Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/15857/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 27 February 2017	**On 4 May 2017**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

SAROJINI WIMALAWATHY JAYASINGH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr V.P. Lingajothy of Linga & Co.
For the respondent: Mr P. Singh, Senior Home Office Presenting Officer

DECISION AND REASONS

1. First-tier Tribunal Judge Daldry ("the judge") allowed the appellant's appeal against the respondent's decision to refuse a human rights claim. In a decision promulgated on 06 January 2017 the Upper Tribunal found that the First-tier Tribunal decision involved the making of an error of law and listed the appeal for a further hearing to remake the decision (annexed). The First-tier Tribunal's findings of fact relating to

the appellant's personal circumstances were preserved. The appeal was relisted for the Upper Tribunal to consider the following issues:

(i) Whether there are "very significant obstacles to the applicant's integration in the country to which [she] would have to go if required to leave the UK" within the meaning of paragraph 276ADE(1)(vi) of the immigration rules.

(ii) In the alternative, whether it would be proportionate to require the appellant to leave the UK to make an application for entry clearance as an adult dependent relative: see *Chikwamba v SSHD* [2008] UKHL 40.

2. The First-tier Tribunal judge's factual findings are set out in the error of law decision [5]. In summary, Judge Daldry found the appellant's daughter, Angela, to be a credible witness. She accepted that the appellant lives with her daughter in the UK. She accepted that her other daughter, Matilda, who she used to live with in Sri Lanka, now lives in the UK. She accepted that the appellant no longer has any relatives in Sri Lanka. Although no medical evidence was produced, the judge accepted that the appellant suffers from high blood pressure, asthma, high cholesterol and short-term memory problems. She also accepted that the appellant, who is 84 years old, now requires considerable personal care. Whilst the individual medical conditions were not serious or life threatening, having considered her age and overall situation, the judge accepted that the appellant now needed "the care and support of her daughter for her activities of daily living and for her personal care" [19]. The fact that the appellant's daughter and her husband had gone to some lengths to rearrange their work lives to care for the appellant showed that the care they provided was required. The nature of her relationship with her daughter was now one of dependency [20]. The judge accepted that her daughter could look after her mother more easily within her household in the UK. She would find it more difficult to provide financial support and monitor her mother's health if she lived in Sri Lanka [21]. The judge acknowledged that the appellant had visited the UK on several occasions in the past, but found that she was now unable to care for herself in Sri Lanka and had no family there to support her [20].

3. The appellant's daughter, Angela, gave evidence at the resumed hearing in the Upper Tribunal. The full detail of her evidence is a matter of record. She told me that her mother used to live in her sister's home in Sri Lanka. She did not own her own home. Her mother doesn't have her own source of income and is reliant on her for support. The appellant's daughter told me that her mother was an only child. She did not have any relatives in Sri Lanka. Her father's family were from India. Her mother lived in Colombo for many years. She had some friends from church, but they were the ones who told her that her mother was lonely and needed assistance. The appellant's daughter told me that it would be too expensive to pay someone to look after her mother in Sri Lanka. The extent of her current health issues meant that she required 24-hour care. In contrast, she can afford to support and care for her mother within her household in the UK. She expressed doubts about her mother's fitness to make a long journey to Sri Lanka. She thought it would be difficult for her to return

to apply for entry clearance. Her main concern was that her mother might quickly pass away if she had to return to Sri Lanka.

4. I have considered the written and oral submissions made by both parties before coming to a decision in this appeal.

Decision and reasons

5. The immigration rules reflect the respondent's policy as to where the balance will be struck in relation to private and family life issues under Article 8 of the European Convention of human rights: see GEN.1.1 Appendix FM and *Hesham Ali v SSHD* [2016] UKSC 60.

6. The appellant wishes to remain in the UK as a dependent relative. The appellant does not meet the strict requirements of the immigration rules for leave to remain as an adult dependent relative because the rules only allow such applications from people who are outside the UK: see paragraph EC-DR 1.1(a) Appendix FM. The appellant does not engage any of the other family life categories outlined in Appendix FM, which relate to partners and children.

