



The Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: AA/07935/2014

THE IMMIGRATION ACTS

Heard at Field House
On November 6, 2015

Decision and Reasons Promulgated
On November 11, 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

MR T P
(ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Mr Coleman, Counsel, instructed by S Satha & Co

Respondent

Mr Kotas (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a national of Sri Lanka and he applied for asylum and associated protection or reliefs.
2. The respondent refused his application on September 24, 2014 and the appellant appealed against that decision under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. The matter was heard by Judge of the First-tier Tribunal Afako on June 9, 2015 and in a decision promulgated on July 8, 2015 the Tribunal refused his appeal on all grounds including Article 8 ECHR.
4. The appellant applied for permission to appeal on June 22, 2015 submitting the Tribunal had erred.
5. Permission to appeal was granted by Resident Judge of the First-tier Tribunal Renton on August 25, 2015 only on the basis that it was arguable the Tribunal had erred in considering the appellant's private life under Article 8 ECHR. In all other respects permission to appeal was refused.
6. The First-tier Tribunal made an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I extend that order.

SUBMISSIONS

7. Mr Coleman submitted that the Tribunal failed to consider private life under paragraph 276ADE(vi) HC 395 and he submitted that in light of the appellant's circumstances the Tribunal should have considered his private life under this provision before any consideration under Article 8 ECHR. By failing to do so the Tribunal materially erred. He further submitted the Tribunal had erred by failing to properly engage with the evidence and in particular failed to have regard to the fact he had limited family in Sri Lanka and was suffering from post-traumatic stress disorder. There was no reference in the decision to proportionality and the Article 8 assessment was cursory at best.
8. Mr Kotas relied on the Rule 24 statement dated September 3, 2015 and submitted that whilst the Tribunal had not specifically considered paragraph 276ADE HC 395 he submitted that the error, on the facts of the case, was not material. The appellant had only been in the United Kingdom for 4 ½ years and the only basis he could bring a claim was on private life. Any private life had been created at a time when his immigration status was precarious due to the outright rejection of his asylum claim. There was nothing within his evidence that demonstrated "very significant" obstacles to his re-integration and the same conclusion would have been reached on both an application under the Rules and Article 8.

DISCUSSION AND FINDINGS

9. Permission to appeal had been granted to the appellant on the basis it was arguable that the Tribunal had erred in its approach whether the Tribunal had considered if the appellant had established a significant private life.
10. The appellant had arrived in the United Kingdom in late December 2012 whereupon he made an application for asylum. This application was refused and rejected with detailed reasons by both the respondent and the tribunal. Although permission to appeal was sought in respect of this aspect of the claim in giving permission resident judge of the first-tier Tribunal Renton made clear there was no error of law and that

the tribunal had properly considered the medical evidence and given for the reasons credibility findings. The Tribunal also made findings with regard to the appellant's mental health pointing out that there was no specialist medical evidence available and its conclusions were open to it.

11. Ground five of the Permission to appeal specifically raises the fact that the Tribunal failed to consider the claim under paragraph 276 ADE HC 395. Mr Kotas accepted that the Tribunal did not consider paragraph 276ADE HC 395 and the decision only addresses Article 8 from paragraph 55 onwards.
12. However, the argument put forward by Mr Kotas is twofold:
 - a. Bearing in mind the findings made about the appellant's medical condition and the fact that his private life has been created whilst his immigration status was precarious means that any claim under Article 8 was bound to fail bearing in mind section 117B(1) of the 2002 Act.
 - b. In light of the fact the Tribunal rejected his claim to have no family in Sri Lanka coupled with the fact he has spent all his life, apart from the last 4 ½ years there, then any decision under paragraph 276ADE was bound to fail because there would be no "very significant obstacles."
13. The difficulty facing Mr Coleman is that the First-tier Tribunal made a number of significant adverse credibility findings that undermined arguments put forward today. Whilst I accept the Tribunal did not make any findings under paragraph 276ADE HC 395 it is clear that the Tribunal could only have allowed his appeal if it was satisfied there were "very significant obstacles" to his return.
14. The Tribunal rejected the scarring evidence and attached little weight to the conclusion given by the appellant's GP that he was suffering with severe post-traumatic stress disorder and permission to appeal on this issue was refused.
15. At paragraph [56] of its decision the Tribunal referred to the appellant identifying at least one uncle living in Sri Lanka and there was no evidence, in light of the rejection of his claim, that there were "very significant obstacles" to his return. Accordingly, whilst the Tribunal erred by not considering his claim under the Immigration Rules I am satisfied that this would not have been material based on the Tribunal's findings because there was no basis for the Tribunal to find there were "very significant obstacles" in light of the wholesale rejection of the other issues raised by him.
16. As regards a standalone Article 8 claim, the Tribunal had regard to part 5A of the 2002 Act and stated in paragraph [57] of its decision that none of the relevant considerations were in the appellant's favour and section 117B(1) of the 2002 Act makes clear that immigration control is in the public interest.
17. I therefore find on the evidence before the first Tier Tribunal there was no material error.

DECISION

- 18. There was no material error.
- 19. I uphold the original decision and dismiss the appeal.



Signed:

Dated:

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT
FEE AWARD**

I make no fee award as the appeal has been dismissed.



Signed:

Dated:

Deputy Upper Tribunal Judge Alis