



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

Appeal Number: HU/13060/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 26th November 2019**

**Decision & Reasons Promulgated
On 04th December 2019**

Before

**UPPER TRIBUNAL JUDGE LINDSLEY
UPPER TRIBUNAL JUDGE McWILLIAM**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**G R
(ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer

For the Respondent: Mr J Plowright, of Counsel, instructed by Perera & Co Solicitors

DECISION AND REASONS

Introduction

1. The claimant is a citizen of Sri Lanka born in June 1975. He arrived in the UK in 2004 and had leave to remain as a foreign student. He was granted indefinite leave to remain on 5th February 2015. He is married with two children (B born in September 2004 and S born in February

2007), and his wife and children are all British citizens. On 7th September 2016 the claimant was convicted of theft. He was sentenced to 18 months imprisonment. On 6th October 2016 the Secretary of State notified him that he would be deported unless he could show that he fell within the exceptions at s.33 of the UK Borders Act 2007. The Secretary of State refused his human rights claim on 8th June 2018. His appeal against the decision was allowed by First-tier Tribunal Judge S Miah in a determination promulgated on the 15th July 2019.

2. Permission to appeal was granted by First-tier Tribunal Judge O'Brian on 7th August 2019 on the basis that it was arguable that the First-tier judge had erred in law in the consideration as to whether it would be unduly harsh for the appellant's partner and children if he were deported and in failing to consider the public interest as set out a s.117C of the 2002 Act.
3. The matter came before us to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

4. In the grounds of appeal, skeleton argument and oral submission the Secretary of State argues as follows.
5. Firstly it is said that the First-tier Tribunal failed to consider or give reasons for how the claimant met the unduly harsh test as set out in KO (Nigeria) v SSHD [2018] UKSC 53, given that this must go beyond the normal effects of deportation on a family and bearing in mind that unduly harsh is an elevated threshold and means something severe or bleak, when concluding that it was unduly harsh for the claimant's family to go with him to Sri Lanka. Further, there was a total failure to consider whether it would be unduly harsh for them to remain in the UK without the claimant. The findings that the support for the family and education of his daughter would be disrupted are not properly reasoned given that these matters had continued whilst the claimant was in prison.
6. Secondly, it is argued that there was a failure in the consideration of the claimant's very compelling circumstances for the same reasons.
7. The claimant argues in a Rule 24 notice that the First-tier Tribunal accepted that the claimant has a genuine and subsisting relationship with his partner and two children in the UK, see paragraph 5 of the decision. The First-tier Tribunal clearly knew that they had to decide both whether it was unduly harsh for the claimant's family to go with him to Sri Lanka or for them to remain in the UK without him, see paragraphs 5 and 6 of the decision. The reasoning at paragraph 27 onwards relates to why these two options are unduly harsh to his wife and children. Consideration was given to the fact the oldest child would be taking her GCSEs next year and the youngest has special needs.

Reasoned findings were given for the conclusion that this would be unduly harsh at paragraphs 27 to 30 of the decision. There was therefore no material error of law.

Conclusions – Error of Law

8. At paragraph 26 of the decision the claimant is found not to be able to satisfy the requirement to have very significant obstacles to integration on return to Sri Lanka, and thus it is found that he could not meet the private life exception to deportation. This finding is not challenged by either party. The appeal therefore depended on whether the claimant can show that he meets the family life exception.
9. The Secretary of State concedes that the claimant has a genuine and subsisting relationship with his partner and children, as is recorded at paragraph 5 of the decision.
10. The First-tier Tribunal does set out that the deportation of foreign criminals is in the public interest and the more serious the offence the greater the public interest in deportation, the s.117C considerations, at paragraph 16 of the decision. We do not find any error in this respect.
11. The claimant correctly submits that the First-tier Tribunal Judge records in paragraphs 5 and 6 of the decision that the Secretary of State contests his contention that it would be unduly harsh for the family to return to Sri Lanka together or for the claimant to return and for the family to remain in the UK. There is therefore a correct self-direction by the First-tier Tribunal of the need to determine both scenarios. It is clear that the findings made at paragraphs 27 to 35 address both options particularly as in the conclusion at paragraph 35 of the decision the First-tier Tribunal Judge returns to both scenarios, looking at whether it would be unduly harsh for the family to go back to Sri Lanka or remain in the UK without the claimant.
12. The most important findings of the First-tier Tribunal relating to the issue of whether the claimant's deportation is unduly harsh relate to his youngest child. At paragraph 28 of the decision the claimant's younger child, who has special needs, is found to have "suffered immensely when the appellant was incarcerated to the extent that he self-harmed by attempting to strangle himself. This was detected by both his mother and his school"; and further at paragraphs 30 and 32 of the decision it is found that this child is particularly vulnerable given the evidence of Dr Obeng and the material in the educational and health plans he could not reasonably be removed from his network of support and care in the UK which could not be substituted by anyone else in Sri Lanka. Additional supporting findings with respect to whether it would be unduly harsh to deport the claimant are as follows: his older child is found to be at a critical stage of her education with her GCSE's looming next year, so it is found that it would not be reasonable to expect her to leave the UK; the claimant's wife is found to have no support network in Sri Lanka, and to

be suffering from stress and depression, at paragraph 34; and at paragraph 29 of the decision relying upon the evidence of both parents and social work reports it was found to be in the best interests of both children that the claimant should be permitted to remain with them in the UK, noting they are both British citizens and the younger child has never been to Sri Lanka and the older one had not been there since she was a year old. There is a proper direction that the best interests of the children are a primary consideration at paragraph 31 of the decision.

13. Whilst there is no direction as to the meaning of unduly harsh we find that there is no material error in this decision as we find that the findings of the First-tier Tribunal that the claimant's younger child, a twelve year old with special needs, attempted to self-harm by strangling himself when he was without his father because he was in prison is sufficiently severe and bleak evidence which shows on the balance of probabilities that it was open to the First-tier Tribunal to rationally conclude that it was unduly harsh for the claimant to be deported and his family to remain in the UK. We are also satisfied that there were rational findings showing it to be severe and bleak for the that child to have to go to Sri Lanka as in that country he would be without his network of essential medical, education and social care and support which could not be replicated in that country.
14. It follows that the decision of the First-tier Tribunal allowing the appeal on Article 8 ECHR family life grounds was entirely lawful and proper.

Decision:

15. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
16. We uphold the decision of the First-tier Tribunal allowing the deportation appeal on Article 8 ECHR grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a likelihood of harm arising to the appellant's younger child who is very vulnerable with special needs.

Signed: Fiona Lindsley
2019

Date: 26th November

Upper Tribunal Judge Lindsley