The scope of 'private life'

7. Paragraph 276ADE of the immigration rules sets out the respondent's policy in relation to private life issues. The appellant falls far short of the 20-year period required for long residence. However, it is argued that she meets the requirements of paragraph 276ADE(1)(vi). The wording of the rule at the date of the respondent's decision on 14 April 2015 was as follows:

> "(vi) …… is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but 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."

8. The factual circumstances considered by the First-tier Tribunal were relevant to a proper assessment of Article 8 within the context of the immigration rules. However, the decision was set aside for the narrow reason that the judge, whilst having considered whether there would be "very significant obstacles" to return, failed to consider the full scope of the test contained in paragraph 276ADE(1)(vi) of the immigration rules, which must include an assessment of whether there are obstacles to "integration".

9. 'Private life' is a broad concept that can encompass a person's personal, social and economic relations as well as engaging aspects of their 'physical and moral integrity'. In *Onur v UK* (2009) 49 EHRR 38 the European Court of Human Rights (ECtHR) outlined the broad nature of the right to private life as it relates to social and family relationships as follows:

> "46. ….the Court recalls that, as Article 8 also protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8. Regardless of the existence or otherwise of a "family life", the expulsion of a settled migrant therefore constitutes an interference with his or her right to respect for private life. It will depend on the circumstances of the particular case whether it is appropriate for the Court to focus on the "family life" rather than the "private life" aspect.."

10. In so far as Article 8 also encompasses the right to family life, the House of Lords made the following observations in *Huang v SSHD* [2007] UKHL 11:

> "But the main importance of the case law is in illuminating the core value which article 8 exists to protect. This is not, perhaps, hard to recognise. Human beings are social animals. They depend on others. Their family, or extended family, is the group on which many people most heavily depend, socially, emotionally and often financially. There comes a point at which, for some, prolonged and unavoidable separation from this group seriously inhibits their ability to live full and fulfilling lives. Matters such as the age, health and vulnerability of the applicant, the closeness and previous history of the family, the applicant's dependence on the financial and emotional support of the family, the prevailing cultural tradition and conditions in the country of origin and many other factors may all be relevant."

11. In *Beoku Betts v SSHD* [2008] UKHL 39 the House of Lords concluded that the effect of removal on all family members could be taken into account as part of the overall assessment of whether a proposed removal would amount to a disproportionate interference with an appellant's Article 8 rights.

12. In *Bensaid v UK* (2001) 33 EHRR 10 the ECtHR reiterated that 'private life' is "a broad term not succeptible to exhaustive definition". The court recognised that Article 8 protects a right to establish and develop relationships with other human beings and the outside world and concluded that "the preservation of mental stability is in that context an indispensible precondition to the effective enjoyment of the right to respect for private life." [47].

13. In *Pretty v UK* (2002) 35 EHRR 1 the ECtHR considered whether the applicant had a right to assisted suicide. The ECtHR concluded that refusal to give an undertaking not to prosecute Mrs Pretty's husband if he helped her to die did not amount to a violation of Articles 2 and 3 of the European Convention. Regarding her right to private life the ECtHR recognised that Mrs Pretty's medical condition, and her fear that she would die in an undignified and distressing way, was likely to engage her right to private life within the meaning of Article 8(1). The ECtHR stated:

> "65. The very essence of the Convention is respect for human dignity and human freedom. Without in any way negating the principle of sanctity of life protected under the Convention, the Court considers that it is under Article 8 that notions of the quality of life take on significance. In an era of growing medical sophistication combined with longer life expectancies, many people are concerned that they should not be forced to linger on in old age or in states of advanced physical or mental decrepitude which conflict with strongly held ideas of self and personal identity."

The meaning of 'very significant obstacles to integration'

14. In the context of the previous wording of paragraph 276ADE(1)(vi), which required an applicant to show that they had no ties (including social, cultural of family) to the country of return, the Tribunal in *Bossadi (paragraph 276ADE; suitability; ties)* [2015] UKUT 42 concluded that the test required a rounded assessment of whether a person's familial ties could result in support to him in the event of his return. The assessment should take into account both subjective and objective considerations and should also consider what lies within the "choice of a claimant to achieve".

