



IAC-PE-SW-V1

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

Appeal Numbers: IA/29477/2014
IA/29520/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 9th September 2015**

**Decision & Reasons Promulgated
On 9th October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**MRS PARULBEN BIPENKUMAR PRAJAPATI (FIRST APPELLANT)
MR BIPINKUMAR KANAIYALAL PRAJAPATI (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Coleman - Counsel

For the Respondent: Mr Nath - Senior Home Office Presenting Officer

DECISION AND REASONS

1. These are appeals by Parulben Bipenkumar Prajapati and Bipinkumar Kanaiyalal Prajapati, citizens of India. They are spouses and their dates of birth are 19th July 1980 and 24th June 1976 respectively. They appeal against the decision of the Respondent made on 7th November 2013 to refuse their applications for leave to remain in the United Kingdom.

2. The Appellants' original appeal against that decision was heard by First-tier Tribunal Judge Parkes on 31st October 2014. He dismissed the appeals. The reasons for that refusal were set out in a determination which was issued on 13th November 2014. The Appellants were granted permission to appeal against that determination and on 28th March 2015, having heard submissions, I found that there was a material error of law in the determination of Judge Parkes and I set that decision aside with no preserved findings of fact. The error that Judge Parkes made was that he appeared to base his decision on an arithmetical error, assuming that the couple had lived in India for eighteen years between their marriage and their entry to the UK when they had in fact spent only eight years there. The position of the Respondent was that this was simply a typographical error but I did not accept that and felt that the Appellants should be given the benefit of the doubt and that such an error may have clouded the Judge's judgment on the issue of the problems the Appellants claimed to have had in India due to the fact that theirs was a marriage between two different castes.
3. The Appellants married in February 1998. They have two children aged, according to the Appellants' evidence, around 10 and 15 who live in India with the Second Appellant's parents. They arrived in the UK in October 2006 with visit visas and overstayed. They claim to have suffered discrimination on account of the fact that they are from different castes and were partially disowned by their respective families who never approved of the marriage.
4. I have statements from both Appellants.
5. Mrs Prajapati, the First Appellant, says that she and her husband have been in the UK for over seven years. They have established lives for themselves. They feel they could not re-establish these lives if returned to India. They have a wide range of friends. She goes on to say that her husband is from the Lewa-Patel caste and she is from the Dalit caste. The Dalit caste is considered to be the "untouchables". When she was growing up people from her caste were always treated as outsiders. They were not allowed to pray in the same temple as others and they are considered to be a curse. She first met her husband in May 1995 at the local temple in Padra where she worked as a cleaner. She only worked outside the temple not inside. Her husband would worship there. At first he did not know she was a Dalit. He once asked her why she was just cleaning outside and was never inside and she told him that because she was a Dalit she was not allowed inside. They began talking to each other and he would come to the temple every day so that they could meet and talk. She wanted to marry him because she felt so protected by him. She felt safe with him. They married on 7th February 1998 but there were no guests there as no-one knew they were getting married. A friend helped them. After three weeks they informed their parents that they had married and both sets of parents disowned them immediately. She was not surprised at this reaction. She had expected it. Since then neither she nor her husband have contacted their parents apart from before coming to the UK. They were told that their parents wanted nothing to do with them and did not care where they lived. There is no mention of their children in this statement.

