



Upper Tribunal
Immigration and Asylum Chamber

Appeal Number: HU/23152/2016

THE IMMIGRATION ACTS

Heard at Field House
On 23 April 2018

Decision & Reasons Promulgated
On 8 June 2018

Before

Upper Tribunal Judge Kekić

Between

Thurairatnam Jayakumar
(anonymity order not made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation

For the Appellant: Mr J Martin, Counsel instructed by Nag Law Solicitors
For the Respondent: Ms Z Ahmed, Senior Home Office Presenting Officer

Determination and Reasons

Background

1. This appeal comes before me following the grant of permission to the appellant by Upper Tribunal Judge Grubb on 1 February 2018 in respect of the determination of First-tier Tribunal Judge E B Grant who dismissed the appeal by way of a determination dated 28 November 2017.
2. The appellant is an Australian national of Sri Lankan origin born on 12 January 1965 who appeals against the decision of the respondent on 23 September 2016 to refuse his family and private life application. He relies on the family relationships he has in the UK with his British national wife (also of Sri Lankan

origin) and their 13-year-old son. It appears that he has been maintaining his relationship with them all these years by way of frequent visits.

3. The judge is criticized for her inadequate consideration of the appellant's relationship with his child and her failure to take account of s.117B(6) as part of the assessment. The grounds also argue that the judge's credibility findings with respect to the appellant's relationship with his wife are flawed and that the wife's reluctance to leave all her relatives in the UK and move to Australia was an inadequate reason for rejecting the genuineness of the marriage particularly where the point was not pursued by the respondent at the hearing and where it was not contended that the marriage was not subsisting.

Appeal hearing and Conclusions

4. At the hearing before me the parties were in agreement that the judge had materially erred in law with respect to her consideration of the appellant's British son. In the circumstances, I did not find it necessary to hear submissions on the other arguments made in the grounds. Both sides asked for a remittal to the First-tier Tribunal and I confirmed that I would be setting aside the judge's determination and acceding to their joint submissions.
5. This is, unfortunately, a case where an otherwise experienced judge fell into error by failing to factor s. 117B(6) into her consideration and conclusions. There having been no objections raised by the respondent's representative, I set aside the determination in its entirety and remit it for re-hearing before another First-tier Tribunal Judge. No findings are preserved.

Decision

6. The First-tier Tribunal Judge made errors of law such that her decision must be set aside and re-made by another judge of that Tribunal at a future date.

Signed:



**Dr R Kekić
Judge of the Upper Tribunal
23 April 2018**