15. The wording of paragraph 276ADE(1)(vi) was amended by way of a Statement of Changes to the Immigration Rules (HC 532), which came into effect on 28 July 2014. The Explanatory Notes to the Statement of Changes made the following policy statement:

> "7.16. These changes make technical amendments to the Immigration Rules on family and private life in Appendix FM and paragraphs 276ADE-276DH to align these with the public interest considerations in section 117B of the Nationality, Immigration and Asylum Act 2002 for decisions engaging the qualified right to respect for private and family life under ECHR Article 8. These considerations, inserted by section 19 of the Immigration Act 2014 which comes into force on 28 July 2014, give the weight of primary legislation to Parliament's view of what the public interest under Article 8 requires, in particular in respect of controlling immigration to safeguard the UK's economic well-being. The amendments to the Immigration Rules on family and private life in Appendix FM and paragraphs 276ADE-276DH made by this Statement of Changes do not represent any substantive change to the policies reflected in the Statement of Changes HC 194 which came into force on 9 July 2012, but ensure consistency of language with that used in section 19 of the 2014 Act, which now provides statutory underpinning for those policies."

16. Although nothing in the language of the public interest considerations contained in section 117B of The Nationality, Immigration and Asylum Act 2002 ("NIAA 2002") in fact reflects the wording of paragraph 276ADE(1)(vi) (section 117C(4)(c) only applies to deportation cases), the explanatory notes make clear that the new wording was not intended to have a substantially different meaning to the previous wording.

17. The phrase "very significant obstacles to integration in the country to which it is proposed he is deported" is also contained in paragraph 399A of the immigration rules. That provision provides a private life exception to the deportation of foreign criminals. The overall context of the phrase is slightly different in so far as the person who it is proposed should be deported must also show that he has been "lawfully resident in the UK for most of his life" and that he is "socially and culturally integrated in the UK". The phrase is therefore intended to apply to those who already have significant private life ties to the UK.

18. The only pre-conditions to the requirement to show "very significant obstacles to integration" for the purpose of paragraph 276ADE(1)(vi) are:

(i) The applicant meets the 'Suitability' requirements of Appendix FM (see 276ADE(1)(i));
(ii) The applicant has made a valid application for leave to remain on grounds of private life (see 276ADE(1)(ii)); and
(iii) The applicant is aged over 18 years or above and has lived in the UK for a continuous period of less than 20 years (discounting any period of imprisonment).

19. While the same phrase is used in both areas of the rules the context is different in deportation cases because the public interest in deportation is given significant weight. In deportation cases the public interest requires a person to show that they have strong cultural and integrating links to the UK and that they would be significant obstacles to integration in the proposed country of deportation.

20. Paragraph 276ADE(1)(vi) applies to private life cases that do not involve deportation. The emphasis is on the effect of removal to the country to which a person would have to go. In circumstances where there would be very significant obstacles to a person's integration in that country the respondent policy, as expressed in the immigration rules, accepts that removal would be disproportionate under Article 8.

21. I have not been referred to any case law relating to the meaning of the term "very significant obstacles to integration" within the context of paragraph 276ADE(1)(vi). In interpreting the meaning of this phrase within the context of paragraph 399A of the immigration rules Lord Justice Sales made the following findings regarding the meaning of the term "integration" in *SSHD v Kamara* [2016] EWCA Civ 813 [14]:

> "In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

22. This interpretation is consistent with the broad ambit of the term 'private life' as set out in the Strasbourg jurisprudence. The term 'integration', as it is used in the immigration rules, relates to the substance of a person's private life, which may include a wide variety of factors including a person's personal identity, their social and economic relationships with others as well as their 'physical and moral integrity'. However, in a similar way to the 'insurmountable obstacles' test contained in the family life requirements under paragraph EX.1 of Appendix FM, the requirement to show 'very significant obstacles' to integration is likely to impose a relatively stringent test: see *R (on the application of Agyarko) v SSHD* [2017] UKSC 11.

In most cases, common difficulties that a person might face in re-establishing themselves in a country after several years abroad, such as finding work or accommodation, are unlikely to reach the stringent threshold. The obstacles need not be impossible to overcome, but must be sufficiently serious to render removal disproportionate. Where the balance is struck in an individual case will require a holistic assessment of all the relevant factors including the strength of the person's social, cultural and familial ties to the proposed country of return and whether there are significant obstacles to the person being able to re-establish a private life of sufficient substance.

Findings on the facts of this case

23. The First-tier Tribunal judge concluded that the appellant had a close relationship of dependency with her daughter over and above the normal emotional ties between adult relatives. Although the appellant's relationship with her daughter is now at a level of dependency that engages her right to family life within the meaning of Article 8, it is undoubtedly the case that it also forms a substantial part of her private life.

24. The appellant visited relatives in the UK several times over the years. In the past she was sufficiently fit to make the journey and could return to live with Matilda in Sri Lanka at the end of those visits. Although her daughter Angela intimated that she had a difficult relationship with her sister, and had some concerns about her mother's welfare while she was living with her in Sri Lanka, the fact that her sister no longer lives in Sri Lanka, as well as her mother's increasing care needs, appear to have prompted the application for leave to remain when her mother visited the UK on the last occasion.

25. The appellant is an 84-year-old woman who has spent a large majority of her life in her country of nationality. Undoubtedly, she has strong cultural ties there and understands how life in the country is carried on. However, what is in question is her capacity to operate there on a day to day basis such that she has some form of meaningful private life. The appellant has no income of her own and is of an age and state of health where she is unable to work to support herself. She is reliant on family members for financial, emotional and physical support. She no longer has family members to support her in Sri Lanka.

26. The First-tier Tribunal judge accepted that it would be far more difficult for the appellant's daughter to be able to afford to support her in Sri Lanka. I accept that the level of care that the appellant requires would be extremely difficult for her daughter to organise and monitor from the UK. An integral part of that care is the love and emotional support provided by her daughter. The appellant now suffers from a range of age related health issues that make it difficult for her to care for herself. Even if some practical care arrangements could be made in Sri Lanka she would be returned to a situation of social isolation whereby she would be deprived of the close relationship of dependency she now has with her daughter and her family. After

having considered all the circumstances I am satisfied that it can properly be said that there would be very significant obstacles to the appellant being able to re-establish a meaningful private life in Sri Lanka. Her age, state of health and dependence on the financial and emotional support of family members in the UK, taken with the absence of support in Sri Lanka at such a late stage of her life, render removal disproportionate in the circumstances in this case.

Article 8 – outside the rules

27. Because I have made detailed findings relating to the private life requirements contained in the immigration rules I do not consider it necessary to make lengthy findings relating to Article 8 outside the rules. However, considering the factual findings it seems clear that if the appellant were to be required to apply for entry clearance from Sri Lanka that it is likely that she would meet the requirements for entry clearance as an adult dependent relative.

28. The appellant's relationship with her daughter is likely to meet the 'Relationship requirements' (E-ECDR 2.1-2.5). Because of her age and state of health the appellant requires long-term personal care to perform everyday tasks. Integral to the care that she requires is the emotional and practical support of her daughter, which would not be available in Sri Lanka. In the alternative, the appellant's daughter is unlikely to be able to afford to support her mother from the UK. The First-tier Tribunal judge was satisfied that the appellant's daughter had sufficient means to provide support and accommodation. As such, she is also likely to meet the 'Financial requirements' (E-ECDR 3.1-3.2). The only aspect of the immigration rules the appellant does not satisfy is the requirement to make an entry clearance application from outside the UK.

