IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER **Case No: UI-2022-006613**
First-tier Tribunal No: HU/55423/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14th June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

SRIWANTHI MIHIKA KALUARACHCHI
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. K Renfrew, Counsel instructed by MTC Solicitors
For the Respondent: Ms. S. McKenzie Senior Presenting Officer

Heard at Field House on 12 March 2024

DECISION AND REASONS

Background and Legal Framework

1. By a decision promulgated on 25 January 2024, I found an error of law in the decision of First-tier Tribunal Judge J Simpson, dismissing the appellant's appeal. I set aside Judge Simpson's decision with preserved findings and gave directions for a hearing to remake the decision, which I now turn to do.

2. The factual background is set out in my error of law decision, and it is not necessary to repeat it in full here. In summary, the appellant is a national of Sri Lanka born on 25 April 1966. She entered the United Kingdom on 6 February 2009 as a student. In April 2016 the appellant began a relationship with Mr Kevin

Parslow, a British citizen. At that time, the appellant had leave to remain in the United Kingdom as a Tier 2 (General) Migrant. The appellant and Mr Parslow began cohabiting in February 2018 at a time when the appellant had leave to remain under section 3C of the Immigration Act 1971. There is no dispute that the appellant's leave to remain in the United Kingdom expired on 7 November 2018.

3. The appellant's human rights claim is based, first, on her family life with her partner, and second, on her private life, within and outside of the Immigration Rules ("the Rules").

4. The appellant is unable to succeed in her application to remain with her partner in the United Kingdom within the Rules due to her immigration status as an overstayer. Accordingly, she can only succeed within the Rules if she can meet paragraph EX.1. of Appendix FM to the Rules ("Paragraph EX.1."). Paragraph EX.1.1. reads as far as relevant:

> "EX.1. This paragraph applies if
>
> (a) …
>
> or
>
> (b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, … and there are insurmountable obstacles to family life with that partner continuing outside the UK.
>
> EX.2. For the purposes of paragraph EX.1.(b) 'insurmountable obstacles' means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner."

5. At [30] of my error of law decision, I referred to the Supreme Court's judgment in R (on the application of Agyarko and another) v Secretary of State for the Home Department [2017] UKSC 11. That judgment concerns the legal position for those such as the appellant and her partner who are in a genuine relationship but where the foreign national spouse has no lawful right to reside in the United Kingdom. What is said there confirms the test which is now applied by paragraph EX.1. Subsequently, the Court of Appeal has confirmed that the factors relevant to that test ought to be considered cumulatively - Lal v Secretary of State for the Home Department [2019] EWCA Civ 1925. Judge Simpson had found that Paragraph EX.1. was not met.

6. Judge Simpson dismissed the appellant's appeal outside the

Rules on the basis that, whilst she would satisfy the Rules if she made an application to join her partner from Sri Lanka, she should nonetheless be required to return even temporarily in order to regularise her stay in view of the weight to be given to the public interest. Judge Simpson sought to apply the reasoning in the case of Chikwamba v Secretary of State for the Home Department [2008] UKHL 40, and I explained in my error of law decision why the judge's reasoning on that issue was flawed.

7. The case-law regarding Chikwamba has recently been clarified by the Court of Appeal in Alam and Rahman v Secretary of State for the Home Department [2023] EWCA Civ 30. Having reviewed the line of authorities following Chikwamba, the Court said this about the principle said to arise from that case:

> "107.Those three points mean that *Chikwamba* does not state any general rule of law which would bind a court or tribunal now in its approach to all cases in which an applicant who has no right to be in the United Kingdom applies to stay here on the basis of his article 8 rights. In my judgment, *Chikwamba* decides that, on the facts of that appellant's case, it was disproportionate for the Secretary of State to insist on her policy that an applicant should leave the United Kingdom and apply for entry clearance from Zimbabwe.
>
> …
>
> 112. The two present appeals, subject to A1's ground 2, are both cases in which neither appellant's application could succeed under the Rules, to which courts must give great weight. The finding that there are no insurmountable obstacles to family life abroad is a further powerful factor militating against the article 8 claims, as is the finding that the relationships were formed when each appellant was in the United Kingdom unlawfully. The relevant tribunal in each case was obliged to take both those factors into account, entitled to decide that the public interest in immigration removal outweighed the appellants' weak article 8 claims, and to hold that removal would therefore be proportionate. Neither the F-tT in A1's case nor the UT in A2's case erred in law in its approach to *Chikwamba*.
>
> 113. Moreover, the Secretary of State did not refuse leave in either case on the ground that the appellant should leave the United Kingdom and apply for entry clearance. I accept Mr Hansen's submission, based on *Hayat*, that *Chikwamba* is only relevant if the Secretary of State refuses an application on the narrow procedural ground that the appellant should be required to apply for entry clearance from abroad. It does not apply here, because the Secretary of State did not so decide. *Chikwamba* is irrelevant to

> these appeals. I also reject the appellants' submission that the UT determination in *Younas* was wrong; in *Younas* and in *Thakral*, the UT's approach was correct.
>
> 114. *Rhuppiah* does not help the appellants. Even if there is some flexibility in section 117B and section 117B(4)(b), there is, on the findings which the tribunals were entitled to make, no exceptional positive feature of the claim of either appellant which could enable it to succeed. There is, moreover, in each case (and subject to ground 2 in A1's case), a further negative factor, that is, that family life could continue abroad."

8. In light of Alam, the issues for me now are simply whether the appellant succeeds within the Rules based on her family life (which depends on whether Paragraph EX.1. is met) and, if not, whether her removal will result in unjustifiably harsh consequences for her and/or her partner.

9. In terms of her private life under the Rules, the appellant is required to show that there are very significant obstacles to her integration on return to Sri Lanka. As stated by Sales LJ in Kamara [2016] EWCA Civ 813, the concept of integration

> "is not confined to the mere ability to find a job or to sustain life while living in the other country … The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

10. Whipple LJ in NC [2023] EWCA Civ 1379 reviewed Kamara and the subsequent decisions which build upon it, summarising their import thus*:*

> "It is not in doubt, based on these authorities, that (i) the decision-maker (or tribunal on appeal) must reach a broad evaluative judgment on the paragraph 276ADE(1)(vi) question (see Kamara at [14]), (ii) that judgment must focus on the obstacles to integration and their significance to the appellant (see Parveen at [9]) and (iii) the test is not subjective, in the sense of being limited to the appellant's own perception of the obstacles to reintegration, but extends to all aspects of the appellant's likely situation on return including objective evidence, and requires consideration of any reasonable step that could be taken to avoid or mitigate the obstacles (see Lal at [36]-[37])."

11. When considering the appellant's case outside the Rules, I have to balance the interference with the right to respect for the family life and private life of the appellant and those others affected, against the public interest. When doing so, I also have to take into account the factors set out in section 117B Nationality, Immigration and Asylum Act 2002 ("Section 117B") so far as relevant.

12. The date for consideration whether there is a breach of Article 8 ECHR is the date of the hearing before me. It is for the appellant to establish the level and extent of interference on which she relies. Once that is established, it is for the respondent to justify the interference in the public interest. The standard of proof is a balance of probabilities.

The Evidence and Findings

13. I had before me a consolidated bundle of 643 pages which contained, amongst other things, the evidence that was before the First-tier Tribunal. Further, there are additional witness statements from the appellant and Mr Parslow filed late by the appellant's representatives without objection. Ms Renfrew also filed a skeleton argument for the hearing before me. I have read all the documents but refer only to those which are relevant to the issues I must consider.

14. The appellant and Mr Parslow gave evidence in English. The appellant is a fluent English speaker and there were no difficulties with her comprehension of the proceedings. The appellant and Mr Parslow adopted their respective witness statements that were before Judge Simpson and their updated witness statements filed for this hearing. Both representatives made submissions. It is not necessary to recite all the evidence and submissions, but I shall refer to the salient matters as and when necessary to support my findings.

15. Judge Simpson heard evidence from the appellant and Mr Parslow, and made detailed factual findings, which I preserved in my error of law decision at [36]. I adopt those findings in this decision and shall refer to them where relevant below. I find as follows.

16. The appellant came to the United Kingdom as a student on 6 February 2009. At the time she met Mr Parslow in 2016, she had leave to remain in the United Kingdom as a Tier 2 (General) Migrant. The appellant and Mr Parslow began living together in February 2018 at a time when the appellant's application for leave to remain on human rights grounds was pending. The appellant and Mr Parslow continue to reside together and are in a genuine and subsisting relationship.

17. Mr Parslow was born in the United Kingdom and has lived here all his life. He is 65 years old. He has extensive family connections in the United Kingdom. This includes the relationships he enjoys with his brothers and his elderly mother. Mr Parslow said that he was not particularly close to one of his brothers, but they are close enough that both brothers were willing to file a joint witness statement in support of the appeal before Judge Simpson.

18. Mr Parslow's mother resides in a care home. Before Judge Simpson, Mr Parslow's evidence was that he planned to take responsibility of his mother's care, however, the current position is that she remains in a care home, with Mr Parslow's youngest brother taking on most of the caring responsibilities principally because he is retired and lives nearest the care home. Mr Parslow takes on more responsibility for his mother's care when one of his brothers is abroad temporarily. Mr Parslow and the appellant enjoy a close relationship with Mr Parslow's mother and visit her weekly.

19. Before Judge Simpson, Mr Parslow was employed as a personal assistant to the Political Secretary of the Socialist Party. He also worked on a freelance basis for Socialist Publications Ltd. Mr Parslow continues in his employment but is currently on a phased return to work on health grounds. Mr Parslow's earnings are sufficient to meet the income threshold under the Rules. He also has substantial equity in his former matrimonial home, which is currently on sale. Mr Parslow expects that the property will be sold soon and that after deductions, he is likely to receive around £200,000 from the proceeds of sale.

20. Before Judge Simpson, Mr Parslow did not have any serious health concerns, but that has since changed. In September 2023, Mr Parslow was diagnosed with localised prostate cancer. Currently, his cancer does not require treatment and he may never need treatment unless his prostate cancer progresses. He is currently in a phase of active surveillance and is subject to a management plan. This includes an annual MRI scan (with a follow-up biopsy if there is a concern about disease progression), blood tests and a consultation with his treating physician every three months. His medical records show that he takes five prescribed daily medications. These records also show that he presented with a cough and weight loss in January 2024 which subsequently developed into pneumonia and required hospital admission from 5 to 14 February. The medical evidence does not support the claim that Mr Parslow is likely to experience continued recurrent chest infections and no such evidence was drawn to my attention.

21. I accept the appellant cared for Mr Parslow during his period of

ill-health and continues to do so as a loving partner would do. The appellant's evidence is that she performs tasks such as cooking, cleaning and ironing and ensures that Mr Parslow drinks fruit and vegetable juice and takes ayurvedic medicine(s) which she believes will "rid" him of cancer. Mr Parslow referred to the love and support the appellant provides particularly when he was in hospital. I have no doubt that Mr Parslow and the appellant share a close emotional bond and support each other, but I cannot accept, as the appellant sought to suggest, that Mr Parslow requires daily care, and nor do I accept her evidence that he cannot look after himself. It is appreciably clear from the evidence I have seen and heard that he can.

22. The appellant is in good health. She is 57 (nearly 58) years old. She has lived most of her life in Sri Lanka. She is an accomplished individual. She qualified as a lawyer and previously co-owned a law firm with her late father in Sri Lanka. She was awarded a CMI Level 7 Diploma in Strategic Management and Leadership in 2011, and an MBA in Innovative Management by Coventry University in 2012. She last worked in the United Kingdom as a manager. She has therefore proven to be academically and professionally adept.

23. Judge Simpson found the appellant has an extensive family network in Sri Lanka, and that she is close with her sister, but less close to the remainder of her family. In rejecting the evidence of the appellant and Mr Parslow, Judge Simpson found that the couple's relationship would not make them 'outcasts' in Sri Lanka; nor did he accept that the appellant's brother-in-law would reject them or that the wider family forbid their relationship. In evidence the appellant confirmed that she has weekly contact with her sister in Sri Lanka. She also confirmed and I accept that she has another sister in Sri Lanka, but they are not in contact. The appellant said that she cannot live with her sister even on a temporary basis - there was simply insufficient space for her to live there. There were further difficulties she said because her sister was unemployed and had health problems, her husband was retired, and their two unmarried student daughters lived at home.

