Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/39235/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 January 2016	**On 26 January 2016**

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SONIA HELEN PERERA BAMMANAGE

Respondent

Representation:
For the Appellant: Ms Sreeraman, Senior Home Office Presenting Officer
For the Respondent: Mr Mahmud, instructed by Malik Law Chambers Solicitors

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Morgan. The decision was promulgated on 28 July 2015. It allowed the Respondent's appeal finding that paragraph 276ADE of the Immigration Rules was met.

2. For the purposes of this decision I refer to the Secretary of State for the Home Department as the respondent and to Ms Bammanage as the appellant, reflecting their positions before the First-tier Tribunal.

3. The parties were in agreement that the appeal before me turned on the provisions contained in paragraph 276ADE(1)(vi) of the Immigration Rules. This requires the appellant to show that there "would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK".

4. The respondent's decision dated 18 September 2014 found that this provision was not met and that the appellant did not face very significant obstacles to integration in Sri Lanka, the country to which she would be required to go if required to leave the UK.

5. The First-tier Tribunal Judge made the following findings at [9] to [13] of the determination:

> "(9) The appellant was born and brought up in the Sultanate of Oman. Her mother is a national of Pakistan and her father is a national of Sri Lanka. The appellant and her parents are practising Catholics. The appellant is a Sri Lankan national but has never lived in Sri Lanka and has only visited for short periods accompanied by her parents when she was a child. The appellant has never spent seven years in Sri Lanka as is suggested in the letter of refusal. The appellant has only ever lived in Oman and the United Kingdom. Neither the appellant nor her parents ever became permanent citizens of Oman. I accept the appellant's evidence that the family would not have been entitled to apply for this given that they do not speak Arabic, are not Muslim and are foreigners. Until she reached 18 the appellant was educated at international English schools in Oman. The appellant's parents are both English teachers working for the Ministry of Education. The appellant completed her primary and secondary education in Oman. The appellant is fluent in English which is her primary language and also speaks Urdu, which is the language in which her parents communicate. The appellant is illiterate in Urdu. The appellant does not speak either of the languages spoken in Sri Lanka and has never lived there.
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> (11) The appellant's parents determined that her higher education would take place in the United Kingdom. The appellant's two sisters, who attended the hearing, are both married, living in the United Kingdom and have been granted indefinite leave to remain. The appellant has no other siblings. The appellant's mother travelled with her from Oman in 2007 and the appellant lived initially with her mother and sister. The appellant's parents relocated to Pakistan in 2008 and that is where they are currently living. The appellant's father is still teaching English. The appellant has some distant relatives of her father in Sri Lanka but her siblings are in the United Kingdom and her parents in Pakistan.
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> (12) The appellant is financially supported by her sisters, one of whom is a software engineer and the other who works as a cardiographer at the Great Ormond Street Hospital. The appellant has now resided in the United Kingdom for eight years, the entirety of her adult life. She has very close ties and has made a life for herself in the United Kingdom. Whilst she is a Sri Lankan national by virtue of her father's nationality she has never lived in Sri Lanka, does not speak the language, has no close family and has only ever visited for holidays. The entirety of the

appellant's stay in the United Kingdom has been lawful. She currently wishes to pursue a Masters in Tourism and Hospitality but was unable to apply for leave on this basis because she had not received her previous qualification prior to making the application for further leave.

(13) In light of the evidence outlined above and what I find to be the highly unusual circumstances of this case I have little difficulty in finding that the appellant would face very significant obstacles to her integration into Sri Lanka. As a young single woman without language or close family returning to a country in which she has never lived I find that she would face very significant obstacles to her integration. This is not a reintegration case because the appellant has never lived in Sri Lanka. She effectively has no ties with Sri Lanka."

6. The appeal was then allowed under the Immigration Rules.

7. The challenge contained in the grounds of appeal was as follows:

"(2) The FTTJ notes that the appellant was brought up in Oman where here (sic) parents were working and came to the United Kingdom for the purposes of study. The FTTJ has allowed the appeal on the basis that the appellant would face very significant obstacles to the appellant's integration into Sri Lanka if she was removed. The FTTJ notes however that the appellant is a Sri Lankan national and that her father who is Sri Lankan still has family members there. The FTTJ notes that the appellant has only spent holidays in Sri Lanka as a child and disputes the Secretary of State's claim the appellant spent seven years there as a child. The Secretary of State contends that as a national of Sri Lanka with some relatives there these do not constitute *very significant* obstacles to the appellant integrating into Sri Lanka. The FTTJ refers to the question of language, when it is clear that English is spoken widely in Sri Lanka. The FTTJ has also failed to reason why a 26 year old, healthy, educated woman with some relatives there would be unable to establish herself successfully in Sri Lanka even if she had only spent holidays there in the past. The appellant has two sisters settled in the United Kingdom; again this does not indicate they could not visit her in Sri Lanka or provide any assistance financially (as it is stated they are doing at the moment) to her from the UK. The FTTJ notes the appellant's parents reside in Pakistan and that her Sri Lankan father is still in employment. Again the FTTJ gives no reason why the parents could not provide her with support if required. The lack of adequate analysis of 'very significant obstacles to her integration in Sri Lanka' in this case is a material error of law."

8. Although the wording at the end of this paragraph refers to a "lack of adequate analysis" it appeared to me that it was really a perversity challenge, the argument being that the decision reached was not one open to the First-tier Tribunal on the material provided.

9. The Upper Tribunal may only interfere with a finding of fact where it is erroneous at a level capable of being an error of law, as set out in the decision of the Court of Appeal in R (Iran) and others v Secretary of State for the Home Department [2005] EWCA Civ 982 at subparagraph 90(2):

> "90.(2) A finding might only be satisfied for error of law on the grounds of perversity if it was irrational or unreasonable in the Wednesbury sense, or one that was wholly unsupported by the evidence."

10. Essentially, this was a fact based assessment for the judge to make and, having heard oral evidence, he was best placed to do so. In Mukarkar v SSHD [2006] EWCA Civ333 Carnwath LJ said this, at [40]:

> "Factual judgments of this kind are often not easy, but they are not made easier or better by excessive legal or linguistic analysis. It is of the nature of such judgments that different tribunals, without illegality or irrationality, may reach different conclusions on the same case (as is indeed illustrated by Mr Fountain's decision after the second hearing). The mere fact that one tribunal has reached what may seem an unusually generous view of the facts of a particular case does not mean that it has made an error of law, so as to justify an appeal under the old system, or an order for reconsideration under the new. Nor does it create any precedent, so as to limit the Secretary of State's right to argue for a more restrictive approach on a similar case in the future. However, on the facts of the particular case, the decision of the specialist tribunal should be respected."

11. In my judgement the conclusion of Judge Morgan cannot be properly characterised as perverse, irrational or not open to him on the evidence. The fact that this may not have been the only outcome possible on the facts does not disclose that the judge made an error of law and it has not been established that he did so for any other reason. Certainly, English is widely spoken in Sri Lanka but this was not a major part of the findings of the First-tier Tribunal where the more potent factors of never having lived in Sri Lanka, being a young, single woman and having only distant relatives there were capable of attracting significant weight.

12. For these reasons I did not find that the decision of the First-tier Tribunal disclosed an error on a point of law.

Notice of Decision

13. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed  Date 25 January 2016

Upper Tribunal Judge Pitt