29. In *Chikwamba v SSHD* [2008] UKHL 40 the House of Lords considered the practical purpose of the Secretary of State's policy of requiring applicants to return to their country of origin to apply for entry clearance. Whilst it acknowledged that there may be some cases where the appellant's immigration history is so poor that it might still be necessary to require them to apply from abroad, the House of Lords concluded that it would only be comparatively rarely, certainly in family cases involving children, that an Article 8 appeal should be dismissed solely on the basis that it would be proportionate for an appellant to apply for entry clearance abroad.

30. The appellant is an 84-year-old woman with several age-related health problems. She is likely to find the journey particularly arduous. Because she now requires personal care, and has no family members in Sri Lanka, members of her family in the UK would have to accompany her. While the appellant could have applied for entry clearance as an adult dependent relative from abroad, I find that, even if my findings relating to the immigration rules are wrong, requiring her to return to Sri Lanka to make what is likely to be a successful application for entry clearance would be disproportionate in circumstances of this case.

31. I conclude that the appellant meets the requirements of paragraph 276ADE(1)(vi) of the immigration rules and that her removal would be unlawful under section 6 of the Human Rights Act 1998.

DECISION

The appeal is ALLOWED under the immigration rules and on human rights grounds

Signed  Date 02 May 2017
Upper Tribunal Judge Canavan

APPENDIX

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/15857/2015

THE IMMIGRATION ACTS

Heard at Field House
On 29 November 2016

Decision Promulgated

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Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SAROJINI WIMALAWATHY JAYASINGH

Respondent

Representation:

For the appellant: Mr P. Singh, Senior Home Office Presenting Officer
For the respondent: Mr V.L. Lingajorthy, Counsel instructed by Linga & Co.

DECISION AND REASONS

1. For the sake of continuity I will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal to the Upper Tribunal.

2. The appellant is a Sri Lankan citizen who was born on 23 March 1933 (83 years old). The appellant visited family members in the UK on a number of occasions between 2001 and 2014. She last entered the UK on 10 October 2014 with entry clearance as a

visitor that was valid until 04 February 2015. She made an in time application for leave to remain on human rights grounds outside the rules in order to continue her family life with her adult children.

3. The Secretary of State refused the application in a decision dated 14 April 2015. She found that the appellant did not meet any of the family life requirements contained in Appendix FM of the immigration rules. The respondent considered whether she met the private life requirements set out in paragraph 276ADE of the immigration rules. She fell far short of the long residence requirement. The respondent was not satisfied that she had severed all ties including social, cultural and family ties in Sri Lanka in order to satisfy the requirements of paragraph 276ADE(1)(vi). She had spent most of her life in Sri Lanka and would be able to readapt to life there. There were no language or cultural barriers. There was no documentary evidence to show that she had any mental or physical disabilities that might prevent her from returning to Sri Lanka. The respondent went on to consider whether there were any 'exceptional circumstances' that might justify granting leave to remain outside the immigration rules but concluded that her age and related health problems were not sufficient to show that her circumstances were 'exceptional'. She had been able to visit family members in the UK and they could travel to visit her in Sri Lanka. Her family members could continue to support her emotionally and financially in Sri Lanka.

4. First-tier Tribunal Jude Daldry ("the judge") allowed the appeal in a decision promulgated on 03 May 2016. She summarised the appellant's family circumstances [4] as well as the reasons for refusal [5-7]. She heard evidence from the appellant and her daughter and made clear findings of fact, which are not subject to challenge. She accepted that the appellant no longer had any family members living in Sri Lanka. She was living with her daughter Matilda in Sri Lanka. However, Matilda is now living in the UK, as are the appellant's other children [12]. The judge found that the appellant and her daughter Angela gave their evidence in a credible and consistent manner [14].

