there were very significant obstacles, and that it was disproportionate.

6. On a fair reading of this decision it is clear that the Judge in making the findings of fact (at least in D44, and to a degree beyond) was simply reciting the submissions being made which chimed in with the evidence which had been provided, and therefore whether a lower or a higher standard of proof was being applied on those factual matters makes no difference. Ultimately, the Judge concluded as I have said that there were very significant obstacles which meant that the Appellant had, as it were in principle, satisfied paragraph 276ADE(1)(vi) of the Immigration Rules, and to that extent the low standard of proof perhaps, as expressed by the Judge poorly, confuses the issue. It is not for me to substitute a view as to whether or not I would have thought that circumstances pressed by Mr Sellwood accurately summarised by the Judge at D33 in relation to family ostracism, absence, emotional heartache and the Appellant's mental fragility and the family dynamics would have justified the conclusion of any significant obstacles, but it seems to me that the grounds did not directly attack that finding which Mr Bramble valiantly argued is embraced within ground 1. Applying the wrong standard of proof and in effect inferring that he must have applied the wrong standard of proof in relation to assessing very significant obstacles.
7. So far as the Article 8 claim is concerned, Mr Sellwood argued, and to this extent Mr Bramble accepted, that the Judge set out the factors that had been particularly advanced by the Secretary of State and by the Claimant.
8. On that basis it seemed to me it was a matter for the Judge to assess and weigh those factors. The issue of the Claimant's past immigration history subsequently not an issue until raised at this appeal, is a factor, but the Judge has done enough and it seemed to me wrong to interfere with the decision on the basis that the errors the Judge made in referring directly to the lower standard of proof were not actually ultimately material to the decision and do not infect it to the extent Mr Bramble seeks to argue.
9. It is clear to me that the Judge's decision is in some respects open to criticism and those criticisms might, as it were on the simple language of the decision no doubt inspired the persons settling the grounds of appeal. Indeed the Judge who read those grounds

and granted permission perhaps missed the point that ultimately the Judge was doing required the proper exercise to reach conclusions that he could reasonably do.

10. To that end, therefore, I conclude that the criticisms that Mr Bramble has made are in many respects criticisms which could show errors in the Judge's decision, but ultimately, even if there are errors of law in the expression "the standard of proof", I conclude that they are of no materiality to the ultimate decision reached. I also concluded that if another Tribunal armed with the same facts had properly expressed itself, as the Judge should have, the same decision is more than likely to have been reached. For that reason, it does not seem to me appropriate for me to interfere with the decision, bearing in mind the recent strictures raised by the Court of Appeal concerning the willingness of the Upper Tribunal to interfere in decisions of the First-tier with which it does not agree. So for these reasons, I conclude the Original Tribunal made no error of law and the decision stands.

NOTICE OF DECISION

11. The appeal is dismissed.

ANONYMITY

12. No anonymity direction was made and none is required.

Signed

Date 29 April 2018

Deputy Upper Tribunal Judge Davey