



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

Appeal Number: IA330562015

THE IMMIGRATION ACTS

**Heard at Field House
On 14 August 2017**

**Decision & Reasons Promulgated
On 30 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR SIVARAMALINGAM JEYAPIRAGASH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Martin, Counsel instructed by Indra Sebastian
Solicitors

For the Respondent: Mr T Wilding, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Sri Lanka, date of birth 16 July 1988, appealed against the Respondent's decision, dated 2 October 2015, to refuse to

vary leave to remain having entered the UK on 11 October 2008 with entry clearance as a student until 20 February 2011.

2. The Appellant was granted further leave to remain in the UK as a student from 4 March 2011 to 20 June 2013. On 30 July 2012 he applied as a Tier 1 (Entrepreneur) which was varied to an FLR(FP) application. On 20 October 2014 he was served with a form IS151A.
3. The Appellant's appeal against that decision came before First-tier Tribunal Judge Swinnerton who, in a decision promulgated on 30 November 2016, dismissed the Appellant's appeal. The appeal was dismissed with reference to the Immigration Rules, but also with reference to Article 8 ECHR. Permission to appeal that decision was given by First-tier Tribunal Judge Brunnen on 16 June 2017. There was no Rule 24 response by the Respondent.
4. The position is that the grounds essentially argue, or at least the way Mr Martin has carefully explained them, in that he accepts the appeal could not succeed under the Immigration Rules, but says the Judge in considering the Article 8 issues, failed to properly take into account and/or explain why various factors which were pertinent, summarised in a skeleton argument provided to the Judge, or were explained or why they did not materially affect the proportionality assessment which the Judge made.
5. Mr Wilding argued that the decision is to be looked at as a whole. The various issues relating to the Article 8 considerations were effectively taken into account and he rejected that certain aspects would necessarily have had any bearing, or that any different Tribunal taking those matters into account was likely to reach a different decision.
6. In particular, he highlights the fact that the Appellant had been found to have relied upon documents which were not authentic and the reliance on false documentation, whilst not leading to a mandatory refusal,

nevertheless was a significant and material factor if any discretion was to be exercised.

7. He also asserted that in effect the various issues raised in the grounds, and in particular in the skeleton argument, were actually dealt with, either directly or indirectly by the Judge or were not material, so as to demonstrate no material error of law by the Judge. Mr Martin said this is all very well, but there was a lack of reasoning and the parties are entitled to expect the issues to be properly addressed.
8. It seemed to me that there was merit in both sides' general criticisms of the decision, but I find, looking at the evidence as a whole, in particular taking into account what the Appellant and his wife had said in the statements that were before the Judge, that the issue of the wife being on a 'clear route to settlement' is a fair point taken: However, it does not deny the Appellant's conduct, or diminish it to the point where it was no longer material. Rather, it seemed to me that the Appellant, relying upon his wife's 'clear route to settlement', was seeking to side-step the consequences of his actions and the deception which he sought to rely upon.
9. Those were matters that the Judge was entitled to take into account, and did. For my own part I might not have reached the same decision, but that is neither here nor there to the point. I find, looking at the decision as a whole, the Judge did enough to show why the claim failed with reference to the issue of Article 8 ECHR in terms of proportionality.
10. It is fair to say, although Mr Martin was relatively understated in his criticism, but the Judge's explanation of the conclusions was not particularly fulsome. The Judge did not seem to have specifically addressed the arguments raised, albeit they are in effect taken into account. To that extent it seemed to me Mr Martin was right, but even so it did not seem to me that any other Tribunal with the same material before it would be likely to reach a different decision.

11. Decision.

For these reasons the appeal is dismissed.

ANONYMITY

No anonymity direction was made nor is one required.

Signed

Date 25 August 2017

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

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

Signed

Date 25 August 2017

Deputy Upper Tribunal Judge Davey