



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

Appeal Number: OA/12795/2014

THE IMMIGRATION ACTS

Heard at Field House

On 15th September 2015

**Decision & Reasons
Promulgated**

On 2nd October 2015

Before

UPPER TRIBUNAL JUDGE RENTON

Between

KANTHIA KUNARARTNAM
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - CHENNAI

Respondent

Representation:

For the Appellant: No Appearance

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka born on 30th April 1934. He applied for entry clearance in order to settle in the UK as the adult dependant relative of the Sponsor, the Appellant's son Kunaratham Thayaparan. That application was refused by an Entry Clearance Officer under the provisions of paragraph EC-DR-1.1 of Appendix FM of HC 395 for the reasons given in a Decision Notice dated 10th September 2014. The Appellant appealed that decision, and his appeal was heard by a Panel comprising First-tier

Tribunal Judge Cheales and First-tier Tribunal Judge Moan (the Panel) sitting at Birmingham on 26th February 2015. The Panel dismissed the appeal under the Immigration Rules, but allowed it on Article 8 ECHR grounds for the reasons given in its Decision dated 16th March 2015. The Respondent sought leave to appeal that decision, and on 14th May 2015 such permission was granted.

2. I must first decide if the Decision of the Panel contained an error on a point of law so that it should be set aside. At the hearing of that issue before me, there was no appearance by or on behalf of the Appellant. I was informed that this was because the Appellant had died on 9th September 2015. Notwithstanding this development, Mr Whitwell asked me to decide that the Decision of the Panel should be set aside in that it contained an error on a point of law as when deciding that the Respondent's Decision was a disproportionate breach of the Appellant's Article 8 ECHR family rights, the Panel took no account of the public interest and in particular did not address the factors set out in Section 117B Nationality, Immigration and Asylum Act 2002.
3. I agreed with this submission of Mr Whitwell. It is apparent from reading the Decision of the Panel that when considering proportionality, the Panel took no account of and attached no weight to the public interest, and in particular failed to consider the factors set out in Section 117B of the 2002 Act. As this amounts to a material error of law, the Decision of the Panel relating to the Appellant's Article 8 ECHR rights is set aside. The decision of the Panel to dismiss the appeal under the Immigration Rules has not been impugned in the appeal to the Upper Tribunal and remains.
4. The Decision of the Panel relating to the Appellant's Article 8 ECHR rights does not need to be re-made. Following the death of the Appellant, there is no extant appeal which needs to be re-decided.

Decision

The making of the Decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside that Decision as far as it relates to the Appellant's Article 8 ECHR rights. To that extent the appeal to the Upper Tribunal is allowed. There is no further extant appeal to be decided.

Anonymity

The First-tier Tribunal did not make an order for anonymity and following the death of the Appellant I find no need to do so.

Signed

Date

Upper Tribunal Judge Renton