



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

Appeal Number: IA/46661/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 11 April 2014**

**Approved extempore decision**

**Determination**

**Promulgated**

**On 28 April 2014**

**Before**

**UPPER TRIBUNAL JUDGE O'CONNOR**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**KAITHIRY PARANEETHARAN**

Respondent

**Representation:**

For the Appellant: Mr G Saunders, Senior Presenting Officer

For the Respondent: Ms A Walker, S. Satha & Co Solicitors

**DETERMINATION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department. For the sake of convenience I shall refer herein to Ms Paraneetharan as the claimant.
2. The claimant is a national of Sri Lanka born 5 August 1983. She arrived in the United Kingdom on 10 September 2008 with leave to enter as a student conferred until 31 October 2010. That leave was subsequently extended until 24 September 2013. On 20 September 2013 the claimant applied for leave to remain on the grounds of her marriage to a Mr Parameswaran. The Secretary of State refused that application in a decision of the 21 October 2013 and on the same date a decision was

made to remove the claimant from the United Kingdom pursuant to section 47 of the Immigration, Asylum and Nationality Act 2007.

3. In relation to the Immigration Rules the Secretary of State observed that the claimant's husband had neither settled or refugee status in the United Kingdom nor was he the beneficiary of humanitarian protection. As a consequence it was concluded that she did not meet the requirements of Appendix FM to the Immigration Rules, a conclusion that is not in dispute.
4. The Secretary of State then, albeit in the briefest of terms, gave consideration to whether to grant the claimant leave to remain outside of the Immigration Rules, with particular reference to Article 8 of the Human Rights Convention; deciding not to do so.
5. The claimant appealed to the First-tier Tribunal. That appeal was heard by First-tier Tribunal Judge Clarke on 12 February 2014 and allowed on human rights grounds, with reference to Article 8 of the Convention, in a determination promulgated on 19 February 2014.
6. It is prudent for me to set out in full the four relevant paragraphs of Judge Clarke's determination:

"10. I prefer the submissions advanced by Ms Walker [and I interpose here to note that those submissions are not set out in the determination]. In essence the respondent saw fit to grant the husband discretionary leave arising out of his application for asylum based upon his fear to return to Sri Lanka. Whilst there are no findings of fact as to whether or not it is not safe for the husband to return there, the grant of discretionary leave until 2016 is to allow him to remain in the UK until that time.

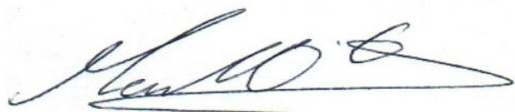
11. I accept that the appellant has accommodation with her parents who still live in Sri Lanka and that she works there as an assistant in an IT shop or following her studies in accounts she could find work in that field as well. I find that she could communicate with her husband using Skype, the telephone and other methods of communication, but this is not enough for a married couple to continue their relationship.
12. They currently live and work together and have a close marriage. The respondent never challenged the subsistence of the marriage, and they clearly are married and enjoy family life together. I cannot expect the husband to visit the appellant in Sri Lanka, and therefore, it would be unjustifiably harsh for these two parties not to recognise that human rights are engaged, and it would be disproportionate for them if the appellant were not granted leave in line with that of the husband, to end at the same time.
13. There are compelling circumstances in this case which is that the respondent saw fit to grant the husband discretionary leave arising out of his asylum claim, and therefore, he cannot be expected to return to Sri Lanka up to the end of his leave in 2016."

7. The Secretary of State was granted permission to appeal by Upper Tribunal Judge Deans in a decision of the 10 March 2014. It was submitted in the grounds of application, and maintained by Mr Saunders before the Upper Tribunal today, that the First-tier Tribunal Judge erred in reaching a conclusion that the claimant's husband could not be expected to return to Sri Lanka and, as a consequence, the judge erred in her conclusion at paragraph 13 of the determination, when stating that there were compelling circumstances in this case for allowing the appeal where the claimant could not meet the terms of the Immigration Rules. The grounds also assert that the judge erred in conflating a grant of discretionary leave to the claimant's husband with a grant of refugee status.
8. In response Ms Walker settled a detailed Rule 24 notice and made lengthy oral submissions, the effect of which were as follows:
  - (i) The First-tier Tribunal Judge did not conflate the grant of discretionary leave with the grant of refugee status, as is evidenced by the terms of paragraph 10 of the determination.
  - (ii) The First-tier Tribunal Judge was entitled to conclude that the claimant's husband could not reasonably be expected to return to Sri Lanka, at least until the expiration of his discretionary leave to remain. That was partly a consequence of the respondent *"having already decided that it would not be proportionate to remove the claimant's husband hence the three year grant of discretionary leave until 2016"*.
9. I accept that the judge did not conflate the grant of refugee status with the grant of discretionary leave to remain to the claimant's husband. This clearly follows, in my view, from the terms of paragraph 10 of the determination.
10. However, I do not accept that the determination discloses adequate reasons for the judge's conclusion that it is not reasonable to expect the claimant's husband to either visit, or to live in, Sri Lanka. The fact that the claimant's husband has been granted discretionary leave to remain cannot, of itself, make it unreasonable for him to return to his homeland. This is so even if the claimant's husband's assertion is correct, and he was granted discretionary leave to remain because it was found that it would not be proportionate to require him to return to Sri Lanka permanently.
11. Each case must be determined on its own facts and the judge ought to have, but did not, give detailed consideration to the claimant's husband's current circumstances. A historic grant of leave may be relevant to such considerations but it is not to be taken as matter of determinative weight. That is highlighted well by the circumstances of the instant case, in which the historic grant to the claimant's husband was, it is said, based partially on the fact of the claimant living in the United Kingdom.

12. In my conclusion Judge Clarke failed to provide an adequately reasoned analysis of how she reached her conclusion that it would not be reasonable for the claimant's husband to return to Sri Lanka, even temporarily.
13. There was one further point raised during the course of argument by Ms Walker in reference to paragraph 12 of the determination where the judge stated:

"I cannot expect the husband to visit the husband in Sri Lanka, and therefore, it would be unjustifiably harsh for these two parties not to recognise their human rights are engaged."
14. Ms Walker submits that when paragraph 12 is read as a whole, it is plain that the judge is saying that the husband cannot be expected to return to visit Sri Lanka, not because it is not reasonable for him to do so but because even if he does so this would still not be adequate to maintain the family life between him and the claimant. I do not read paragraph 12 of the determination in this way. In my conclusion what the judge was saying in paragraph 12 was simply that the claimant's husband could not reasonably be expected to make visits to see the claimant in Sri Lanka.
15. If it is right that paragraph 12 can be read in two divergent ways then it is difficult to understand how it can also be maintained that the determination contains sufficient reasoning for the Secretary of State to understand why she lost this appeal. If paragraph 12 is to be read in the way in which I find it should be, then in my conclusion the judge has given wholly inadequate reasons for his findings therein.
16. In summary, looking at the determination as a whole I do not accept that it can be said that the losing party, here the Secretary of State, can properly understand why she lost, given the dearth of reasoning which appears therein. For this reason I set aside the First-tier Tribunal's determination.
17. I announced my conclusions at the hearing. Having done so both parties agree that in the circumstances of this case the appeal should be remitted to the First-tier Tribunal to remake the decision afresh and I take that course, having first considered paragraph 12 of the Senior President's Practice Statement.

Signed:



Upper Tribunal Judge O'Connor  
Date: 17 April 2014