5. The judge accepted that the siblings do not have much contact with one another in the UK and that the appellant's most significant relationship is with her daughter Angela, with whom she lives [15]. Angela is a British citizen who lives with her husband and two children. She works as a community psychiatric nurse. The judge noted that it was not disputed that her daughter was in a position to maintain and accommodate the appellant in the UK [16]. After having heard evidence from the appellant and her daughter the judge was satisfied that they "had a strong bond and attachment and that there was a caring and loving relationship between them" [17]. Having found them to be credible witnesses, and despite the fact that no medical evidence had been produced, the judge accepted that the appellant suffers from high blood pressure, asthma, high cholesterol and short term memory problems. She also needs the assistance of her daughter with some personal care [18]. The judge concluded as follows:

"19. Whilst the appellant's medical conditions taken individually are not serious or life threatening, taken holistically, as a whole and bearing in mind her age, I find that they have a significant impact on her life and result in her needing the care and support of her daughter for her activities of daily living and for her personal care. The appellant's daughter is a qualified nurse and gave detailed and cogent evidence about the nature of the care required and it was clear that she approached this aspect of her relationship with her mother in a pragmatic and caring way and that she was able to deal with this by having made certain changes to her family life. In particular, she was able to work flexible hours which involved her working three "long days" during which time her husband was able to care for the appellant, he working sixteen hours a week at Marks and Spencer and for the remainder of the time the appellant's daughter would care for her. The fact that Mrs Poomathu and her husband had had to make such changes to their working arrangements showed that the care they were giving to the appellant was required.

20. I have considered the case law and find that in the absence of having any family in Sri Lanka and given the appellant's health conditions, there would be very significant obstacles to her returning there. She would be alone without the support of her daughter upon whom she has come to depend. I find the development of that relationship of dependency to be entirely reasonable in the circumstances. The appellant has maintained contact with her daughter over the years and has visited the United Kingdom frequently but now she is no longer able to return to Sri Lanka to care for herself and nor does she have any family there to help. At this stage in her later life, that there is a relationship now of dependency involving the appellant's daughter Angela taking a caring role with regard to her mother.

21. I heard from the appellant's daughter that whilst it was quite possible for her to support her mother in the United Kingdom in her own household it would be much more difficult for her to provide financial support on an ongoing basis to meet all of her mother's needs whilst she was living in Sri Lanka. I find this to be entirely reasonable. The appellant's daughter explained how she was able to absorb the costs of having her mother in her household by sharing food with her that was made for the rest of the family and generally by distributing the provisions of the household such that it was not a significant extra expense for her mother to be there. I also accept that it would be difficult for her both to monitor her mother's health and to support her if she were to return to Sri Lanka. I therefore find that the appellant does qualify for a grant of indefinite leave under the provisions of 276ADE(1)(vi).

22. I also find when applying the stage test in **Razgar** that the appellant would qualify for a grant of leave outside of the rules. This is because when considering the question of proportionality find that it would be disproportionate remove the appellant. I have accepted that she has a private and family life in the UK with her daughter Angela and her family. I find that to remove the appellant to Sri Lanka would interfere with her private and family life. I find that there would be a legitimate aim in terms of such a removal in that it would be for the purposes of immigration control and would clearly be in accordance with the law. But for the reasons I have set out above I find that in the very exceptional circumstances of this appellant's case, given her age, health problems and the lack of family support in Sri Lanka it would be disproportionate to remove her."

6. The Secretary of State seeks to appeal the First-tier Tribunal decision on the following grounds:

(i) The First-tier Tribunal failed to consider material matters in assessing whether there were 'very significant obstacles to integration' for the purpose of paragraph 276ADE(1)(vi). She considered the position if the appellant

remained in the UK but failed to consider what her position would be if she returned to Sri Lanka.

(ii) In assessing Article 8 outside the immigration rules the judge failed to have regard to the public interest considerations outlined in section 117B of the Nationality, Immigration and Asylum Act 2002 ("NIAA 2002").

Decision and reasons

7. After having considered the arguments put forward by both parties I am satisfied that the First-tier Tribunal decision involved the making of an error on a point of law.

8. Despite the fact that the respondent applied the wrong version of paragraph 276ADE(1)(vi) in the reasons for refusal letter, that part of the rules having been amended in July 2014 (HC 542), the judge made reference to the correct test of "very significant obstacles" in her decision. While her factual findings are not the subject of appeal, and were clearly open to her to make on the evidence, it was necessary for the judge to consider the full wording of the test outlined in paragraph 276ADE(1)(vi), which states:

> (vi) subject to sub- paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but 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.

