



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/03031/2013
IA/03165/2013

THE IMMIGRATION ACTS

Heard at Field House
On 19 September 2013

Determination Promulgated
On 27 September 2013

Before

UPPER TRIBUNAL JUDGE KING TD

Between

NAVDEEP KAUR
AMANDEEP SINGH

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr S Hamid, Solicitor, instructed by Freemans Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are sister and brother and nationals of India, their dates of birth being 14 April 1993 and 12 August 1994 respectively.

2. They came to the United Kingdom on 22 July 2010, with their mother, who it is claimed subsequently disappeared on 15 August 2010 and has remained absent since then.
3. Both sought to claim asylum on the basis that if they were returned they would be ill-treated by their uncle who had ill-treated them in the past.
4. That application was refused by the respondent in a refusal letter dated 6 October 2010. So far as the second appellant is concerned, given his age, it was found by the respondent that he qualified for limited leave to remain in accordance with the published Home Office Asylum Policy Instruction on Discretionary Leave.
5. He was granted discretionary leave until 12 February 2012 when he became 17½ years of age.
6. His sister, the first appellant, was granted discretionary leave also for the same period on the basis that she was the carer for her brother.
7. The hearing of the asylum claim came before Immigration Judge Bryant on 31 January 2011.
8. The accounts of both appellants were considered in that hearing and it was the finding of the Immigration Judge that they lacked credibility as to their experiences in India. He found their evidence to be a fabrication.
9. Thereafter, an application was made for further leave to remain in the United Kingdom outside the Immigration Rules, it being contended that to remove either of the appellants would be in breach of their fundamental human rights. The respondent refused those applications on 12 August 2012. There were no grounds to claim asylum or humanitarian protection and the decision of Immigration Judge Bryant was relied upon in that regard. The period of discretionary leave, having expired, the respondent did not consider that removal was contrary to Article 8 of the ECHR.
10. The appellants sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Gordon on 25 June 2013. The Judge applied the case of Devaseelan to the findings of Judge Bryant so far as asylum and humanitarian protection are concerned. The Judge did not accept that the appellant's mother was missing in the United Kingdom or indeed that their brother had been missing in India. The Judge concluded that there were relatives in India to whom the appellants could return. In those circumstances the appeal was dismissed.
11. Grounds of appeal were submitted against that decision and permission to appeal was granted. Thus, the matter comes before me in pursuance of that grant of permission.

12. Mr Hamid, who represents the appellants, invited my attention to his skeleton argument and to the bundle of documents as were presented before the First-tier Tribunal Judge.
13. His first and substantial ground of appeal was to the effect that the First-tier Tribunal Judge had failed to consider the impact of the recent case of **SM & TM & JD & Others v SSHD [2013] EWHC 1144 (Admin)** as part of her decision making. The burden of the submission made is to the effect that the Secretary of State was wrong to have given the second appellant only discretionary leave for one year and four months but should have given leave to him for much longer.
14. The children who were the subject matter of the decision by the Administrative Court had ages ranging from 10 to 6. They were all related to one another, either as siblings or as cousins.
15. Certain aspects of guidance were quoted in paragraph 21 of the judgment highlighting that, when making decisions affecting children, such applications should be dealt with in a timely way so as to minimise the uncertainty that they may experience.
16. The concern of the Administrative Court was in the process of successive applications for grants of time limited to discretionary leave as to whether that was a timely resolution of any given application. An overarching submission at the heart of that particular case was that when it was so obvious that the future of all the children was going to be in the United Kingdom, where they were all born and where they have all continuously lived and from which they and their mothers cannot be removed, the decisions to grant time limited discretionary leave which would obviously be renewed was merely prolonging uncertainly for the children for no practical or useful purpose and certainly for no purpose with regard to safeguarding and promoting their welfare.
17. It was the finding of the Administrative Court that the relevant 2009 Discretionary Leave Policy and the instruction document was unlawful as it effectively precluded case specific consideration of the welfare of the child in making the discretionary decision whether to grant limited discretionary leave or indefinite leave to remain.
18. It seems to me that the situation and circumstances facing the appellants, in particular the second appellant, was far removed from the factual basis as considered in **SM**. It was by no means established that they would have the right to remain in the United Kingdom; indeed the express findings of the Secretary of State for the Home Department in relation to both applicants was that they had no proper basis to remain over and above the policy in relation to minors. They were not born in the United Kingdom and had family elsewhere.
19. The second appellant was granted leave to remain as an unaccompanied minor following the determination of Judge Bryant. The sister was granted leave in line

with that to be his carer. For my part I can see no unfairness or illegality in the process that was undertaken so far as both appellants were concerned.