24. The appellant's evidence in this respect lacked candour. When asked to state the number of rooms in her sister's house, the appellant's immediate response was that there are two bedrooms. As that did not answer the question, Ms Renfrew asked her again. The appellant could not remember. I find that difficult to accept. If the appellant can state that there is insufficient space in her sister's house, which she confidently asserts has two bedrooms, I consider that she is likely to be familiar with the components of the whole house itself. I have no hesitation in finding that the appellant was being evasive in her

evidence, and that she can live with her sister even if just on a temporary basis if she returns to Sri Lanka. Even if that is not a choice the appellant wishes to exercise, she has an extensive family network in Sri Lanka and, whilst she may not be as close to them as she is to her sister, there is no reliable evidence why she could not turn to them for support.

25. The appellant foresees another option because she addresses the possibility of renting accommodation in Sri Lanka in her witness statement. She explains this is not an option because she would have no income. I do not accept that. Judge Simpson found the appellant (and Mr Parslow) have access to financial resources and that she could sustain herself in Sri Lanka either in the short or long term. I agree. I acknowledge that it would be difficult for the appellant on return to Sri Lanka to restart her life, and she may not find work immediately as a lawyer given that she has not practiced law in Sri Lanka for fifteen years, however, she does have other transferable skills, qualifications, and experience which she could utilise to find work. She is not at retirement age, albeit I acknowledge she is close to it, but there is insufficient evidence that a person with the appellant's skills and qualifications would be unable to secure employment on return to Sri Lanka should she either wish or need to do so. Her language skills, familiarity with the lifestyle and culture of Sri Lanka, her previous employment experience and qualifications are all likely to place her in good stead. Alternatively, as Judge Simpson found, Mr Parslow is not without means and could provide support, either in the long or short term.

26. Judge Simpson accepted, at the date of hearing before him (2022), that Sri Lanka was undergoing a period of civil unrest, economic dislocation, and price inflation. However, he considered the crisis was general in nature and that the appellant and Mr Parslow, as impressive, educated, and resourceful individuals, were better equipped to meet the challenges than many other citizens of Sri Lanka. The appellant maintains that the economic crisis in Sri Lanka answers the question as to why she (and Mr Parslow) cannot survive in Sri Lanka. The background evidence appertaining to that crisis dates to 2022. There is thus no up-to-date evidence addressing the current economic situation in Sri Lanka and the extent to which the country may have recovered from that crisis. I am thus not persuaded that the prevailing economic country conditions (whatever they might be) means that neither the appellant nor Mr Parslow in view of their individual circumstances would not be able to survive economically in Sri Lanka. I shall later return to the background evidence that relates to the political situation in Sri Lanka.

27. Turning then to Mr Parslow's evidence as to why he could not

return to Sri Lanka with the appellant. Judge Simpson considered Mr Parslow's concerns specifically in relation to the interruption to his income stream, not speaking Sinhalese, and being intensely uncomfortable in hot humid climates and the inevitable consequence of separation from his mother. Judge Simpson, however, did not accept that Mr Parslow was unfamiliar with Sri Lankan culture and life and found that he would, with the assistance of the appellant, be able to overcome all the hurdles he identified. Judge Simpson further acknowledged that whilst Mr Parslow would not be able to enjoy the company of his mother with the same degree of regularity, he noted that Mr Parslow was not his mother's carer.

