



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

Appeal Number: PA/10734/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 15 February 2018**

**Decision & Reasons Promulgated
On 22 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**PILLAINAYAGAM [K]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Easty, of Counsel

For the Respondent: Mr Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka. He was born on either 4 November 1961 or 21 November 1961. See refusal dated 7 October 2017.
2. He appealed against the respondent's refusal to grant asylum, humanitarian protection and on human rights grounds dated 7 October 2017.

3. The appeal was dismissed on asylum grounds but allowed on human rights grounds by Judge A A Wilson (the judge) in a decision promulgated on 8 December 2017.
4. The grounds claim the judge erred by making a material misdirection in law and giving inadequate reasoning as follows:
 - “2. It is asserted that the FTTJ’s findings are confused and based on speculation, rather than the facts and a proper assessment of the facts within the framework of the Article 8 legislation.
 3. The Presenting Officer raised a number of concerns regarding the genuineness of the relationship, especially given the inconsistencies in the appellant’s and his claimed partner’s evidence but the FTTJ fails to address the issues raised when finding that this is a genuine relationship. Please see the attached Presenting Officer’s minute regarding the hearing.
 4. The FTTJ accepts without question that the appellant’s claimed partner was raped and the child was born as a result of that. This finding is notwithstanding the fact that her asylum claim was unsuccessful and the FTTJ speculates as to the reasons for the grant of discretionary leave. It is therefore contended that the FTTJ has not properly considered whether or not there would be insurmountable obstacles to family life continuing in Sri Lanka. This is a high threshold to be met as set out by the Supreme Court in **Agyarko** and a mere assertion at paragraph 10 that there would be strong and humanitarian reasons why she should be given leave to remain is not sufficient. The FTTJ has failed to assess the evidence himself prior to coming to the conclusion regarding whether or not the claimed partner’s account is credible in this regard. Mere speculation is insufficient.
 5. At paragraph 11, the FTTJ finds that the claimed partner’s status in the UK is not precarious. It is asserted that in accordance with **Rhuppiah** the FTTJ is mistaken and little weight should have been given to the private and family life which has developed in the UK.
 6. Further, there is no finding regarding whether the appellant has a “parental relationship” with the child and if so, whether it would be reasonable to expect the child to leave the UK with the appellant and his mother. Given that the appellant is not the biological father of the child, it was incumbent on the FTTJ to make findings regarding the relationship with the child. It is not enough to assess the best interests of the child as a standalone consideration in the balancing exercise.”
5. Judge Chohan granted permission to appeal on 8 January 2018. He said inter alia:
 - “3. There is substance in the grounds seeking permission. Overall, in respect of the Article 8 assessment, it does seem that the judge has given inadequate reasons. There appears to be little or no consideration as to why the child in question could not live in Sri Lanka with parents. Parental relationship also lacks consideration.”

6. There was no Rule 24 response.

Submissions on Error of Law

7. Ms Easty described the case as being weak with regard to asylum grounds but strong with regard to human rights. There was no s.55 consideration by the Secretary of State. The judge wanted the Secretary of State to reconsider her decision. This was a situation where **Greenwood (No. 2) (para. 398 considered) [2015] UKUT 629 (IAC)** applied such that if there was any error on the part of the judge it was not material. His decision was pragmatic.

8. Mr Nath relied upon the grounds.

Conclusion on Error of Law

9. I find the grounds are made out. Ms Easty said that if there was an error it was not material in terms of **Greenwood (No. 2)**. I find that the judge attempted to treat the human rights aspect of this appeal as a freestanding challenge to the decision not anticipated by **Greenwood (No. 2)**. If I am wrong in that regard I find that the judge materially erred in failing to carry out an analysis or any adequate analysis of the parties' relationship, issues regarding the same having been raised by the respondent. The judge failed to engage with relevant case law, **Rhuppiah [2016] EWCA Civ 803** and **Agyarko [2017] UKSC 11**.

10. As regards the failure on the part of the respondent to carry out an s.55 analysis, the judge was in a position to be the primary decision maker in that regard. It was a matter for the appellant to put before the judge evidence with regard to the family circumstances, such evidence apparently being significant in its absence. See the judge's decision at [22].

11. The judge's findings and conclusion with regard to the dismissed asylum claim are preserved.

12. As regards the Article 8 claim, the respondent has established that the judge materially erred. I set aside that aspect of the decision allowed on human rights grounds and remit the same to the First-tier Tribunal for those issues alone to be heard afresh.

Notice of Decision

13. The judge's findings and conclusions with regard only to the allowed human rights aspect of the appeal contain material errors of law, are set aside and shall be remitted to the First-tier Tribunal for re-hearing.

No anonymity direction is made.

Signed

Date 15 February 2018

Deputy Upper Tribunal Judge Peart