Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HU/12577/2015
HU/12711/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 16 February 2018	**On 17 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

SIVAGANANTHY MUTHUTHAMBY
KANEESHAN MUTHUTHAMBY
(ANONYMITY DIRECTION NOT MADE)

Appellants

And

Entry Clearance Officer – Chennai

Respondent

Representation:

For the Appellants: Mr D Balroop, of Counsel, instructed by Genga & Co Solicitors Ltd
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. This is the Appellants appeal against the decision of First-tier Tribunal Judge M R Oliver ("the judge") promulgated on 4 May 2017 dismissing their appeals against a decision of the Entry Clearance Officer (ECO)

refusing their applications for entry clearance to enter the United Kingdom under Appendix FM of the Immigration Rules ("the Rules").

2. The Appellants (mother and son) are nationals of Sri Lanka born on 20 July 1974 and 4 September 1999 respectively. They applied for entry clearance to settle in the United Kingdom as the partner and child of the sponsor, Mr Vairaiya Muthuthamby (the First Appellant's partner and the Second Appellant's father). The sponsor was present in the United Kingdom with limited leave to remain until 24 January 2018. The Appellants application was refused, and they appealed. The judge dismissed the appeal. The judge observed that the Appellants could not succeed under the Rules as the sponsor was not settled in the United Kingdom. As for Article 8 of the ECHR, the judge noted that it was the sponsor's decision to come to the United Kingdom that separated the family. The judge further noted that *"the way in which they chose to live their family life apart is not interfered with by the refusal to allow them to reunite now. They will be able to continue to live as they have chosen to do by meeting during holiday periods together."* Accordingly, the judge dismissed the appeal.

3. The Appellants applied for permission to appeal against the First-tier Tribunal's decision asserting that the judge failed to engage with the *"considerable wealth of evidence contained in the Appellant's (sic) bundle*". The grounds further assert that the judge erred in finding that it was the decision of the sponsor to leave the Appellants in Sri Lanka as he fled in fear of persecution and so could not return there. Thus, it was said that the judge failed to assess whether family life could resume in Sri Lanka and that he wrongly found that intermittent contact with the Appellants in India constituted family life.

4. Permission to appeal was granted by First-tier Tribunal Judge Osbourne on 4 December 2017.

Discussion and Conclusions

5. The Appellants applied for entry clearance to join the sponsor in the United Kingdom under Appendix FM of the Rules. There is no dispute that the Appellants cannot meet the requirements of the Rules as the sponsor is not settled in the United Kingdom. The application under the Rules therefore was doomed to fail. The issue before the judge was whether refusal of entry clearance infringed the Appellants' human rights contrary to Article 8 of the ECHR. The factual matrix concerning that issue is not complex or lengthy and can be summarised as follows.

6. The sponsor is a Sri Lankan national who entered the United Kingdom in 2003 and claimed asylum. The application was refused. Nonetheless, due to his ongoing fears he has not since returned to Sri Lanka. The sponsor was granted limited leave to remain on private life grounds in 2011 and his current leave on that basis expired on 24 January 2018. He is working in the United Kingdom. He visited the Appellants in India in 2016 and 2017 respectively.

7. The grounds (not drafted by Mr Balroop) consist of six paragraphs. Paragraph two contends that the judge's decision lacks reasoning and the findings made failed to engage with the *"considerable wealth of evidence"* filed by the Appellants. There is no merit in this ground. As I observed at the hearing the Appellants' bundle could not properly be described as containing a *"considerable wealth of evidence"* (it comprises of 37 pages) most of which deals with the sponsor's personal and financial circumstances. This challenge fails to identify what, if any, of that evidence the judge failed to consider, and nor do they explain how any of that evidence would have made a material difference to the outcome. Mr Balroop, sensibly, did not pursue this ground before me.

8. Paragraphs three to five of the grounds take issue with paragraph seven of the judge's decision, which I have quoted in full above. The grounds assert that the judge's decision is founded on a mistake of fact in finding that the sponsor left Sri Lanka by choice rather than in consequence of a well-founded fear of persecution. Mr Balroop thus submitted that paragraph seven of the judge's decision did not go far enough as he should have assessed whether family life could continue in Sri Lanka. This ground I consider is misconceived.

9. It is noteworthy that the claim the sponsor feared returning to Sri Lanka is a matter that is referred to in the First Appellant's witness statement and not that of the sponsor's. Nevertheless, the judge was clearly aware of the sponsor's background as he set this out at [4] to [5]. While I acknowledge that the judge makes no specific reference to this background in his assessment at [7], I am not persuaded that he committed a material error by that failure.

10. I agree with the submission of Mr Wilding that the grounds place the narrative too high as the sponsor's asylum claim was refused. It was not therefore accepted that the sponsor had a subjective fear of returning to Sri Lanka; a claim which he did not directly make in his witness statement before the judge. Even if the judge had made specific reference to this background at [7], there was no protection claim before him and at its highest the evidence showed that the sponsor's asylum claim had been refused. In light of that fact it is unlikely to have led the judge to a different conclusion. In the circumstances, I consider that the judge was entitled to factor into his assessment that it was the sponsor's decision to leave his wife and child to come to the United Kingdom. I find that was a conclusion that is supported by the evidence and was plainly open to him. There is no material error of law in this regard.

11. Finally, Mr Balroop complained that the judge's decision was insufficiently reasoned and that the Appellants were unable to discern why they had lost. That complaint I consider is unjustified. In **Shizad (sufficiency of reasons: set aside)** [2013] UKUT 00085 (IAC), the tribunal stated thus: *'Although there is a legal duty to give a brief explanation of the*

conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge'.

12. The accepted material was that the sponsor was not settled in the United Kingdom. He had chosen to spend his family life living apart from his family until he first visited them in 2016. In effect the judge found that preserving that status quo was not disproportionate. While the decision is very concise and could have been expressed in better terms and at greater length, I consider that the judge expressed himself in shorthand and reached key conclusions on the evidence that was relevant to the assessment of proportionality. In my judgement the reasons why, the judge dismissed the appeal is clear and sufficiently reasoned.

13. At the hearing I asked Mr Balroop to identify the compelling factors in this case that would have justified a different conclusion. In that regard he was only able to refer to paragraph eight of the First Appellant's witness statement in which she expresses her wish that the family be reunited. While that is understandable, the circumstances in this case do not identify factors that reach the threshold required to compel the balance to be tipped in the Appellants favour to warrant a grant of leave outside of the Rules.

14. In summary, I conclude that the judge cut through verbiage to arrive at the heart of the matter which was whether the refusal of entry clearance was disproportionate. Brevity and concision does not necessarily indicate an error of law. In this instance the key conclusions reached by the judge support the findings made. His conclusion is not surprising given the evidence that was before him and the facts in my view only compelled the judge to reach that conclusion which was entirely open to him on the evidence and is sufficiently reasoned. I therefore dismiss the Appellants' appeal.

Notice of Decision

The appeal of the Appellants is dismissed, and the decision of the First-tier Tribunal shall stand.

No anonymity direction is made.

Signed Dated 27 March 2018

Deputy Upper Tribunal Judge Bagral