28. The evidence does not persuade me to take a different view from the preserved findings of Judge Simpson. The circumstances relating to Mr Parslow's mother are not significantly different. She has the care provided by the care home and the care and support of her two other children. She is not entirely dependent on either Mr Parslow or the appellant for care. Judge Simpson found the appellant and Mr Parslow have the means and resources to survive in Sri Lanka, and their financial circumstances are likely to improve soon on the sale of Mr Parslow's former matrimonial home. Whilst I acknowledge that Mr Parslow has surpassed the state retirement age in Sri Lanka, there is insufficient evidence that that acts as a general bar to him finding work in Sri Lanka. Judge Simpson found that Mr Parslow was a resourceful individual, and it has not been objectively established that he could not work in Sri Lanka where English is a recognised language should he choose to do so. Whilst I further acknowledge that Sri Lanka has a hot climate, a mere assertion that Mr Parslow would be unable to become accustomed to the heat and climate in view of his medical condition(s), is not sufficient to establish that this would entail a very serious hardship making it impossible for him to live in Sri Lanka.

29. There is then the claim that Mr Parslow cannot live in Sri Lanka because he would not have access to free medical treatment or to an adequate healthcare service. I accept from the background evidence that the economic crisis in 2022 took its toll on the healthcare system generally in Sri Lanka and had an impact on the supply of cancer drugs. I recognise also that a serious illness which requires ongoing treatment could amount to an insurmountable obstacle, but whether it is, is entirely fact sensitive. I am not satisfied that this has been established in this case. First, Mr Parslow's cancer does not currently require treatment. The management of his condition requires him to undergo an annual MRI scan (and possibly a biopsy), blood tests and a consultation every three months. The background evidence does not establish that these specific treatments and

services, or indeed Mr Parslow's current prescribed medications, are not available currently in Sri Lanka, and/or that Mr Parslow would be unable to access treatment and medical services because they are unaffordable.

30. Second, I stated earlier that the medical evidence did not establish that Mr Parslow was likely to experience continued recurrent chest infections, but should such difficulties arise and he requires treatment, the background evidence does not satisfactorily establish that treatment would not be available and/or unaffordable. Third, the appellant's evidence undermined her claim that Mr Parslow could not access medication and treatment in Sri Lanka due to the economic crisis when she admitted that her sister was able to access medical treatment. The appellant did not elaborate on her sister's health difficulties, and they may not be as serious as that of Mr Parslow's, but I found the appellant's evidence again suggested that she was not being entirely candid about the circumstances that she or Mr Parslow were likely to face in Sri Lanka. I find that appropriate medical care and treatment is likely to be available and accessible to Mr Parslow in Sri Lanka.

31. I reach these conclusions taking into account the background evidence relied on by Ms Renfrew referenced at paragraph 24 of her skeleton argument. This evidence largely relates to the general situation in Sri Lanka as of July 2023 and February 2024. I take into account that since the crisis the healthcare system has lost at least 1,000 medical specialists; there are reports of 150 essential medications running out over the last year (2023), and in 2024 over 1,700 medical professionals reportedly left the country, but this evidence is far too general in nature and is not sufficient to establish that there is a lack of adequate healthcare to cater for Mr Parslow's specific treatment and care needs as they currently stand.

32. Next, Mr Parslow asserts, in his witness statement prepared for this hearing, that he may be liable to political persecution in Sri Lanka due to his political beliefs. That is a general, and indeed a bold assertion, without further elaboration. This is not a matter that Ms Renfrew referred to in her submissions as a factor relevant to the issue of insurmountable obstacles or proportionality. She was right not to do so for the following reasons. The written evidence is general and lacking in detail. If Mr Parslow genuinely felt that he would be subjected to political persecution in Sri Lanka, it is not unreasonable to expect him to provide detailed evidence in his witness statement as to why that is so. Ms Renfrew obviously recognised the deficiency in the evidence and she ended her examination of Mr Parslow by asking him to explain what he meant in his witness statement. Mr Parslow said there had been a crackdown in Sri Lanka on

political co-thinkers aligned to the Socialist Party he worked for in the United Kingdom, and that he would be singled out if he became involved in political activities in Sri Lanka. I observe that he did not state here, notably, that he would in fact become involved in politics in Sri Lanka.

