



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/00154/2016**

Appeal Numbers:

IA/00156/2016

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 24 September 2018

Promulgated

On 20 December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR MOHAMED FALEEL MARIKKAR (FIRST APPELLANT)
MRS SHARMILA SHAREEN MARIKKAR (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr G O'Ceallaigh

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants, nationals of Sri Lanka appealed against the Respondent's decision, dated 18 December 2015 (not 11 December 2015), to refuse an application for leave to remain made under the Immigration Rules and Article 8 ECHR on the basis of family/private life in the United Kingdom. Their adverse decisions came before First-tier Tribunal Judge R L Walker who on or about 27 November 2017 dismissed their appeals under the

Rules and on human rights grounds. Permission to appeal the decisions was given by Designated Judge of the First-tier Tribunal Macdonald on 27 April 2018. The Upper Tribunal listed this case in June 2018 but the late withdrawal of representation led to the matter being adjourned.

2. At the hearing on 24 September 2018 the issue was whether or not there were material errors of law made by the Judge. The first ground raised the issue that the Judge made adverse findings against the First Appellant's credibility in connection with his claim. It seemed the Appellants had been poorly served by the representation that had previously been undertaken and in the result matters had not been addressed as they should have been.
3. The Judge did not re-examine the issue of the claimed convictions and criminality of the First Appellant but received evidence at least supportive of the First Appellant's claim as to how the criminality had occurred. However the Judge raised the issue that the First Appellant had been convicted of offenses involving deception, fraud or dishonesty. There was nothing to gainsay the fact that that must have been a material consideration in the assessment of the First Appellant's conduct and character. It was said that the way in which the Judge expressed himself had not been put to the First Appellant and therefore there was procedural unfairness.
4. Mr Tufan argued that the issue of the First Appellant's criminality cannot be gainsaid and whatever explanation the First Appellant has, would like to give or how he would wish the offences to be assessed, it was really not for the Judge to go behind the convictions. Even if there was diminished fault on the Appellant's part for the convictions, nevertheless he had committed the offences. There was nothing to gainsay that fact and in the circumstances the adverse criticisms and the inferences the Judge drew really added nothing to the matter.

5. On behalf of the First Appellant it is said that the Judge made a fundamental error of law and reliance was placed amongst other things on the case of *HA v SSHD* [2010] CSIH 28. That case noted, in relation to a similar point, the fact that a Judge had disputed an issue over the genuineness of the membership card and ought to have afforded the First Appellant the opportunity to comment on the falsity of the document and possibly its reliability, which was not given.

6. The present case was quite a different position for the First Appellant because quite simply he must have been aware that his criminality was a material issue because he raised it himself. The First Appellant sought to diminish his responsibility. I make no criticism of that but the fact is there was the opportunity to explain these circumstances away and it was not necessary for the Judge, bearing in mind the First Appellant was represented, to put it back to the First Appellant in some different way. I bear in mind the case of *Mehmet Cokar* [2002] a decision of the Court of Sessions in Scotland [D28-37] which addressed that issue, namely the obligation upon representatives to raise and deal with issues which on the face of it manifestly might arise: It is quite another matter if the issue was unsuspected and unconsidered and indeed the representatives and the First Appellant have been taken by surprise. Accordingly it seemed to me whilst it would have been better for the Judge to have more specifically dealt with it, but he was not entering the arena. In fairness the issue was at large in the hearing of the appeal and evidently to a degree addressed come what may. Accordingly I find no arguable error of law under first ground of appeal.

7. The second ground was that the Judge erred in failing to make findings as to the circumstances of the First Appellant's offence. This was to a degree tangential to the first ground. The fact was the Judge did address the First Appellant's criminal convictions and did address that evidence. It seemed to me that it was not an obligation upon the Judge to deal with what was said to be the factual matrix behind the offending either in respect of the

first offence or were it to be argued in respect of the second offence. Accordingly whilst I understand the point it did not seem to me the Judge has failed to give consideration to these matters. When a shotgun approach is taken it is not beholden on the Judge to pick up every pellet of argument, examine it and dismiss it or consider the arguments relating to it. In this case I consider ground 2 added nothing to the matter.

8. Ground 3 raises the issue of the family life between the Appellants and their adult children to the extent of their dependency upon the latter.
9. The Judge's conclusion was that Article 8 rights were engaged but the level of interference was not of the necessary significance, was perhaps a surprising one which other Judges might reach a different conclusion. However the fact that others may differ on that issue added nothing to it because it was for the Judge himself to reach that view, which he did, on the totality of the evidence. It is not suggested that he was not aware of the relationship between the Appellants and their children.
10. Accordingly it did not seem to me that another Tribunal properly addressing the evidence that was received would necessarily reach a different conclusion. Therefore to this extent such error as there might have been is in any event not material. I find nothing in ground 3 to show any material error of significance even if one might complain that the Judge has not given weight to some of the considerations that were urged on their behalf.
11. Finally it said the Judge failed to consider material factors as to whether or not there were no very significant obstacles for their reintegration into Sri Lanka. The argument at least initially looked attractive but it must be recalled that the very significant obstacles considerations are directed particularly to the provisions of the Immigration Rules which it was unarguable that the First Appellant undoubtedly failed in terms of the suitability requirements because of the convictions.

12. So the subsidiary argument was essentially met by saying the criminality and the issues that have particularly health obstacles to their integration into Sri Lanka also formed part of the proportionality exercise. The complaint was made that the Judge has not particularly addressed that issue. I bear in mind of course that the Appellants are husband and wife for the Judge took the view that the First Appellant, the husband, was an able and active man with skills and abilities. The Judge did not accept the claims that somehow or other the First Appellant would not be able to find employment and support the Second Appellant and/or anyone else for that matter on a return to Sri Lanka. The Judge also had reservations about the claims that the children of the Appellants made as to the extent to which they could provide or would provide support for their parents.

13. It was arguable, and I agree with the Appellants in this respect, that the Judge did appear to express himself very much by reference to the future event of the children as adults going their own way and making lives for themselves. It seemed to me that of itself was a mistake because the Judge was indeed addressing or needed to address the current position but ultimately even if he was rather misstating the position in terms of the future position, the fact is the Judge took the view that they, notwithstanding the health issues that were claimed could return to Sri Lanka. The First Appellant had suffered two strokes and he and his wife had ill-health. Nevertheless, the Judge took the view that they could make a life for themselves back in Sri Lanka notwithstanding the lengthy time that they have been away. Those were matters for him to make a judgment on. I might not have reached the same conclusions but it seemed to me the fact that I might not does not demonstrate that there is a material error of law.

14. Accordingly, I was satisfied that this ground, whilst it has certain attractiveness, ultimately would not make a material difference to the

decision which the Judge had formed on the merits of the Article 8 ECHR claim overall.

15. I find that the Original Tribunal made no material error of law. The Original Tribunal stands.

NOTICE OF DECISION

The appeals of the Appellants are dismissed.

ANONYMITY ORDER

No anonymity order was previously made nor is one required.

Signed

Date 13 December 2018

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

The appeal is being dismissed therefore no fee award is appropriate.

Signed

Date 13 December 2018

Deputy Upper Tribunal Judge Davey

P.S. The delay in promulgation was the result of the case file and typing being miss-located.