20. Seemingly they had come with their mother upon a visitor's visa for a family visit which in fact did not take place. There was no lawful basis for either appellant to be in the United Kingdom. Thus it was that discretionary leave was granted for the minimum period commensurate with the exercise of the policy. I do not understand what uncertainty was caused thereby, as the respondent had made it very clear in the respective refusal letters that she did not accept the basis of the claim as advanced. Indeed Judge Bryant in the hearing upheld those concerns, particularly as to asylum and humanitarian protection. The Judge did not accept that there had been a land dispute or that there was any danger to either appellant upon return or violence at the hands of their uncle.
21. The appellants were granted leave in order for them to put forward their case for consideration by the First-tier Tribunal. I detect no unfairness in the position adopted by the respondent or in the grant of discretionary leave which was made.
22. Criticism is also made as to the approach taken by First-tier Tribunal Judge Gordon to her assessment of the evidence and particularly by her lack of acknowledgment that the evidence presented by the appellants was evidence given by young people.
23. Both had been under the care of the local authority to some extent. There was a letter from the Education Children's Services Team of the Slough Borough Council dated 6 June 2013 confirming that both appellants were accommodated under Section 20 of the Children Act as they were unaccompanied children, seeking asylum. Until her 18th birthday Slough Borough Council funded the accommodation of Navdeep and subsistence costs. There is now a support role with a personal advisor under the 2000 Care Leaving Act which will continue to support her until her 21st birthday and up to the age of 25, if she remains in full-time education.
24. The Borough Council provides the second appellant with accommodation and subsistence and the author of the letter, Sunita Mohindru, is his personal advisor. The Borough will continue to support him until his 21st birthday and up to the age of 25 if he remains in full-time education.
25. It is said that both appellants were studying for ESOL qualifications at the East Berkshire College.
26. Criticism is made in particular as to the approach taken by the Judge to the documentation that had been produced and to the observations made as to behaviour. It is submitted that it was inadequate for the Judge to have dealt with the documents in the way which she had done.

27. The appellant's mother disappeared on 15 August 2010 and essentially three documents were produced in support of that fact. The first was a letter from the Gurdwara dated 24 June 2013 in these terms:-

"I am writing to confirm that the enclosed poster of a missing woman named Baljinder Kaur, aged 40 of Carlton Road, Slough was displayed at the notice board of Gurdwara Sri Guru Singh Sabha, Slough, on 25 August 2010. It was left on the notice board for few weeks but the Management Committee of the Gurdwara did not receive any information about this missing person."

The next document purports to be an enclosed poster of the missing woman, being her description and photograph, asking persons to make contact with the police on a particular number quoting URN 481 of 20/8 or to contact the local Gurdwara. The third document is an extract from the Slough Express, seemingly obtained from the internet, dated Wednesday 25 August 2010, speaking as to the missing woman giving her description and urging people to make contact with the police.

28. The Judge considered these documents, particularly at paragraph 19 of the determination. The first appellant was unable to explain where the photograph of her mother came from and why the letter from the Gurdwara had not been before Immigration Judge Bryan when the asylum appeal was heard in January 2011. It refers to the fact that their mother went missing on 20 August 2010 whereas the evidence from the appellants had been that she went missing on 15 August 2010. She noted there was no independent documentary evidence of the involvement of the police.
29. So far as the document from the web is concerned that had not been produced before Immigration Judge Bryant. It was dealt with at paragraph 15 of the determination. Seemingly that had only been received by the first appellant in the United Kingdom a week before the hearing before Judge Gordon. It was sent by fax from a friend in the US. Little explanation was given as to why that had not been produced at the previous hearing. The first appellant was asked where the photograph of her mother had come from and she had said "the police could get a photograph from the airport".
30. The Judge did not feel able, in the light of those comments, to give much weight to those documents. It seems to me, and I so find, that she was entitled to take that view of the documents.
31. It is of course important to place documentation within a proper context and it is clear that the Judge has done so. When pressed upon the photograph of her mother, the first appellant said that she had a copy of a letter from her solicitor. She did not know when the poster was taken down or how many posters were put up. She had made no enquiries of India as to whether her mother had re-appeared there.