9. While the judge considered whether there were "very significant obstacles to her returning" to Sri Lanka, her reasons for coming to that finding related largely to the appellant's circumstances in the UK and her dependent relationship with her daughter. The wording of the rule requires some analysis of whether there are very significant obstacles to the appellant's "integration into the country" to which she would have to go. A full assessment of the relevant legal test requires consideration of the conditions that the appellant would face in Sri Lanka and whether there are "very significant obstacles" to such integration.

10. Although paragraph 276ADE is said to reflect the respondent's position regarding the right to private life under Article 8 of the European Convention the wording of the rule does not give rise to the kind of approach normally taken by the Strasbourg court when considering Article 8 or by the UK courts following the decision in *R v SSHD ex parte Razgar* [2004] UKHL 27.

11. The judge clearly considered that it would be unreasonable to expect the appellant to return to Sri Lanka in the circumstances but paragraph 276ADE(1)(vi) requires an assessment of whether there are obstacles to "integration". This aspect of the assessment is lacking from the First-tier Tribunal decision. It might well be that many of the same factors could be taken into account as part of that overall assessment. The meaning of the phrase "integration" may not be confined solely to issues of nationality, language and cultural ties. It is possible it could include issues relating

health, social isolation and a person's ability to conduct a meaningful life within the community. Although it was open to the judge to consider the strong bond between the appellant and her daughter, it was necessary to give specific consideration to the issue of "integration" in order to reach sustainable findings relating to paragraph 276ADE(1)(vi).

12. The judge made alternative findings with reference to Article 8 outside the rules. When undertaking the balancing exercise under Article 8(2) she was obliged by statute to take into account the public interest considerations outlined in section 117B of the Nationality, Immigration and Asylum Act 2002 ("NIAA 2002"). Her failure to do so also amounts to a material error of law.

13. For these reasons I conclude that the First-tier Tribunal decision involved the making of an error on a point of law. The parties were in agreement that if an error of law was found that it would be appropriate to relist the case for remaking in the Upper Tribunal.

DIRECTIONS

14. The appeal will be relisted for hearing before Upper Tribunal Judge Canavan.

15. There has been no challenge to the First-tier Tribunal's factual findings relating to the appellant's personal circumstances, which will stand.

16. The resumed hearing will need to focus on the test outlined in paragraph 276ADE(1)(vi), or in the alternative, whether there are any compelling circumstances to engage the operation of Article 8 outside the immigration rules. The latter might require consideration of whether it would be proportionate to expect the appellant to return to Sri Lanka to apply for entry clearance as an adult dependent relative with reference to the principles outlined by the House of Lords in *Chikwamba v SSHD* [2008] UKHL 40.

17. The appellant shall inform the Upper Tribunal by **Friday 13 January 2016** at the latest whether she intends to call witnesses in relation to the outstanding issues, and if so, whether the witnesses will require the assistance of an interpreter.

18. If the appellant intends to call further evidence from witnesses, further statements should be prepared dealing with the outstanding issues, which must be served at least **10 days** before the resumed hearing.

19. Any further evidence relied upon by either party must be served at least **10 days** before the resumed hearing.

20. Both parties must prepare written arguments to be served at least **10 days** before the resumed hearing, including:

(i) Arguments relating to the proper interpretation of the "very significant obstacles to integration" test outlined in paragraph 276ADE(1)(vi). In particular, what is the meaning of the term "integration" in this context.

(ii) Arguments relating to whether it would be proportionate to expect the appellant to return to Sri Lanka to apply for entry clearance as an adult dependent relative with reference to the principles outlined in *Chikwamba*.

(iii) Any other arguments the parties consider relevant to a proper determination of the appeal.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The appeal will be listed for a resumed hearing in the Upper Tribunal

Signed  Date 03 January 2017
Upper Tribunal Judge Canavan