6. In Mr Prajapati's statement he confirms that he and his wife came to the UK on visit visas on 1st October 2006 and have been here continuously since then. He confirms that they are from different Hindu castes. They could not continue to live in India as marriage outside the caste is not accepted in any circumstances. He confirms his wife's account of how they met and decided to marry. Their statements are actually virtually the same. There is no mention of their children in his statement.
7. The position of the Secretary of State is that the Appellants cannot meet the eligibility requirements of Appendix FM because they entered the UK on visit visas. The Secretary of State considered the Appellant's private life in the UK but concluded that none of the requirements of paragraph 276ADE are met. She considered whether there are exceptional circumstances but concluded that there are none.
8. I heard oral evidence firstly from Mrs Prajapati who adopted her statement. Mr Coleman asked her what happened to her children and she said that her in-laws had taken them. When he asked her what exactly had happened she said that due to the differences of the castes her husband's whole family came over to their house and took the children. He asked if this has been done through the courts or whether the children had just been physically taken. She responded "I gave my children". He then asked her what day-to-day difficulties she and her husband had endured in the eight years they lived in India as a married couple. She said they had a lot of difficulties because they could not get jobs. People would ask more and more questions and no-one would give her a job because of her caste. If her husband was given a job and then his employer found out about their marriage he would then be sacked. The news of the caste difference had spread and they could not get jobs or a good house.
9. She was the cross-examined by Mr Nath. She said that she had told her husband about her caste prior to them getting married. Her parents are both Dalit. They have not had problems. Neither she nor her husband has had contact with anyone in their home town. She confirmed that she had no police reports or evidence of any kind of any of the problems they had in India. She confirmed that her in-laws had taken the children. When Mr Nath asked her if the children are still with them she responded "as far as I know". When she was asked how old they are she said they are 16 and 12 but she did hesitate and said that that was their approximate ages. She could not say in response to a question from me how old they were when they were taken away, explaining that she was not educated. I did put it to her that I found it strange that she did not know the ages of her children when they were removed from her care by her in-laws. She then said that one was 9 and the other would have been 3 or 4. She had said to Mr Nath that they just wanted to forget everything. Mr Nath then put it to Mrs Prajapati that she had never told the Home Office about her children. She confirmed that to be so. When she was asked why she did not mention her children she said she does not know. They were trying to forget about India. I asked her if she wants to speak to and see her children. She said she does. She said that because of her caste she has lost everything. She confirmed that she has not spoken to her children for seven years. She was asked whether she would like them to come here and said she can only decide that with her husband.

10. I then heard evidence from Mr Prajapati who adopted his statement. He said that his children are 16 and 9 or 10. They live with his father. When he was asked why they live with his father he said it is because he married into a different caste. He married his wife because he loves her. His family took the children. Seven or eight members of the family came over and took them away. They brought a piece of paper for him to sign agreeing that he would have nothing to do with their business or his inheritance. He signed it. He was unable to remember how old the children were when they were taken away from them. He said it was when they were coming to London. He then said it was about eight months before they came to London, probably in early 2006 although he was not sure. When he was asked what day-to-day problems he had in India because of his mixed marriage he said they could not find a house or jobs. He would be kicked out of jobs. He was asked if he told the Home Office that he has children and said that he did. He said he and his wife can live happily in the UK. They support each other. They have friends.
11. In cross-examination he was asked when he last spoke to his children and said he could not remember. He then said it was when they got here. They phoned to say they had arrived. When he was asked for clarification of this he said they phoned his father. There has been no communication since. He was asked if his children are still with his father and he said he does not know. Mr Nath put it to him that he did not find it credible that he had not spoken to his children. He said he is living here happily with his wife and his family will not allow them to speak to the children. Mr Nath asked him if it is the case that they are not trying to speak to the children and he responded that they are happy here. He insisted that he had told the Home Office about his children when he was arrested at Leytonstone Police Station.
12. I asked Mr Prajapati if he could tell me why his parents did not take the children from them sooner. He responded that they did not want the children to have Dalit influences. I pointed out that that did not really answer the question and asked why they did not take them when they were born for example. He said he and his wife were looking for a house and a job. I asked him if it was the case that he and his wife consented to the children going to their parents and he said that they did consent.
13. In his submissions Mr Nath said he would rely on the reasons for refusal letter. He submitted that neither Appellant is credible. There is no evidence that they had any difficulties because of the differences in their castes. The Home Office were not told about the children. The Appellants could not with any accuracy or consistency give the ages of their children. He questioned why they would say that they spoke to them when they arrived here when they said that they had not spoken to them at all. It is not clear whether their evidence is that the children were taken by force or whether the Appellants consented to Mr Prajapati's parents bringing the children up. He said there are serious credibility issues and very little evidence.
14. In his submissions Mr Coleman submitted that paragraph 276ADE(vi) applies in this case because there are very significant obstacles to the Appellants integrating into India if they were returned. He said there would not be any police evidence of the treatment to which they were subjected because it was simply discrimination and the stigma of Mrs Prajapati being Dalit. They were socially not acceptable. They have

been disowned by their families and cast aside. It is highly likely that they let the children go simply acceding to the demands of Mr Prajapati's parents. They did this because their life was hard and they could not provide for their children. They are happier here. The background evidence shows that Dalit women are discriminated against. He submitted that the appeal should be allowed under 276ADE.

