Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/02615/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 31 January 2018	**On 20 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

GEETHAPRIYAN SELVANAYAGAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy of Counsel, instructed by Lova Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Walters promulgated on 22 February 2017 dismissing the Appellant's appeal against a decision of the Respondent dated 16 December 2014 refusing both asylum and leave to remain on human rights grounds.

2. The Appellant is a citizen of Sri Lanka born on 20 February 1996. He left Sri Lanka at the age of 13 on 21 February 2009, and arrived in the United Kingdom on the following day, where he was received by his paternal uncle, Mr Nadesan Pathmanathan. On 24 February 2009 the Appellant claimed asylum. His application was refused on 17 April 2009, but he was

granted discretionary leave to remain for two years pursuant to the Respondent's policy in on unaccompanied asylum-seeking children.

3. The Appellant made an application for further leave to remain by way of form HPDL, signed by him on 5 April 2012. Amongst other things it was stated in that form: *"The applicant has no one in Sri Lanka and therefore he is unable to return to Sri Lanka"* (Respondent's bundle before the First-tier Tribunal, at C4).

4. Pursuant to his application, the Appellant was granted further leave to remain on 28 May 2013 until 20 August 2014.

5. I interject in the chronology to observe the following. Although the Appellant had declared in April 2012 that he had nobody to return to in Sri Lanka, I note from the evidence before the First-tier Tribunal that the Appellant stated that he had re-established contact with his mother in 2011: *"The Appellant said that after he left Sri Lanka on 21.2.09 he lost contact with his mother and sister, Kishoka. He states that he re-established contact with them in 2011."* (paragraph 36 of the Decision of First-tier Tribunal Judge Walters). I further note in this regard paragraph 44 wherein the Judge records that the evidence of the Appellant's uncle was "*that the Appellant's mother and sister are now living with [his sister] and have done so since 2011*".

6. Towards the end of the Appellant's leave, on 31 July 2014, he applied again for further leave to remain. However, on this occasion his application was refused for reasons set out in a decision letter of 5 December 2014. Thereafter the decision of 16 December 2014 that is the subject of these proceedings was made.

7. The Appellant appealed to the IAC.

8. His appeal was heard in the first instance by First-tier Tribunal Judge Majid, who allowed the appeal in a decision promulgated on 5 January 2016. However, Judge Majid's decision was set aside by Upper Tribunal Judge Perkins in a decision promulgated on 6 October 2016. Thus it came before First-tier Tribunal Judge Walters to remake the decision in the appeal with all issues at large. Judge Walters dismissed the Appellant's appeal on both protection grounds and on human rights grounds for the reasons set out in his Decision.

9. The Appellant applied for permission to appeal to the Upper Tribunal.

10. Permission to appeal was refused in the first instance by First-tier Tribunal Judge Farrelly on 9 October 2017. However, on 19 December 2017 Upper Tribunal Judge Coker granted permission to appeal. In doing so Judge Coker refused permission to appeal on protection grounds, stating that there was no arguable error of law in that regard. However, permission to appeal was granted *"solely on the limited basis of Article 8 grounds"* in that it was considered arguable that the First-tier Tribunal Judge had "*failed to engage sufficiently with s117B in the specific characteristics of the appellant*".

11. Mr Paramjorthy candidly acknowledged that he had hoped that he would have had the opportunity to argue the protection case as pleaded in the grounds in support of the application for permission to appeal – which were drafted by him. The seeming wistfulness of this observation was underscored by his later acknowledgement of the force of Mr Tufan's submission in answer to the ground of challenge in respect of Article 8.

12. The ground pleaded and relied upon by the Appellant is essentially in respect of section 117B(3) of the Nationality, Immigration and Asylum Act 2002. The grounds put the matter this way:

> *"Paras 62-64 – the FTTJ has materially erred in his assessment of proportionality pertaining to the A's Article 8 right to a private and family life here in the UK. The A entered the UK as a minor, has matured into an adult, in studying at University, is not a burden on the taxpayer, is supported financially by his Uncle and the FTTJ has failed to properly engage with paragraph 117B(3), in that the A does not have permission to work and therefore is dependent on his Uncle. The FTTJ has failed to rationally engage with proportionality and the fact that the A's removal will be arguably disproportionate to the maintenance of an effective immigration control policy. The whole ethos of section 117, is that the A should not be a burden on the state and further should be able to speak English, all of which the A qualifies."*

13. The particular focus is on the supposed error in respect of section 117B(3).

14. The First-tier Tribunal Judge dealt with the Article 8 aspect of the case from paragraph 54 onwards of his Decision. In context I note that the Judge made a number of observations and findings essentially favourable to the Appellant. He noted the Appellant's age upon arrival in the United Kingdom and his present age. He noted that he had attended secondary school and was presently studying at the University of Greenwich on a course paid for by his uncle on the basis of the rates of a foreign student. It was accepted that the Appellant had formed a family life with his uncle and his uncle's wife and two children. The Judge found that the fact that his uncle was financing the Appellant's university degree meant that the

Appellant was more than normally emotionally dependent on his uncle. The Judge also found that the Appellant's proposed removal would amount to an interference with the exercise of his right to respect for private and family life. The Judge also concluded that the extent of the interference would be of such gravity as to engage Article 8. The Judge therefore made specific and detailed findings on the evidence entirely in accordance with the way matters were put to him on behalf of the Appellant, and concluded that the first two **Razgar** questions were to be answered in the Appellant's favour.