32. The second appellant said that he took the letter from the Gurdwara and reported it to the police. He too had made no further enquiries about the whereabouts of his mother.
33. The Judge noted that there were few outside agencies that had been involved in the search for the mother and little evidence that social workers had been asked for help. The police, according to the appellant, had been contacted but appeared to have done little, saying they could do little about a photograph. However, it is clear that a photograph was available for certain matters but little had been done thereafter to follow up the search for their mother.
34. Criticism is made of the Judge relying upon demeanour as part of her reasoning. In paragraph 18 of the determination she expressed concern, saying that neither appellant appeared particularly concerned to find their mother. It is noted at paragraph 15 that the first appellant appeared "very relaxed" about the disappearance of her mother. It is said not to be a fair reflection of the situation because the first appellant became very upset and emotional during examination. It is said that caution should be exercised by the Judge as to how young people convey their feelings of sadness and abandonment.
35. There may be considerable merit to that comment. It is important for the Judge to recognise that she is dealing with two young people. That being the case, however, apart from the documentation issued immediately following the disappearance in 2010, there would seem to have been no further investigations or enquiries made or followed up in the intervening years, particularly so even with obvious enquiries which could have been made in India.
36. Overall I find that it was properly open to the First-tier Tribunal Judge to make the findings which she did upon the presence or otherwise of the mother. It is to be noted that the case of **Devaseelan** was applied to other aspects of the case including the lack of credibility generally or as found to the original claim of difficulties in India.
37. It is contended by Mr Hamid that the Judge erred in failing to make clear findings as to Article 8. If the Judge had found that the evidence was credible, that the mother had gone missing, that would have significantly affected the findings made in respect of Article 8 of the ECHR. Mr Hamid submits that the appellant's father is dead, his brother missing as also their mother. All close relatives have therefore become missing or dead and that there is a lack of family support in India.
38. He invites me to find that there is family life as between the two appellants in the United Kingdom and both are undertaking positive courses such as to improve their education and their private life. It is said in those circumstances the Judge's findings are largely unreasoned.

39. It is clear from the determination that the Judge has in mind the private life of the appellants in the United Kingdom. That is set out in paragraph 27. Whilst recognising that there is family life as between the two appellants, the question arises as to whether the removal to India for the appellants to enjoy their life there with their relatives is an interference with their private and family life in the United Kingdom as to be disproportionate in all the circumstances.
40. The Judge made clear findings in paragraph 25 of the determination that there are relatives in India to whom the appellants can turn for assistance. Although it was accepted that the father had died there were a number of uncles and cousins living in the same village. It had not been accepted by the Immigration Judge that there was animosity of the nature as claimed. Judge Gordon noted the findings by Judge Bryant that there was no land dispute in the village affecting the appellants and/or causing their mother to have sold their property.
41. Mr Hamid submits that the disappearance of her mother is an extraordinary circumstance that would make a difference, if properly considered, to an Article 8 claim. For my part I cannot see how that fact, even were it to be accepted, creates any Article 8 right to remain in the United Kingdom. There may be cases where it is desirable for the children to remain in the United Kingdom in order to conduct their search for their mother. As has been observed by the Judge however the appellants would seem to have done absolutely nothing to further such enquiries since 2010, despite having lived in the United Kingdom for nearly three years.
42. Although they arrived on a visa, the purpose for which the visa was issued was not fulfilled and the appellants have been allowed to remain in the United Kingdom essentially because of the respondent's policy in relation to unaccompanied minors.
43. They have family to return to and no doubt would put their education to good use in India.
44. It seems to me, and I so find, that the Immigration Judge properly considered matters for and against the appellants and came to a reasoned finding as to Article 8 of the ECHR. There was no document or report from the Slough Borough Council to indicate that either appellant has particular emotional or physical needs such as to require their continuing presence in the United Kingdom.
45. The Judge is entitled to consider the appellant's claim within the overall immigration history, particularly the lack of credibility as to their claim as found by Judge Bryant. As young people they obtained the appropriate protection from the authorities but may now be returned to family.
46. Mr Tarlow, who represents the respondent, invited me to find that the case of SM was not relevant to this particular case and that full and proper consideration had been given by the Judge to the claim as advanced by both appellants. Although he expressed some sympathy with their plight, particularly if it be true that their mother

had disappeared, he contends that their best interests lie in any event with their family in India where they can be fully supported.

47. I find that there is no material error of law in the determination. The findings were reasoned and properly arrived at. The private and family life of the appellants was considered in the light of their family in India. This appeal by the appellants is dismissed.
48. In those circumstances the decision of Judge Gordon shall remain standing, namely that the appeals in respect of asylum and human rights are dismissed.

Signed

Date

Upper Tribunal Judge King TD