



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/12131/2014
IA/12135/2014
IA/12138/2014

THE IMMIGRATION ACTS

Heard at Field House
On 28th August 2015

Decision & Reasons Promulgated
On 4th September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

MASTER JOSHUA TAKAHASHI
MRS RIE TAKAHASHI
MR KASTSUFUMI TAKAHASHI
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Slatter, Counsel, instructed by Richmond Chambers LLP
For the Respondent: Mr T Wilding, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants and each of them are citizens of Japan born respectively on 13th April 2006, 22nd October 1969 and 13th February 1980. They made various applications in

order that they might regularise their stay in the United Kingdom. The first Appellant's application was made pursuant to paragraph 276ADE. The second Appellant's application was made initially also under 276ADE, but later pursuant to a Section 120 notice reliance was placed on paragraph 276A1, and in relation to the third Appellant the application was initially made under 276A1 but then changed pursuant to that 120 notice to 276B.

2. The substance of the applications was that the second and third Appellants, the parents of the first Appellant had been resident in the United Kingdom for a continuous ten year period.
3. On 25th February 2014 decisions were made by the Secretary of State to refuse the applications and to remove the Appellants from the United Kingdom pursuant to Section 47 of the Nationality, Immigration and Asylum Act 2006. The Appellants appealed and their appeals were heard on 8th October 2014 by Judge of the First-tier Tribunal Fox sitting at Richmond. He dismissed each of the appeals. Not content with those decisions, by Notice dated 10th December 2014 application was made by the Appellants and each of them for permission to appeal to the Upper Tribunal.
4. On 21st January 2015 Judge of the First-tier Tribunal Osborne refused permission. There was then a renewed application dated 2nd February 2015. The matter was then considered by Upper Tribunal Judge O'Connor who granted permission in these terms:

"The First-tier Tribunal correctly directs itself as to the issues before it in relation to the first and second Appellants, although not to the third Appellant – it incorrectly directing itself that the third Appellant sought to assert he met the requirements of paragraph 276A2 of the Rules [19], rather than paragraph 276B [36]. This, though, is not an error capable of affecting the outcome of the appeal, given the material correlation between the requirements of both Rules. However, it is arguable that the First-tier Tribunal gave no meaningful consideration to these issues, and that its reasoning in relation to such – found exclusively at paragraph 47 of his determination – falls short of being legally adequate. These errors also arguably impact on the First-tier Tribunal's conclusions in relation to the first Appellant."

5. Even before the matter came for hearing before me in the Upper Tribunal, having considered the papers I questioned whether the reasoning of the First-tier Tribunal was adequate. It is not necessary for me to consider matters further. Mr Wilding and Mr Slatter had had the opportunity in advance of my coming into the hearing to discuss whether or not there were material errors in the statement of reasons. Mr Wilding very fairly opened by accepting, in his words that the decision was, "Back to front". The reasoning in relation to the third Appellant was inadequate and there was no sufficient finding whether the second Appellant met the requirements of paragraph 276B or in the alternative 276A1. In those circumstances he accepted that the assessment by the judge in relation to Joshua, the first Appellant, at [44] and in relation to the second and third Appellants at [45] simply could not stand. Therefore, by consent the decision of the First-tier Tribunal was to be set aside through an error of law. Of course it is not sufficient when it comes to matters of law for the parties to

agree that there is an error of law, I have to find that for myself but I have no hesitation in so finding. Upper Tribunal Judge O'Connor rightly points to paragraph 47 as being inadequate and there are not sufficient findings necessary for the decision which was eventually made in this case to be sustainable.

6. Having set aside the decision of the First-tier Tribunal I can either remit the matter to the First-tier Tribunal or re-make the decision. However in this case there are discretionary aspects of the case which means that the matter is not quite so straightforward; still I need to make some findings with findings needing to be made in respect of the third and second Appellants.
7. One important aspect of the appeal in relation to the second and third Appellants was whether when they apparently left the United Kingdom they did so at a time when they had leave. At paragraph 7 reference is made to the third Appellant departing from the United Kingdom on 1st March 2006. If he did so then as Mr Wilding rightly points out he would not have had leave since he had leave only to 28th February 2006.
8. When did the third Appellant leave ie on 28 February 2006, when he had leave or the following day, when he did not? In his witness statement to the First tier Tribunal the third Appellant deposed to having left on 28th February 2006 by South Korean Airlines. The flight departed 21:30pm though he arrived at his first interim destination on 1st March 2006. That same evidence was adopted before me without challenge by Mr Wilding and so, I find as a fact on the basis of the unchallenged evidence that on balance of probabilities the third Appellant left the United Kingdom on 28th February. It follows then that on this point there was a material error in the findings of fact in the First-tier Tribunal but for these purposes the significant point is that the third Appellant had leave at all material times necessary for the purposes of the Rules.
9. Although it is conceded that both the second and third Appellants have been continuously resident in the United Kingdom for ten years Mr Wilding rightly pointed out that that did not necessarily lead to a successful outcome.
10. As to the third Appellant there is in respect of paragraph 276B(ii), which deals with the public interest, a discretion in the Secretary of State and Mr Slatter agrees and indeed was helpful in reminding me of the authority of **GK (long residence - immigration history) Lebanon [2008] UKAIT 00011** which is directly on point.
11. As to the second Appellant, consideration needs to be given both to 276B(ii) and also to (iv) which requires her to demonstrate sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom in accordance with the relevant Appendix and there is of course the alternative of 276A1.
12. That then leaves the child Appellant, Joshua (there is also another child). The First-tier Tribunal could not really make sound findings as to what was in the best interests of Joshua without knowing the status of the second and third Appellants and that applies to me also. This is one family and proper consideration needs to be

given to the family as a whole. There is also the second child born in the United Kingdom whose status must also be considered and I mention that in this Statement of Reasons so as to remind the Secretary of State of the existence of this child when exercising her discretion in relation to the second and third Appellants.

13. It was agreed that were I to re-make the decision favourable to each of the Appellants the matter should be not remitted to the First-tier Tribunal but rather I should simply allow the appeal so as to allow the Secretary of State to exercise her discretion and that is what I propose to do.
14. For the avoidance of doubt I find in respect of both the second and the third Appellants that they have ten years' continuous residence in the United Kingdom demonstrated to the appropriate standard of proof within the meaning of 276A(a). The Secretary of State is reminded that when exercising her discretion she should have regard to paragraphs 298 and 301.

Notice of Decision

15. The appeals of each of the Appellant to the Upper Tribunal are allowed. The Decision of the First Tier Tribunal is set aside and remade such that the appeals are allowed as not being in accordance with the law.
16. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Zucker

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeals and because a fee has been paid or is payable, I have considered making a fee award and have decided to make fee award of £140 in respect of each Appellant so that the award in total in this appeal is £420.

Signed

Date

Deputy Upper Tribunal Judge Zucker