15. The Judge dealt with the third and fourth **Razgar** questions uncontroversially at paragraphs 59 and 60 of the Decision.

16. The Judge then moved to a consideration of the fifth **Razgar** question, proportionality. In doing so he expressly specified that he was having regard to sections 117A-117D of the 2002 Act (paragraph 61).

17. At paragraph 62 the Judge says this in respect of section 117B(3):

"I find that s. 117B(3) applies in that it is in the interests of the economic well-being of the United Kingdom that persons who seek to remain are financially independent. The Appellant is obviously not."

18. The Judge otherwise took into account section 117B(5), and noted that the Appellant's immigration status was precarious and to that extent little weight could be accorded to his private life (paragraph 63). The Judge also observed that there was no evidence given to the effect that the Appellant could not return to live with his mother in Sri Lanka or that it would be unreasonable or difficult for him so to do (paragraph 64).

19. The Judge took into account that the Appellant was studying, but noted that it was open to him to apply for a student visa (paragraph 65). I pause to note that no particular complaint has been made in this regard, and indeed Mr Tufan has reminded me today of the well-known now words of Lord Carnwath in the case of **Patel & Ors [2013] UKSC 72** to the effect that the *"opportunity for a promising student to complete his course in this country, however desirable in general terms, is not in itself a right protected under Article 8."*

20. The grounds of appeal in substance plead that the Judge wrongly accorded adverse weight to the public interest consideration identified under section 117B(3) in circumstances where the Appellant was of an age and experience where he could not be financially independent - but was nevertheless not financially dependent on the State or anybody other than his uncle. To that extent, in substance the grounds argue that any

'mischief' identified under the public interest considerations need not be a concern on the facts of this particular case.

21. In answer to that challenge Mr Tufan indicated that the Respondent relied upon the case of **Rhuppiah v Secretary of State for the Home Department [2016] EWCA Civ 803** and in particular at paragraph 63, which is in these terms:

> *"Finally, I turn to consider the meaning of the phrase 'financially independent' in section 117B(3). This is an ordinary English phrase, and the FtT gave it its natural meaning, as indicating someone who is financially independent of others. This is the correct interpretation. The FtT was also entitled on the evidence to find that the Appellant was not financially independent in this sense, and that this was a factor which counted against her in the Article 8 balancing exercise."*

22. It seems to me absolutely clear that the Judge's conclusion herein in respect of section 117B(3) was entirely in accordance with the meaning indicated by the Court of Appeal. The Appellant was not 'financially independent of others'. As I have indicated above, Mr Paramjorthy acknowledged the force of this submission. It seems to me that once that submission is identified and seen to be sound, the substance of the Appellant's challenge is lost.

23. Were it otherwise, I note that at best the Appellant could have argued that a potentially adverse matter should have been taken out of the balance, to be replaced by what would otherwise have been essentially a neutral matter. In my judgment this would have made no material difference to the outcome in the appeal. The details of the factual premises of the Appellant's case are clear and straightforward; there is nothing in the premises that suggest - by way of analogy - that he could satisfy the requirements of the Immigration Rules with regard to paragraph 276ADE - bearing in mind that the Judge expressly found that there was no evidence of any difficulties in relocating and reintegrating into life in Sri Lanka. Otherwise, no exceptional circumstances are identifiable in the evidence or the findings of the Judge such that would suggest a disproportionate interference with private and/or family life such as to warrant departure from the Immigration Rules. Those matters in the grounds spun as positive factors – "*should not be a burden on the state… should be able to speak English, all of which the A qualifies*" – are in substance neutral factors not positive factors informing entitlement to remain.

24. Had the merits of the appeal required further consideration, it seems to me more would need to be explored in respect of what, on its face, appears to have been an inaccurate statement in the application for variation of leave to remain previously made in 2012. I invited observations in this regard from the Appellant during the hearing today.

After a few moments for Mr Paramjorthy to take instructions, the Appellant responded to the effect that although his mother had gone to live with his uncle's sister in 2011 it was not until some time much later that the Appellant had learnt of this.

25. I note in the first instance that such a response is entirely discrepant with what the Judge has recorded to the effect that the Appellant re-established contact in 2011. Moreover, when the Appellant was invited to explain why, in circumstances where he had lost contact with his mother and sister and they had then come to live safely with another relative, he was not told at the time, the Appellant suggested it was because telling him that his mother and sister were safe would mean revealing that his father had died. I remind myself that at the time when it became known his mother and sister were safe, the Appellant did not know the whereabouts of his father anyway. Accordingly, telling him that his mother and sister were safe would not necessarily put him in any worse position. When I invited the Appellant to comment on whether or not he was worried about his mother at this time (i.e. when missing) he replied *"not really"*. Bluntly, I did not find the Appellant to be truthful in this regard. The impression left is that it would have been safe and possible for the Appellant to return to Sri Lanka in 2011/2012 but it was elected to tell a lie about the whereabouts of family members in order to secure further leave to remain in a preferred environment and access to a continuity of education.

26. However, in the event it is unnecessary for me to reach any firm findings in this regard because ultimately, in my judgement, the First-tier Tribunal Judge made no error of law in his assessment of the Appellant's Article 8 case.

Notice of Decision

27. The decision of the First-tier Tribunal contained no error of law and stands.

28. The Appellant's appeal remains dismissed.

29. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed: Date: **18 February 2018**

Deputy Upper Tribunal Judge I A Lewis