



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/08307/2014  
IA/08305/2014  
IA/08306/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 16 December 2014

Determination Promulgated  
On 8 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR M U (FIRST CLAIMANT)  
MISS F M (SECOND CLAIMANT)  
MS L I (THIRD CLAIMANT)  
(ANONYMITY ORDER MADE)

Claimants

**Representation:**

For the Appellant: Ms A Holmes, Senior Home Office Presenting Officer  
For the Claimants: Ms M Malhotra (Counsel instructed by Chipatiso Associates LLP)

**DETERMINATION AND REASONS**

1. For ease of reference I shall refer to the parties as the "Secretary of State" who is the Appellant and to the "Claimants".

2. This is an appeal against a Decision and Reasons of the First-tier Tribunal (Judge Wellesley-Cole) promulgated on 24 October 2014 in which the Tribunal allowed the appeals against a decision made by the Secretary of State on 29 January 2014 to remove the Claimants administratively on the grounds that their human rights claim was refused.
3. The Claimants are all members of the same family and are citizens of Sri Lanka. The first claimant is Mr M U whose date of birth is 11 December 1978, his dependent wife is Mrs F M whose date of birth is 9 November 1988 is the second and main Claimant and the third Claimant is their 2½ year old daughter whose date of birth is 5 May 2012.

### **Background**

4. The Secretary of State took into account that the Claimant entered the UK on 8 October 2010 as a student on a visa valid until 29 February 2012. His application for leave to remain on human rights grounds was refused without a right of appeal on 6 April 2013. Notice of liability to removal was served on the parties on 11 November 2013. Further representations were received on 22 January 2014 on the grounds of family and private life.
5. The main application was made by F M with her husband and child as dependants. She claimed to have met her partner, a fellow Sri Lankan national in 2010. He entered the UK in 1999 initially as a student and subsequently remained with leave as a work permit holder although this was revoked in 2007. He thereafter remained in the UK as an overstayer. An application for leave to remain outside of the Rules was submitted by him on 15 August 2011 and refused on 27 October 2011.
6. The Secretary of State considered Article 8 of the ECHR under Appendix FM and 276ADE of the Immigration Rules. It was accepted that the Claimant met the suitability requirements but failed to meet the eligibility requirements as either a partner or a parent. In accordance with paragraph 276ADE the Claimant was not able to meet the requirements therein. Consideration was given to the needs and welfare of the child under Section 55 of the Borders, Citizenship and Immigration Act 2009. The Claimant's return to Sri Lanka with members of her family would not breach Article 8 and such private life as was established could equally be maintained from abroad in Sri Lanka.
7. The Tribunal heard oral evidence from the Claimant and her husband. The Tribunal had regard to the freestanding Article 8 outside of the Rules. It considered that private life encompassed family life. The Tribunal accepted that there was a family life established but found no interference as the family would be removed as a unit. The Tribunal cited the guidance of Lord Bingham in **Razgar** and focused on proportionality having regard to **Huang** Court of Appeal, **AG Eritrea [2007] EWCA Civ 801**, **VW Uganda [2009] EWCA Civ 5** and **EB Kosovo [2008] UKHL 41**. The Tribunal considered length of residence in the UK, age, contribution to society, the

fact the parties were economically self-sufficient and their 2 year old child was born in the UK as factors in favour of the individuals' private interests. The Tribunal further considered part 5A of the Immigration Act 2014 which brought into effect Section 117 setting out those public interest factors that the Tribunal must have regard to in reaching a decision under Article 8 ECHR.

## **Grounds of Application**

### **Ground 1**

8. The Secretary of State submitted that the Tribunal failed to give any or any adequate reasons why it would not be reasonable to expect the Claimants to return to their home country. Although reaching a decision that the removal would be disproportionate the Tribunal failed to articulate those reasons in support of the decision. (Paragraphs 12 and 14 were inadequate). The Tribunal failed to state any compelling or exceptional circumstances to warrant consideration outside of the Rules.

### **Ground 2**

9. The Tribunal erred in including family life as part of the assessment for private life, in the circumstances that the family would be removed as a unit and as such there would be no interference with their family life.

## **Permission**

10. Permission was granted by Designated First-tier Tribunal Judge McCarthy on 17 November 2014, as follows:

“Although at 11 and 12 the judge identified the correct legal principles that she had to apply, namely she had to undertake a proportionality exercise, and although at 12 she identified the statutory provisions relating to public interest considerations, at no point does she carry out the necessary balancing exercise between the personal circumstances of the appellants and the public interest. In other words, it is eminently arguable that no reasons have been given for the judge's findings at 14.”

## **The Hearing**

11. This matter comes before me for consideration as to whether or not there is a material error of law in the decision and reasons of the First-tier Tribunal.
12. I heard oral submissions from Ms Holmes and from Ms Malhotra which I have taken into account together with written submissions in reaching my decision.

13. Ms Holmes relied on the grounds and amplified the same in her submissions. The Tribunal failed to give any reasons at all for the proportionality decision and had not considered the circumstances on return to Sri Lanka either. This was simply not adequate and the Tribunal failed to grapple with the circumstances of the case sufficiently. There was no consideration of compelling or exceptional circumstances to justify consideration of the application outside of the Rules. A further error was the focus on private life and the failure to address family life, which was a material error, given that the family would be removed as a unit and there would be no breach of Article 8 family life.
14. Ms Malhotra submitted that the Tribunal had regard to the length of time in the UK spent by the Claimant's husband (fifteen years) and the fact that he had worked, paid taxes and never been an economic burden on the State. The Tribunal looked at the circumstances from the perspective of Section 117B. She acknowledged that it was unclear what the Tribunal meant at paragraph 11, "although they applied on private life grounds as opposed to family life, I have subsumed the family life arguments into the private life grounds assessment because they are a family and have lived here."
15. Ms Malhotra relied on written submissions. She accepted that whilst reference is made to the fact that an application was made only on the basis of private life, the application must have been made on the basis of family and private life and accordingly she conceded that there ought to have been some consideration of family life in the decision.
16. At the end of the hearing I reserved my decision which I now give with my reasons.

### **Discussion and Decision**

17. I am satisfied that there were material errors of law in the determination which shall be set aside. I am satisfied that the grounds have been made out.
18. In short, although the Decision and Reasons referred to relevant legal principles, thereafter it failed to apply the same to findings of fact and failed to give adequate reasons for reaching its decision.
19. The Claimants did not meet the requirements of the Immigration Rules either under Appendix FM or having regard to paragraph 276ADE. I am satisfied that the Tribunal embarked on a freestanding assessment under Article 8 ECHR without reference to the existence of circumstances outside of the Rules to justify the same. On the facts there were no exceptional circumstances ( and none have been relied on) to support consideration under Article 8 outside of the Rules.
20. Furthermore I find that the Tribunal failed to properly follow the step-by-step approach propounded by Lord Bingham in **Razgar**. Somewhat oddly it focused only

on the private life of the Claimants, and in so doing purported also to consider family life. This was a clear error of law that was material to the outcome of the decision. In addition to which there was no consideration of the circumstances for the family either as a unit or separately of their situation in Sri Lanka in terms of existing family, social and cultural ties and the possibility of employment etc. I am satisfied that the Tribunal's consideration of Article 8 issues was entirely flawed.

21. I now propose to re-make that decision without further hearing and having regard to the evidence that was before the First-tier Tribunal.
22. There was no dispute as to the facts in the matter. The Claimant's husband entered the UK in 1999 and had leave to remain until 2011. The parties met whilst studying in the UK in December 2010. The husband was engaged in employment and was economically self-sufficient during the time he was employed. Prior to that he obtained educational qualifications in Computer Science. His leave as a work permit holder was curtailed. The main Claimant resided in the UK for three years and their child was born in April 2012.
23. The Claimants are essentially a young hard working family who wish to settle and remain in the UK. For Mr M U there has been a considerable period of residence in the UK of some fifteen years which was entirely lawful until 2011 when his leave was curtailed. None of the Claimants have been able to meet the requirements of the Rules having regard to private or family life. I find no basis for considering Article 8 ECHR as there are simply no exceptional or compelling circumstances to justify considering the claim outside of the Rules.
24. If I am wrong and it were necessary to follow the step-by-step **Razgar** approach then I find no arguable basis for reaching any conclusion that the decision to remove the family to Sri Lanka is disproportionate. The Claimants are a family unit. The child is only 2½ years of age and therefore her interests clearly lie in remaining with both of her parents wherever that may be. She is far too young to have established any independent life in the UK. The parents both came to the UK as students and as such their immigration status was temporary. Although Mr M U was given work permit status again this was limited for a number of years and in any event was curtailed. Having regard to their respective private lives, there is simply no evidence to support an argument that there was any interference with the private lives. It is clear that the main claimant has been living in the UK for a relatively short time and maintained links with family members in Sri Lanka where her parents are living. Whilst there was no evidence before the Tribunal as to the circumstances of family, social or economic ties in Sri Lanka, there certainly was no evidence to show that it would be unreasonable to expect the family to return to Sri Lanka.
25. For all of the above reasons the appeal is dismissed on immigration and human rights grounds.

**Decision**

26. I find a material error of law in the Tribunal's decision.
27. The decision is set aside.
28. I re-make the decision and substitute a decision that the appeal is dismissed on immigration and human rights grounds.

Signed  
GA Black

Date 5.1.2015

Deputy Upper Tribunal Judge G A Black

Anonymity direction is made because one of the parties is a minor.

**TO THE RESPONDENT**  
**FEE AWARD**

No fee award is payable.

Signed  
GA Black

Date 5.1.2015

Deputy Upper Tribunal Judge G A Black