



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/21933/2012
IA/21927/2012

THE IMMIGRATION ACTS

Heard at Field House
On 9 August 2013

Determination Promulgated
On 15 August 2013

Before

UPPER TRIBUNAL JUDGE LATTEER

Between

JIGNESHKUMAR RATILAL PATEL
HINABEN JIGNESHKUMAR PATEL

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Z Malik instructed by Malik Law Chambers, Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are citizens of India born on 22 April 1976 and 17 October 1976 respectively. They have been granted permission to appeal against a decision of the

First-tier Tribunal issued on 23 January 2013 dismissing their appeals against the respondent's decision to remove them as overstayers.

2. The appellants arrived in the UK on 6 June 2004 with visit visas valid until 20 November 2004 and they have overstayed since that date. Subsequently, they applied for further leave to remain on human rights grounds but their applications were refused and the respondent decided to remove the appellants. Their appeal against that decision was heard by the First-tier Tribunal on 3 January 2013. The judge was satisfied that the respondent's decision was in accordance with the law and that removal would not be disproportionate to a legitimate aim within article 8.
3. Permission to appeal was granted on the basis that it was arguable that the judge had erred in law by failing to consider and determine whether the discretion under para 353B of the HC 395 should have been exercised differently by the respondent. This issue has now been considered by the Upper Tribunal in the reported determination of Khanum and Others (Paragraph 353B) [2013] UKUT 00311 where it was held that para 353B was not designed to replace para 395C and that in a case where there were no outstanding further considerations and appeal rights were exhausted, the decision whether or not to carry out a review within the scope of para 353B was entirely a matter of discretion by the respondent and was not justifiable.
4. Mr Malik conceded that if that case was correctly decided, his appeal could not succeed. He did not seek to make any further submissions save to reserve his position on a challenge to that decision on appeal. I adopt and follow the reasoning in Khanum. I am accordingly not satisfied that the judge erred in law by failing to consider the position under para 353B. It has not been argued that the judge erred in law in any other respect.

Decision

5. The First-tier Tribunal did not err in law and the decision stands.

Signed

Date: 13 August 2013

Upper Tribunal Judge Latta