



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

Appeal Numbers: IA/26245/2012
IA/26250/2012
IA/26253/2012

THE IMMIGRATION ACTS

Heard at Field House

**On 6 June 2013
Prepared on 23 June 2013**

**Determination
Promulgated
On 4 July 2013**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

**MR MANISH HARSHAD HARPALE
MRS AMRUTA MANISH HARPALE
MR VARUN MANISH HARPALE**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Burrett, Counsel, instructed by Singhania & Co
Solicitors

For the Respondent: Ms A Holmes, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The first appellant was born on 27 September 1970, the second appellant, his wife, was born on 29 December 1977 and the third appellant, their son, was born on 26 October 1990. The appellants are all Indian citizens. The first appellant applied for leave to remain as a Tier 1 (General) Migrant, with his wife and child as his dependants, but this application was refused by the respondent in April 2012 under paragraph 322(1A) of the Immigration Rules on the basis that forged bank statements had been submitted in support of the application. The application was also refused on the basis that sufficient evidence had not been provided to satisfy the maintenance requirement under the Rules.
2. Subsequently, the respondent's decision was withdrawn and the application was sent back for reconsideration, but it was again refused on the same grounds. The refusal letter is dated 31 October 2012.
3. The appellants appealed against this decision, and also against the respondent's decision, made contemporaneously, to remove all the appellants under Section 47 of the Immigration, Asylum and Nationality Act 2006.
4. These appeals were heard before First-tier Tribunal Judge M A Khan, sitting at Hatton Cross on 5 February 2013, but in a decision which is not dated, and was promulgated some time afterwards, Judge Khan dismissed the appeals, both under the Immigration Rules and under Article 8 of the ECHR. Although at paragraph 36, Judge Khan states that he finds that "the respondent's decision to set removal directions is unlawful" this finding is not repeated within the decision.
5. The appellants appealed against this decision, on a number of grounds, but were originally refused permission on all grounds by Designated First-tier Tribunal Judge M A Baird, who, when stating the reasons for refusing to grant permission, stated (at paragraph 4) that Judge Khan had been "entitled to reach the conclusion he did on the evidence before him".
6. The appellants renewed the application for permission to appeal to the Upper Tribunal and were eventually granted permission to appeal by Upper Tribunal Judge Chalkley, but only under Article 8. Having set out his reasons for refusing permission on all other grounds, when stating his reasons for granting permission, Judge Chalkley stated as follows at paragraph 4:

"I agree that the judge's dismissal of the appellants' Article 8 appeal appears to 'rubber stamp' the respondent's consideration of the appellants' Article 8 rights. The judge does not appear to have properly considered and applied *Razgar v Secretary of State for the*

Home Department [2004] UKHL 27. On this issue only I grant permission."

7. Before me, on behalf of the appellants, Mr Burrett accepted that insofar as the decision was based upon the provisions of paragraph 322(1A) of the Rules, this could not be overturned, but he still wished to re-argue the grounds with respect to that aspect of the decision, even though permission had not been granted to do so, because it was important to these appellants for the future that the adverse credibility findings should be overturned. It was the appellants' case that Judge Khan had misunderstood the evidence before him. It was the first appellant's case that he had handed his genuine bank statements to an agent and it was the agent who had committed the fraud. Although it was accepted that the application must fail under paragraph 322(1A) by reasons of the agent's fraud, it was important that the Tribunal found that he had not been personally dishonest. The appellants were seeking a finding that the first appellant had not been personally dishonest.
8. Mr Burrett's full submissions are set out in the Record of Proceedings, and need not be repeated verbatim in this determination. The application to this Tribunal to allow the appellants to re-argue the grounds on which Upper Tribunal Judge Chalkley had refused permission was opposed by Ms Holmes on behalf of the respondent.
9. In my judgment, there is no proper basis upon which I should now grant permission to appeal on grounds other than those upon which Judge Chalkley had granted permission. Judge Chalkley had looked at the determination of Judge Khan closely, and at all the material facts in this case and had given detailed reasons for refusing permission on all grounds other than under Article 8. Essentially, Judge Khan had been right to find that applicants should be held responsible for the acts of their agent. Judge Chalkley was entitled to refuse permission to appeal on all except the Article 8 grounds, and there is no proper basis upon which I should reopen that decision.
10. With regard to the appeal under Article 8, Mr Burrett accepted that in the course of making his submissions to reopen the other grounds, the power of the arguments with regard to Article 8 had been diminished, but he still submitted that there appeared to be a lack of consideration of the impact of removal on the third appellant.
11. On behalf of the respondent, Ms Holmes submitted that at paragraphs 32 and 33, Judge Khan had dealt almost entirely with the situation of the young child (the third appellant) and although *Razgar* was not mentioned specifically, the judge had covered everything he had to cover.

Discussion

12. It is quite clear from paragraphs 32 and 33 of his determination that Judge Khan considered the position of the third appellant with care.

Although he did not mention *Razgar* by name, it is clear that he did consider properly the questions posited by Lord Bingham in that case. He found that the appellants did have private life, and also considered the interests of the third appellant by reference to Section 55 of the Borders, Citizenship and Immigration Act 2009, in light of the guidance given by Lady Hale in *ZH (Tanzania)*. He found in terms that notwithstanding the private life the appellants had in this country the respondent's decision was "lawful, justified and proportionate in the circumstances of the case" (paragraph 35). That decision was open to him, and the failure to mention the case of *Razgar* in terms clearly did make a material difference to the outcome.

13. It follows that the appellants' appeals against the substantive decision must be dismissed.
14. However, Judge Khan's failure specifically to allow the appeal against the removal decision to the extent that that decision was not in accordance with the law, for the reasons he properly set out at paragraph 36 of his determination, was a material error of law, such that this part of his decision must be remade. Accordingly, I shall so find.

Decision

The determination of First-tier Tribunal Judge M A Khan contained a material error of law insofar as Judge Khan did not decide that the decision to remove these appellants was not in accordance with the law, such that the decision must be remade by the Upper Tribunal. I substitute the following decision:

The appellants' appeals against the decision of the respondent refusing to grant them leave to remain are dismissed under the Immigration Rules and under Article 8.

The appellants' appeals against the decision to remove them under Section 47 of the Immigration, Asylum and Nationality Act 2006 are allowed to the extent that this decision was not in accordance with the law.

Signed:

Date: 3 July 2013

Upper Tribunal Judge Craig