



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

**Appeal Number: IA/37309/2013  
IA/37140/2013  
IA/38777/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On May 18, 2015**

**Determination Promulgated  
On May 19, 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MRS MARIYAMOTCHALAKINI MARKUPILLAI EPOUSE VARATHA  
MISS SUBAMAGISHA VARATHARASA  
MISS SUBATHARSHA VARATHARASA  
(NO ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Iqbal, Counsel, instructed by March & Partner Solicitors

For the Respondent: Mr Avery (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The appellants are citizens of Sri Lanka albeit they have been granted refugee status in France in 2010. The appellants entered the United Kingdom on May 8, 2013 and on August 11, 2013 they applied for leave to remain. The respondent refused their applications on August 23, 2013 and at the same time decisions were taken to remove them

under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The appellants appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on September 11, 2013.
3. On September 16, 2014 Judge of the First Tier Tribunal Adio (hereinafter referred to as the "FtTJ") heard their appeals and in determination promulgated on September 30, 2014 he refused their appeals under both the Immigration Rules and article 8 ECHR.
4. The appellant lodged grounds of appeal on October 9, 2014 and on October 29, 2014 Judge of the First-tier Tribunal Davies refused permission to appeal finding there was no arguable error in law. Grounds of appeal were renewed to the Upper Tribunal on November 19, 2014 and expanded upon and Deputy Upper Tribunal Judge Bruce found there was an arguable error in law on the basis the FtTJ's determination did not deal with the legality of the section 47 decision and there were contradictory findings on compelling circumstances and proportionality.
5. The matter came before me on the above date and the appellants were in attendance and the parties were represented as set out above.
6. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and I see no reason to alter that order.

### **PRELIMINARY ISSUE**

7. Ms Iqbal raised a point that the grounds of appeal suggested the removal was to Sri Lanka whereas her colleague's submissions to the FtTJ had been on the basis of removal to France. She submitted that the respondent would need the permission of the French authorities to return them to France because this was, in her opinion, a "Dublin III Convention" case. Mr Avery disagreed and whilst I was of the same opinion as Mr Avery I allowed Ms Iqbal time to review her position. After a short adjournment she indicated she did not intend to pursue that point but would still be arguing that there was an arguable error in law in the FtTJ's approach to article 8 ECHR.

### **SUBMISSIONS**

8. Mr Iqbal submitted the FtTJ found there were compelling circumstances that enabled him to consider the appeal outside of the Immigration Rules and having done so she went on to find although there were compelling circumstances removal was still proportionate.

Ms Iqbal submitted this was contradictory and amounted to an error in law.

9. Mr Avery relied on the Rule 24 letter dated March 4, 2015. He submitted the FtTJ accepted there were compelling factors that justified him considering the appeal outside of the Rules but having done so he found the public policy of removal having regard to the matters summarised in paragraph [29] of his determination justified removal as proportionate. This was a mere disagreement with the FtTJ's decision.
10. I reserved my decision.

## **FINDINGS**

11. This was an application to vary the appellant's leave to enable the appellants (mother and two daughters) to remain in the United Kingdom. The FtTJ found there were compelling factors that enabled him to consider the facts outside of the Rules and then from paragraph [27] of his determination he examined the facts against the tests set out in Razgar [2004] UKHL 00027.
12. Ms Iqbal has submitted that by finding there were compellable reasons not to remove them the FtTJ then erred by finding removal was proportionate. Mr Avery has submitted the FtTJ assessed the evidence as he was obligated to do and then made findings open to him.
13. The FtTJ accepted in paragraph [27] there was family life on the basis there was a financial dependency between the first-named appellant and sponsor who are mother and son. The FtTJ extended this family life to include the two other appellants who at the time of the original hearing were 19 and 15 years old. He further found that removal would interfere with their family life. At paragraph [28] the FtTJ accepted removal would be in accordance with the law namely the maintenance of effective immigration control. Whilst accepting the first-named appellant spoke no English and the other appellants spoke limited English he accepted the appellants would be maintained by the Sponsor he had regard to the fact that by being unable to speak English it would be harder to integrate into UK society and when they arrived they had no legitimate expectation that they would be allowed to remain as they had arrived as visitors on six month visas. He also had regard to the fact the children would be educated at public expense if allowed to remain and the problem with the first-named appellant's husband no longer existed because he had died.
14. I am satisfied the FtTJ had regard to all of the "compelling factors" advanced on the appellants' behalf but in carrying out the final stage in Razgar he had regard to proportionality. This balancing act was

undertaken in paragraph [31] and the conclusions made were not only open to the FtTJ but were well reasoned.

15. I am satisfied there is no conflict. Although the FtTJ accepted there were factors that merited consideration they did not outweigh the countervailing circumstances and the FtTJ was entitled to dismiss their claims.

**DECISION**

16. There was no material error. I uphold the original decision.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT  
FEE AWARD**

The appeal failed and I therefore make no fee award.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis