



IAC-AH-DP-V2

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

Appeal Numbers: IA/28372/2013
IA/45150/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 17th September 2015**

**Decision & Reasons Promulgated
On 4th November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MRS SAVITRI PAREY (FIRST APPELLANT)
MRS DAVID PAREY (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss E King, Counsel

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Trinidad and Tobago born respectively on 14th January 1980 and 13th March 1975. This matter has a very extensive history. The actual issues of which are set out in great detail in previous determinations and in particular the First-tier Tribunal determination of Judge MPW Harris promulgated from Hatton Cross on 1st October 2014. That determination allowed the Appellants' appeals pursuant to Article 8 of the European Convention of Human Rights. Judge Harris noted that the

credibility of the Appellants had not been challenged by the Respondents in the appeals and that the second Appellant's case was dependent upon that of the first Appellant. Judge Harris found at paragraph 40 of his determination that there were such compelling circumstances arising from the delay of the Respondent as to render her decisions in respect of the first Appellant to be disproportionate and in breach of Article 8 and on that basis her appeal was allowed. Thereafter he analysed at paragraphs 42 to 58 the position of the second Appellant and made a similar finding.

2. On 1st October 2014 Grounds of Appeal were lodged by the Secretary of State to the Upper Tribunal and on 12th November 2014 First-tier Tribunal Judge McDade granted permission to appeal. Judge McDade noted that the grounds of application for permission to appeal asserted that the Judge was not justified in finding delay on the part of the Secretary of State as a basis to allow the appeals. The Respondent asserted that there was no such delay and that the Judge was therefore not justified in allowing the appeals as there were no exceptional circumstances to engage Article 8 private and family life.
3. A very detailed Part 24 response was filed and served by the Appellants. That Rule 24 response effectively constituted a skeleton argument and analysed the meaning of delay, the evidence regarding the process of the application and its outcome and exceptional circumstances. The Rule 24 response pointed out that the First-tier Tribunal had now on two occasions found that the feature in these appeals of the delay in the consideration of the first Appellant's application leading to a brief period without leave did not render removal disproportionate and that was a finding properly open to the Judges to conclude. The matter was quite properly thereafter listed for consideration as to whether there was a material error of law in the decision of the First-tier Tribunal Judge before the Upper Tribunal and the appeal came before Deputy Upper Tribunal Judge Kelly sitting at Field House on 16th December 2014. In a decision and reasons promulgated on 15th January the appeal of the Secretary of State was allowed to the extent that the Judge found a material error of law in the decision of the First-tier Tribunal and Judge Kelly quite properly went on to indicate that the matter would be retained in the Upper Tribunal and to be reheard following a further hearing.
4. It is appropriate to note the view expressed at paragraph 17 of Judge Kelly's error of law finding and to set it out:

“Nevertheless, following a careful analysis of the evidence, the Tribunal made findings of fact that are not challenged and which should therefore be preserved. I do not therefore consider it appropriate to remit the matter to the First-tier Tribunal for a complete rehearing. On the other hand, I consider that it would be inappropriate for the Upper Tribunal to decide the appeal without conducting a further hearing of its own. This is because, despite the number of hearings that have taken place already, there does not appear to have been any significant investigation into the question of the Respondent's social and family connections to Trinidad, or to the extent to which they might face difficulties in reintegrating into the society of their

country of origin. I therefore direct that there be a further hearing in the Upper Tribunal, with a time estimate of one and a half hours, at which the Respondents may present further evidence.”

5. The matter was therefore relisted for hearing and then unfortunately had a chequered history in that there were adjournments on 15th April and 14th May before the matter came back yet again before Judge Kelly on 14th July. However at that hearing it was not possible for the appeal to be reheard but the appeal did take a slight change of direction. Firstly it was conceded by the Secretary of State that the second Respondent Mr David Parey now met the requirements of paragraph 276B(i) of the Immigration Rules and secondly directions were given as follows:
 - (i) The resumed hearing of the appeals do stand adjourned until the first available date after 8th September 2015.
 - (ii) The Appellant (and I note that of course the Appellant in this matter is the Secretary of State) shall give written notice to the Respondents (i.e. Mr and Mrs Parey) and to the Tribunal of any reason or reasons why it is said that
 - (a) the second Respondent (David Parey) ought not to be granted leave to remain by reference to sub-paragraphs 276B(ii) and (iii) of the Immigration Rules and/or
 - (b) the first Respondent ought not to be granted leave to remain as the dependant of the second Respondent. This direction is to be complied with by 25th August 2015.
 - (iii) In the event that the Appellant does not comply with the direction in paragraph 2 above the Tribunal may assume that the Respondent does not have any objection to leave to remain being granted on the above basis to either or both of the Appellants.
6. It is on that basis that the appeal comes back before me for further consideration. I note that this is an appeal by the Secretary of State but for the purpose of continuity throughout the appeal process I refer to Mr and Mrs Parey herein as the Appellants and the Secretary of State as the Respondent. The Appellants appear by their instructed Counsel Miss King. Miss King is familiar with this matter having appeared on several occasions before the Tribunal and is also the author of the Rule 24 response. The Secretary of State appears by her Home Office Presenting Officer Mr Kandola.

Submissions/Discussions

7. Miss King starts by pointing out that this is supposed to be a substantive rehearing and that Mr Parey meets the requirements of paragraph 276B of the Immigration Rules and that he should be granted indefinite leave to remain thereunder on the grounds of long residence on the basis that he has had at least ten years' continuous lawful residence in the United Kingdom and that there are no public interest reasons why he should not be allowed to remain. Mr Kandola acknowledges that Mr Parey has no

dependants and that there are no adverse conduct issues and acknowledges on behalf of the Secretary of State that Mr Parey's application can be allowed under the Immigration Rules. His concern relates to that of the first Appellant Mrs Parey pointing out that she needs to meet the requirements of Appendix FM-SE. He points out that Mrs Parey is able to make a fresh application under paragraph FM-SE within 28 days and that she has a remedy in-country.

8. Miss King accepts that that is an accurate reflection and that it would be open to Mrs Parey to apply as a dependant. However she points out the basis upon which this appeal was brought back before the Tribunal today and that there is no reason why the appeal cannot proceed today pursuant to Article 8.
9. Mr Kandola challenges that pointing out that Mrs Parey had applied for indefinite leave to remain and she now wishes to switch pursuant to Section 120 grounds but that she cannot succeed today as she does not have the evidence. He points out that I am being asked to allow the appeal under Article 8 and that the basis upon which I am being asked to allow is not a compelling reason.
10. Miss King indicates that as an alternative it would be appropriate to give directions that the matter can be addressed and dealt with under the Immigration Rules. She points out that Appendix FM-SE requirements including the provision of bank statements and payslips for the past six months. Mr Kandola indicates that he would be content for this matter to be dealt with on the papers in an attempt to avoid having to bring this matter back before the Tribunal for yet another hearing.

Findings and Directions

11. The history of this matter is extensive. However the basis upon which this matter came back before the Upper Tribunal has changed since Judge Kelly gave his directions. Firstly it is accepted that Mr Parey's appeal should be allowed under the Immigration Rules. Secondly the question thereafter arises as to whether or not the first Appellant, Mrs Savitri Parey, could have her appeal dealt with pursuant to Appendix FM-SE of the Immigration Rules as a family member of Mr Parey or whether she should proceed under Article 8. Both legal representatives are in agreement that the more logical approach is to accept Mrs Parey's appeal be addressed under Appendix FM-SE as a family member rather than under Article 8 and it is agreed that whilst there is no objection to that raised by Mr Kandola on behalf of the Secretary of State the evidence is not there today for this to take place. I am agreeable that such a course of action should take place. I am also conscious of the fact that despite Judge Kelly's direction no evidence was served by the Secretary of State to Mr Parey being granted leave to remain by reference to paragraph 276B of the Immigration Rules and indeed that is orally confirmed today by Mr Kandola. On that basis it seems appropriate for the appeal of the first

Appellant to be addressed pursuant to Appendix FM rather than pursuant to Article 8. I thus make orders and directions accordingly.

Decision and Directions

12. The appeal of the second Appellant is allowed under the Immigration Rules.
13. That the appeal of the first Appellant be addressed pursuant to the Immigration Rules on the basis that the Appellant seeks leave to remain in the United Kingdom as a family member pursuant to Appendix FM-SE of the Immigration Rules.
14. That the first Appellant do, through her solicitors, serve the Secretary of State within fourteen days of receipt of these directions oral evidence upon which she seeks to rely in order to satisfy her application with regard to the financial requirements she needs to address pursuant to Appendix FM-SE of the Immigration Rules.
15. That the Secretary of State do within ten days of receipt of that documentation either advise the first Appellant's solicitors that they are satisfied with the evidence and that they will not oppose the appeal or they set out their written reasons of objection.
16. That in the event that the Secretary of State is not satisfied that the first Appellant meets the requirements of Appendix FM-SE that the matter be thereafter listed for further consideration reserved to either Deputy Upper Tribunal Judge Kelly or Deputy Upper Tribunal Judge Harris sitting at Field House on the first available date 28 days thereafter with an ELH of two hours.
17. That in the event of the matter being relisted for further consideration that there be leave to both parties to file and serve at least seven days prehearing further bundles of documents upon which they seek to rely, such bundles to include any skeleton arguments and authorities.
18. That the application made herein for a wasted costs order do stand dismissed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris