



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

Appeal Number: OA/18641/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 19th February 2015**

**Determination
Promulgated
On 15th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MRS THARGIKA DENI MOWLEETHARAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharma, Counsel

For the Respondent: Miss K Pal, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka born on 30th November 1981. The Appellant had applied for entry clearance as a partner under Appendix FM of the Immigration Rules. Her application was refused by the Secretary of State on 5th September 2013. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Cohen sitting at Taylor House on 2nd October 2014. In a determination promulgated on 7th October 2014 the Appellant's appeal was allowed under the Immigration Rules. The Secretary of State lodged Grounds of Appeal to the Upper Tribunal on 7th October 2014. Those grounds submitted that the Tribunal had erred by

finding that the Entry Clearance Officer was wrong to consider the Appellant's application under paragraph EC-P1.1 and E-ECP4.5 of Appendix FM of the Immigration Rules and should have considered the application under the provisions of the family reunion requirements. It was submitted that the Tribunal was incorrect in this assessment as was the Secretary of State's Presenting Officer and that the application was assessed under the correct Immigration Rules as the Sponsor had been granted refugee status in March 2010 but the Sponsor and the Appellant had not married until 23rd May 2012 in India. The Grounds of Appeal make detailed reference to paragraph 352A of the Immigration Rules and it was submitted that the Tribunal had consequently erred as the Appellant and Sponsor did not marry until after the Sponsor left to seek asylum and therefore the findings of fact were flawed.

2. On 12th January 2015 Upper Tribunal Judge Deans granted permission to appeal. Judge Deans noted that the application for permission to appeal contended that the application was properly considered under Appendix FM and that the application did not fall within the family reunion provisions in paragraph 352A for the reasons stated above namely that the Appellant and Sponsor were married after the Sponsor left his country of former habitual residence to seek asylum.
3. It is on that basis that the appeal comes before me. This is an appeal by the Secretary of State. For the purpose of ensuring continuity within the proceedings Mrs Mowleetharan is referred to herein as the Appellant and the Secretary of State as the Respondent. The Appellant appears by her instructed Counsel Mr Sharma. Mr Sharma is familiar with this matter having appeared before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer Miss Pal.

Submissions/Discussion

4. I am greatly assisted in this matter by the concession made by Mr Sharma that the Grounds of Appeal which I have recited in some detail above are made out and that the Appellant accepts that there is an error of law in the decision of the First-tier Tribunal Judge. However he indicates he is not instructed to concede the appeal and that that must be left to the Tribunal but that he has nothing further to add.
5. Miss Pal does no more than rely on the Grounds of Appeal indicating that they set out clearly the Secretary of State's position.

The Law

6. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

7. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

8. To a certain extent the First-tier Judge was led down a course of action for which he cannot in any way be criticised. It is clear from paragraph 8 of his decision that due to the error of the Home Office Presenting Officer, which Mr Sharma acknowledges that he supported at that time, that the judge was invited to allow the appeal to the limited extent of remitting the decision to the Respondent for reconsideration under the family reunion provisions.
9. Paragraph 352A of the Immigration Rules requires that
 - (a) The requirements be met by a person seeking leave to enter or remain in the United Kingdom as the spouse or civil partner of a refugee are that:
 - (b)(i) the applicant is married to or the civil partner of a person who currently holds refugee granted status as such under the Immigration Rules in the United Kingdom; and
 - (ii) the marriage or civil partnership did not take place after the person granted asylum left the country of his former habitual residence in order to seek asylum.
10. It is clear from the factual matrix in this matter that the Appellant and Sponsor were married after the Sponsor left his country of former habitual residence to seek asylum and consequently the correct approach in this matter which both parties agree to is to find that there is a material error of law in the decision of the First-tier Tribunal, to set aside that decision and to remit the matter to be re-heard. It is agreed with the parties and the court administration that that remit will take place at Taylor House on 14th August 2014 with a time estimate of two hours.

Decision and Directions

The decision of the First-tier Tribunal contains a material error of law and is set aside. The matter is remitted to the First-tier Tribunal sitting at Taylor House on Friday 14th August 2015 with an ELH of two hours.

None of the findings of fact are to stand. Leave is granted to either party to file and serve an up-to-date bundle of evidence and any skeleton arguments and/or authorities upon which they intend to rely at least seven days pre-hearing. A Tamil interpreter is required.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge D N Harris