33. Ms McKenzie began her cross-examination where Ms Renfrew ended. When asked to elaborate further by Ms McKenzie, Mr Parslow referred to a single news article published in 2023 of an attack by the police on socialist and human rights activists at a commemorative event defending the rights of Tamils and in remembrance of those Tamils who were massacred. Mr Parslow's evidence was that he would be "expected" to participate in protests if he lived in Sri Lanka. There is no dispute that this event took place, however, I agree with Ms McKenzie that the evidence is not sufficient to support the view that Mr Parslow would be "expected" to participate in such protests if he lived in Sri Lanka. I find this evidence is self-serving and exaggerated. Further, Ms McKenzie rightly observed that this was not a claim that was specifically advanced before Judge Simpson. Mr Parslow said that he mentioned it, albeit in general terms, and that since the previous hearing the government had escalated its crackdown on protesters. Neither, Mr Parslow's previous witness statement that was before Judge Simpson, and indeed the decision of Judge Simpson itself supports that, as there is no specific reference therein to a fear of political persecution and none has been drawn to my attention. For all these reasons, I do not accept that Mr Parslow intends to engage in political activity in Sri Lanka or that he is likely to fall victim of political persecution.

34. It was clear from Mr Parslow's evidence that he and the appellant wish to continue their relationship in the United Kingdom. It was also clear that he continues, understandably, to battle with the choice of whether to stay or go with the appellant. In theory he said, despite the difficulties he would face in Sri Lanka, that he would go with the appellant, but ultimately that would be a matter for discussion in the event that the appellant was required to leave. Judge Simpson found that Mr Parslow would not accompany the appellant to Sri Lanka but would remain in the United Kingdom and support an application for entry clearance. I preserved this finding, so I shall proceed on that basis.

35. Judge Simpson also found that if the appellant was required to leave the United Kingdom to make an application for entry clearance that this would succeed. He indicated that the processing times for visas is about 24 weeks following application. As I understand it, that is a general UK government target for spouse visas rather than relating to Sri Lanka

specifically. I do not have evidence about the position in Sri Lanka in particular nor whether it would be possible to make a priority application. Whatever the position, however, the appellant could ensure before leaving the United Kingdom that all the paperwork is in order so that an application could be made promptly after return. Judge Simpson found that there would be sufficient funds to support her during the application process.

Application of the facts to the law

36. I begin with the position within the Rules. I shall deal first with the appellant's claim that she qualifies for leave to remain on private life grounds. The Rules require the appellant to establish that there will be very significant obstacles to her integration in Sri Lanka. Ms Renfrew in her submissions referred to the practical difficulties the appellant would face in finding accommodation and employment, the latter in her words was not "straightforward". I addressed earlier why I find these matters are either not difficulties or could be overcome by the appellant (despite her age) and I adopt them here. I am required to make a broad evaluative judgement taking into account all relevant factors. In the words of Kamara, the question is whether the appellant will be enough of an "insider … to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

37. Even though, the appellant has been absent from Sri Lanka for fifteen years, I cannot accept in consequence of my assessment of the evidence and in view of the preserved findings of Judge Simpson that the appellant will not be able to re-establish herself, forge and enjoy inter-personal relationships with her family and fellow citizens within a reasonable period. She will have access to family support, accommodation, and the financial support of Mr Parslow if she chooses not to work. There is no language, cultural or other societal or familial difficulties that will act as barriers to integration. I have no doubt as, Ms Renfrew highlights in her skeleton argument, that the appellant's separation from Mr Parslow will cause upset, but it has not been established in any objective sense that any consequence of separation is a barrier to integration. I find the appellant does not qualify for leave to remain within the Rules on private life grounds.

38. I next turn to consider family life within the Rules. As I have already set out, the obstacles prayed in aid relate in the main to Mr Parslow and not the appellant herself. I accept that Mr Parslow was born in the United Kingdom and is British. As is

made plain in Agyarko, however, the fact that he is British and has no ties with Sri Lanka would not mean that there would be insurmountable obstacles to him going to live there. I have already explained why I do not accept the claim that his age, employment prospects, language difficulties, familial relationships, his inability to live in a hot climate and finances are insurmountable obstacles.

39. For the sake of completeness, I observe the appellant and Mr Parslow make reference to Mr Parslow's state pension being frozen if he resided in Sri Lanka once he becomes eligible later this year. Whilst Mr Parslow is unlikely to receive a yearly increase in his UK state pension if he resided in Sri Lanka, I struggle however to understand how this would result in very serious hardship. In this regard, I remind myself of the preserved findings of Judge Simpson, not all of which I need repeat here, in respect of the financial circumstances prospective and otherwise of Mr Parslow and indeed the appellant. Essentially, they are not without means.

40. The crux of the appellant's case under the Rules concerns Mr Parslow's health circumstances. Fortunately, Mr Parslow's cancer has been caught early enough that it is sufficient at this stage to monitor his condition. I acknowledge that this must nevertheless be a worrying time for Mr Parslow and the appellant. I have already found however that there is no satisfactory evidence before me that Mr Parslow's condition cannot be managed in Sri Lanka or that he will not have access to medication and treatment.

41. For the foregoing reasons, and taking all the foregoing factors together and cumulatively, I conclude that there are no insurmountable obstacles to the appellant and Mr Parslow continuing their family life in Sri Lanka. Paragraph EX.1. is not met. The appellant therefore fails within the Rules.

42. I turn then to the position outside the Rules. There is no dispute between the parties that the matter in respect of Article 8 ECHR boils down to the question of proportionality. The relevant foregoing questions to be considered are answered in the affirmative. As for the question of proportionality, the relevant test here is whether refusing leave to remain would result in "unjustifiably harsh consequences" for the appellant or Mr Parslow. This requires me not just to assess the degree of hardship which they would suffer, but to balance the impact of refusing leave to remain on their family life against the strength of the public interest in all the circumstances of this particular case.

43. The same factors are at play. In her skeleton argument Ms

Renfrew prays in aid the obstacles to family life continuing in Sri Lanka; the relevant factors under section 117B; the impact of the appellant and Mr Parslow living abroad on the appellant's family in the United Kingdom – she clearly meant Mr Parslow's family – and the "applicability of *'Chikwamba'*". However, Ms Renfrew understandably places greater emphasis on the Chikwamba point, namely, that the weight to be given to the public interest is reduced by the fact that an application for entry clearance would succeed. In her submissions Ms Renfrew further prayed in aid, the effects of separation on Mr Parslow's health and the appellant's inability to re-establish herself within a reasonable period on return to Sri Lanka. As I indicated earlier, I proceed on the basis of Judge Simpson's finding that Mr Parslow would not leave the United Kingdom, however, I shall address the factors relied on by Ms Renfrew on a hypothetical basis should Mr Parslow decide to leave with the appellant.

44. I bring forward my earlier factual findings and the application of them under the Rules. For the reasons I gave earlier, I find that the appellant will be able to re-establish herself on return to Sri Lanka within a reasonable period. I find, there are no insurmountable obstacles to family life continuing in Sri Lanka. I find that it has not been established that there would be a breach of the human rights of any family member should the couple leave the United Kingdom. Mr Parslow's mother is cared for in a care home and she has the support of two other children. She is not dependent on Mr Parslow or indeed the appellant for care. There is insufficient evidence that Mr Parslow's brothers, nieces and nephew will be adversely affected should the couple leave the United Kingdom. I accept that Mr Parslow and indeed the appellant will not see his mother and other family members with the same degree of regularity, but it has not been established on the evidence that separation would result in unjustifiably harsh consequences either for him, the appellant, or indeed, them.

45. I find Mr Parslow will be able to access and afford medical treatment and care in Sri Lanka. It is unlikely to be of the same standard to that in the United Kingdom, but that is not the test. It has not been established that Mr Parslow's health is likely to deteriorate in the appellant's absence. He is able to return to work and can care for himself. In the event that Mr Parslow requires emergency treatment about which the appellant was particularly concerned, he can access NHS services and he is likely to have the additional support of his family in the United Kingdom.

46. I give some weight to the appellant's private life. I have little evidence about that beyond what is said about her studies, some employment and her family life. Nevertheless, I accept that she

has been in the United Kingdom now for over fifteen years and will have developed some private life of her own.

47. Having regard to section 117B, I accept that the appellant is financially independent. She does not work as she is not entitled to do so. Mr Parslow has been supporting them both. That is however a neutral factor as is her ability to speak English.