15. In this case the burden of proof is on the Appellants and the standard of proof is the balance of probabilities.
16. I have given careful consideration to all the evidence put before me in this case. There is not a jot of evidence apart from the oral evidence of the Appellants to support the basic claim in this case that the Appellants are of different castes. I have one article from the Times of India reporting that an inter-caste marriage had claimed the life of a 21 year old woman, apparently an honour killing because she had fallen in love with a Dalit boy. There is evidence in the US Department of State Human Rights Report submitted by the Appellants' representatives that there is discrimination against Dalits, including extra judicial killings and sexual violence against Dalit women. Mrs Prajapati said that her parents, both Dalits had had no problems. I accept that the Appellants say that their problems arose from their mixed marriage but there is no evidence at all of persecution. Even if I take this case at its highest and accept that Mrs Prajapati is a Dalit the accounts that they gave do not indicate anything more than discrimination and the fact is that they spent eight years as a married couple in India and brought up their two children without any significant problems that they were able to evidence or even tell me about in court.
17. I do not find either Appellant to be credible. I quite simply do not understand what the situation is with their children. They were not clear as to whether the children were handed over voluntarily or if they were taken by Mr Prajapati's parents. What the Appellants said in their statements was that they had been instantly disowned by their parents as soon as their parents found out about the marriage. This does not sit well with a decision to hand the children over to their parents voluntarily. The account given by both of them about "the whole family"/seven or eight members of the family" having come over and taken the children away would indicate that they were taken by force. If they were taken by force why would the Appellants phone India to let Mr Prajapati's parents know that they had arrived in the UK. Mr Nath was right in saying that neither appeared to be able to say with any certainty or consistency what the ages of the children are. It seems that they have had no contact with the children since they came here according to their evidence. I do not know what the truth of the matter is because both accounts are so confused and lacking in clarity or consistency but I do not accept that they are estranged permanently from their parents or that they would not have any support if they returned to India. They gave differing accounts of contact with the children and their grandparents. They did not mention the children at all in their statements. Their account is simply not plausible. I do not accept that they do not know the ages of their own children. I do not accept that they would not remember how old the children were when they were forcibly removed from their care by several family members. This it seems to me would be a traumatic experience that would be imprinted on one's mind. It is the

case of course that their evidence was not even consistent as to what had actually happened. Frankly they gave the impression that they had decided to play down the fact that they have two children and concocted a very ill-thought out story to explain why they had not referred to them in earlier dealings with the Home Office.

18. It is submitted that the Appellants meet the requirements of paragraph 276ADE(vi). Paragraph 276ADE sets out the criteria for leave to remain in the UK on private life grounds. The only provision that could conceivably assist the Appellants is 276ADE(vi) which applies to an applicant who,

‘(vi) is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the Appellant’s integration into the country to which he would have to go if required to leave the UK.’

19. I have dismissed the Appellants’ account of family problems in India but even if I had not I would find that they have not established that there very significant obstacles to integration there. I am able to give only very limited weight to their oral evidence as I do not find either of them to be credible. They lived and survived together and brought up two children apparently without family help for nearly eight years and there seems to be no reason why they cannot do that again.

20. I have considered Article 8 ECHR. The Appellants have a family life but that family life is with each other and they would be removed together so there would be no interference with that. It is irrelevant that they “are happier here”.

21. I accept that in the seven years they have been here they have developed a private life. I accept that they have friends. That private life however was formed while they were in this country illegally. They overstayed visit visas. They have had no right to be here. I bear in mind Section 117B of the of the Nationality Immigration and Asylum Act 2002 which is clear that in considering the public interest in removal little weight should be given to a private life established in the UK while a person’s immigration status is either unlawful or precarious. I find therefore that there will be no interference with their family lives and any interference with their private lives would in all the circumstances be proportionate to the need for effective immigration control in the UK.

Notice of Decision

The decision of the First-tier Tribunal having been set aside is replaced with this decision.

The appeals are dismissed under the Immigration Rules and on human rights grounds.

No anonymity direction is made.

Signed

Date: 5th October 2015

N A Baird
Deputy Judge of the Upper Tribunal