



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

Appeal Number: IA/25388/2015

THE IMMIGRATION ACTS

**Heard at Stoke on Trent
On 2 October 2017**

**Decision & Reasons Promulgated
On 3 October 2017**

Before

Deputy Upper Tribunal Judge Pickup

Between

**Reagesira Yasmine Thavaraja
[No anonymity direction made]**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr M West, instructed by Shan & Co

For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Lawrence promulgated 6.1.17, dismissing her appeal against the decision of the Secretary of State, dated 7.7.15, to refuse her human rights claim.
2. First-tier Tribunal Judge Brunnen granted permission to appeal on 21.7.17, limited to two grounds only:
 - (a) That the judge failed to take account of the length of time the appellant and her husband have been absent from Sri Lanka, their

lack of any family support there and the vulnerability of the appellant as a pregnant woman with a young child;

(b) That the assessment at [31] of the decision as to whether there were compelling circumstances to justify granting LTR outside the Rules is flawed by the judge dealing with it in one sentence, stating the conclusion with no reasons.

3. Thus the matter came before me on 2.10.17 as an appeal in the Upper Tribunal.

Error of Law

4. For the reasons summarised below, I found no error of law in the making of the decision of the First-tier Tribunal such that the decision of the First-tier Tribunal should be set aside.

5. I have taken into account the submissions of both representatives, including the late-service of Mr West's skeleton argument.

6. In relation to the first ground, I find that the judge did take account of all relevant considerations. The long absence of the appellant from Sri Lanka was addressed at [22] of the decision. However, the judge also took into account that she was living in a Tamil community in India for that time, and in fact returned to Sri Lanka for some 6 months before coming to the UK. At [26] the judge noted that Tamil Nadu shared much if not all of the cultural and linguistic and religious norms of Sri Lanka, even if there is a difference in accent. It was not irrelevant that there were no obstacles to integration there, as there was no evidence that either the appellant or her husband was of any adverse interest to the Sri Lankan authorities. Neither of them are British citizens. Even though the husband has DLR in the UK, that is not a barrier to his joining his wife in Sri Lanka and continuing family life there, with their children, neither of whom (the child then living and the child now born), are entitled to remain in the UK.

7. The judge also spent considerable time in the decision devoted to assessing the best interests of the appellant's child, applying the case authorities to the circumstances. There was absolutely no reason to conclude that the child's best interests were to remain in the UK so that the mother and appellant should be permitted to remain. She was only 3 years of age and the centre of her life would have been with her parent(s).

8. That the appellant was pregnant at the time or that they had no family in Sri Lanka does not seem to be particularly significant, as this would be a family of both parents and child returning to Sri Lanka. There was no reason to consider that she would be particularly vulnerable. It was, of course, up to the husband whether he returned with them, but if an Appendix FM assessment had been made (they did not qualify), it is clear that the judge would have concluded that there were no insurmountable obstacles to continuing family life in Sri Lanka.

9. All of these considerations, including under Appendix FM and paragraph 276ADE in respect of family life are the Secretary of State's proportionate response to family and private life claims, and the assessments made in the decision were effectively a proportionality assessment. At [31] the judge concluded that there were no compelling circumstances to justify granting LTR outside the Rules. Such reasons could have been given for such a conclusion would only have been a repetition of the assessments and findings already made. If there is no basis for going on to consider article 8 outside the Rules, then it suffices for the judge to say so. Frankly, it is difficult on the facts of this case to see what those compelling circumstances could be.
10. In the circumstances, I find that neither ground is made out. No material error of law is disclosed by the grounds and thus the appeal must be dismissed.

Conclusion & Decision

11. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

I have considered whether to make a fee award pursuant to section 12(4)(a) of

the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed.

A handwritten signature in black ink, appearing to read 'James L', written in a cursive style.

Signed

Deputy Upper Tribunal Judge Pickup

Dated