48. I am required by virtue of section 117B(4) and (5) to give little weight to the appellant's private life and family life. The little weight provisions apply to the appellant's private life which she developed at a time when her immigration status was first precarious from February 2009 to November 2018 and thereafter unlawfully. They also apply to her relationship with Mr Parslow. Whilst the relationship began when the appellant had leave to remain in 2016, it has largely continued whilst she has been here unlawfully from November 2018 onwards.

49. Ms Renfrew submits that the little weight provisions concerning family life do not apply to the appellant because the relationship began at a time when she had limited leave to remain in the United Kingdom and not whilst she was here unlawfully. I dealt with this argument in my error of law decision by reference to the case of Deelah and others (section 117B - ambit) [2015] UKUT 515 (IAC). In Deelah the then Chamber President of the Upper Tribunal concluded at paragraph 26 that the statutory interpretation of the "little weight" provisions in section 117B are not confined to the creation or initiation of either a private life or a relationship formed with a qualifying partner, but extends to its continuation and development because the verb "established" is synonymous with "developed". No authority has been drawn to my attention that indicates that the statutory interpretation of the little weight provisions considered in Deelah ought not to be followed.

50. I accept that this does not mean that no weight should be given but the level of weight depends on the evidence about the strength of the private and family life and interference with it (see: Rhuppiah [2018] UKSC 58 §49). I do not repeat what I have already said. Although I accept the appellant has a strong family life with Mr Parslow, I have already concluded that this can be continued in Sri Lanka.

51. Against, the interference I have to balance the public interest. That is the interest in maintaining effective immigration control. I accept that there might be some rare cases where a temporary interference would be disproportionate even if in the longer-term family life could be continued outside the United Kingdom. This could be the position even when, as in this case, the Rules are not met. I have carefully considered whether that

could be said to be the position here by reference to the questions I am required to consider (see: Younas (section 117B(6)(b); Chikwamba; Zambrano) [2020] UKUT 00129 (IAC)).

52. I accept that even a temporary removal is a sufficient interference with the appellant's family life. However, even if ultimately the appellant would be granted entry clearance as Mr Parslow's spouse, the need for foreign nationals to follow the Rules is not a minor public interest consideration. The system of immigration control is undermined by a failure to follow the Rules. It is also unfair on those who enter in accordance with the Rules to allow persons in the appellant's situation to remain when they have overstayed their leave to remain and without requiring such persons to regularise their stay in accordance with the Rules.

53. The appellant has circumvented the lawful operation of the immigration system by remaining in the United Kingdom unlawfully since 7 November 2018. Even though the appellant made an application on 19 November 2018 for Indefinite Leave to Remain on grounds of long residence, on the advice of her then legal representatives, the refusal of which was the subject of ongoing litigation until she withdrew her application for permission to appeal to the Court of Appeal in June 2021, this does not in my judgement reduce the weight to be afforded to the public interest. Ms Renfrew's reliance on these matters ignores the appellant's evidence in response to Ms McKenzie's questions that she overstayed because she had commenced a relationship with Mr Parslow; she did not want to leave him and wanted to stay in the United Kingdom.

54. I do not repeat my previous conclusions about the other factors which weigh in the appellant's favour in terms of interference. These include the strength of her relationship with Mr Parslow, the length of her residence in the United Kingdom - the first nine years and nine months of which were spent here lawfully - and indeed that entry clearance would be granted. I take all those factors into account when conducting the balancing exercise.

55. The public interest in this case is a strong factor. Balancing the interference with the private life of the appellant and her family life and the rights of those affected by her removal against that strong public interest, I conclude that the public interest outweighs the interference. Removal would not lead to unjustifiably harsh consequences for the appellant or those (in particular Mr Parslow) who are affected by the decision. Removal of the appellant does not breach section 6 of the Human Rights Act 1998 (Article 8 ECHR).

56. For those reasons, I dismiss the appellant's appeal.

Notice of Decision

The appellant's appeal is dismissed on human rights grounds. Her removal does not breach section 6 of the Human Rights Act 1998 (Article 8 ECHR).

R.Bagral

Deputy Upper Tribunal Judge

Immigration and Asylum Chamber

1 June 2024