Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/14105/2014
IA/14106/2014

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision and Reasons Promulgated**
On 9th November 2015	**On 12th November 2015**

Before

UPPER TRIBUNAL JUDGE COKER

Between

TALWINDER KUMAR TUGNAIT
SAROJ BALA

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bukhari of Bukhari Chambers solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. First-tier Tribunal Judge Pears dismissed the appeals of Mr Tugnait and Ms Bala, his wife, against decision to remove them under s10 Immigration and Asylum Act 1999 dated 13th March 2014. The appellants had applied for leave to remain outside the Rules on human rights grounds. That application was considered by the respondent and refused for reasons set out in a decision dated 12th November 2013, such decision not being an appealable decision as defined by s82 Nationality Immigration and Asylum Act 2002 and thus not having a right of appeal.

2. The respondent considered the application by the appellants and their two children (HS born 21st June 2001 in India and PT born 19th December 2006 in the UK) in accordance with Appendix FM and paragraph 276ADE of the Immigration Rules. The two children are not parties to the appeal.

3. Although permission to appeal the findings of the judge was sought on the grounds that the First-tier Tribunal judge had erred in law in his consideration of Appendix FM, paragraph 276ADE and s55 Borders Citizenship and Immigration Act 2009, permission to appeal was not granted on those grounds. Permission to appeal was granted solely on the grounds that it was arguable that the judge had erred in his consideration (or lack of consideration) of Article 8 'outside the Rules'.

4. The grounds had not challenged the findings of fact made by Judge Pears but had been based upon the assessment of those facts in the context of the relevant case law and legislation.

5. First-tier Tribunal Judge Pears, having heard evidence from both appellant's through an interpreter, made the following findings:

- The respondent had failed, in the reasons given for refusing to grant leave to remain, to consider whether there were matters outside the Rules to be considered and had failed to consider s55.
- On 10th March 2009 the first appellant was convicted of possession of a false or improperly obtained ID document and sentenced to 9 months imprisonment.
- The first appellant failed to refer to that conviction in his application for leave to remain in the UK.
- The appellants and the two children are a family unit which, if removed, will be removed together and could together go and live in India.
- Neither appellant speaks English to a level that does not require an interpreter.
- The first appellant was served with Form IS151A on 9th October 2008 notifying him of his liability to removal.
- The first appellant made an asylum claim on 5th December 2008, a claim he subsequently withdrew and which was not relied upon as a ground of appeal before the First-tier Tribunal.
- The appellants made their application for leave to remain in July 2012.
- Despite the first appellant's evidence that he and his family "have a strong profound and the quality of private life in the UK. …worked in the UK for a significant length of time…integration including social, educational and economical number of friends in the UK….strong community and cultural connections in the UK…" the judge noted that no supporting evidence to that effect had been produced to suggest any particular integration with UK Society or even Indian Society in the UK. Their evidence was not accepted, they have attempted to reduce their ties with India ([35], [64], [65], [66] of the decision).
- The appellants exaggerated their claimed loss of ties and connections with India or that he would be unable to obtain a job.
- Both appellants have family in India ([65] of the decision)
- The appellants and their daughter arrived in the UK in 2006, not 2002 as claimed.
- The first appellant gave contradictory evidence as to whether he had contact with his parents or not.
- The appellants do not meet the Suitability requirements of the Rules.

- The first appellant has known that his immigration status in the UK has been precarious and their family and private life has been precarious since at least 9th October 2008.
- The presence of the first appellant is not conducive to the public good.
- There are no educational or health issues relating to the children that indicate any characteristics that require protection.
- It would not be unreasonable for the children to leave the UK.
- The appellants have not shown "arguably good grounds for granting leave to remain outside the immigration rules or shown there are compelling circumstances not sufficiently recognised" ([72]).

6. Judge Pears set out extensive extracts from relevant case law. He specifically reminded himself that if there were matters that were not sufficiently considered under the Immigration Rules then consideration should be given in accordance with the approach set out in *Razgar* [2004] UKHL 27. He also specifically referred himself to Part 5A Nationality, Immigration and Asylum Act 2002.

7. The essence of the submissions by Mr Bukhari were that the judge failed to have adequate or any regard to the best interests, in particular, of the older child and that the conclusion by the judge in [71] ("…. The First Appellant's conviction, his imprisonment…and the inability of either Appellant to meet the requirements of the immigration rules outweighs the welfare interest of the children remaining here") reflected a failure to consider the best interest of the children and *then* consider that finding in the context of the circumstances as a whole. He relied heavily upon paragraph 33 of *EV (Philippines) and others* [2014] EWCA Civ 874 and *Azimi-Moayed and other (decisions affecting children: onward appeals* [2013 UKUT 00197 (IAC). He submitted that the First-tier Tribunal decision gave an impression that the child's welfare had been set against the father's deception and that the child had been 'punished' for the non-disclosure of the conviction by the father. He submitted that the references in [64] and [65] of the First-tier Tribunal decision (lack of integration and evidence attempting to reduce ties to India) related solely to the appellants and not to the children.

8. The most that can be said about this family is that the eldest child has been in the UK in excess of seven years since the age of 4. The evidence before the First-tier Tribunal did not indicate any engagement with society in the UK by the children other than attendance at school. There was no evidence about activities the children were engaged in separate to their family other than that the older child enjoyed swimming. The parents produced no evidence of cultural or social activities outside their family or within the wider UK context. The judge plainly had regard to all the evidence that was put to him in reaching his decision – see [35], [37], [44], [49], [63], [64], [66], [67], [70]. Length of residence of a child is simply insufficient to found a successful claim to residence when considered in the context of the circumstances as a whole which are, in this case, adverse to remaining. Although the judge did not make a specific finding as to the best interests of the children, it is simply not possible to conclude that the decision of the judge would have been any different even if he had made a finding that the best interests of the older child were in remaining in the UK. Even if the judge had gone through the specific criteria referred to in [35] of *EV (Philippines)* it is plain from the findings of the judge that he took the view that the children had

retained ties and links with India through their parents and that they would not have significant difficulties adapting to life in India. As [36] of *EV (Philippines)* makes plain, the essential question is how emphatic an answer falls to be given to the question 'is it in the best interests of the child to remain'. Weight has to be given to the need to maintain immigration control, applicants have no right to remain and the immigration history of the parents may be relevant. That the older child has lengthy residence is simply insufficient to outweigh the other factors

9. The First-tier Tribunal judge plainly had overall regard to all the evidence before him. It is inconceivable that any other judge could have reached a conclusion that the evidence before him identified matters that required consideration outside the Immigration Rules. The judge in any event considered whether there was engagement of Article 8 in family life terms and concluded, correctly, that because the family would be leaving the UK as a family unit and travelling to India where they have family and other connections, there would be no interference with family life. The judge considered the requirements of s117B of the Nationality Immigration and Asylum Act 2002; he found that it was not unreasonable on the evidence before him for the children to leave the UK.

10. There is no error of law in the decision of the First-tier Tribunal decision.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision

The decision of the First-tier Tribunal stands.

Date 10th November 2015

Upper Tribunal Judge Coker