IAC-AH-PC-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/31885/2014
IA/31890/2014
IA/31896/2014

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 19 June 2015	**On 15 July 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HK
AK
PJ
(ANONYMITY DIRECTION MADE)

Respondents

Representation:
For the Appellant: Mr Mills, a Senior Home Office Presenting Officer
For the Respondents: Mr A Pipe, instructed by D & A Solicitors

DECISION AND REASONS

1. The respondents are citizens of India. The third respondent is the child (born 2006) of the first and second respondents. I shall hereafter refer to the respondents as the appellants and to the appellant as the respondent (as they appeared respectively before the First-tier Tribunal.

2. By decisions dated 14 August 2013, the respondent refused the appellants' applications for leave to remain in the United Kingdom. The appellants appealed to the First-tier Tribunal (Judge V A Lowe) which, in a decision promulgated on 3 November 2014 allowed the appeal of the third appellant under the Immigration Rules and the appeals of the first and second appellants on human rights grounds (Article 8 ECHR). The Secretary of State now appeals, with permission, to the Upper Tribunal.

3. The decision of the judge is extremely thorough and lengthy. However, the point taken by the Secretary of State on appeal to the Upper Tribunal is relatively narrow and concerns the judge's application of HC 395 (as amended), paragraph 276ADE(1)(iv).

> 276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
>
> (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK.

4. At the Upper Tribunal hearing, Mr Mills, for the Secretary of State, did not seek to argue that the decision of the First-tier Tribunal Judge was lacking in adequate reasons or that the reasons were perverse in the face of the evidence. Rather, he attacked the approach of the judge to the proper construction of "reasonableness" under paragraph 276ADE. He submitted that the judge had, in effect, conflated Section 55 of the Borders, Citizenship and Immigration Act 2009 with "reasonableness". He submitted that "reasonableness" of requiring the child leaving the United Kingdom should be determined according to a wider and more holistic analysis of all the circumstances in the case and not simply those appertaining to the best interests of the child. Mr Pipe, for the appellants, submitted that there had been no such conflation. He argued that the conclusion reached by the judge was plainly available to her on the evidence.

5. I reserved my determination.

6. I state at the outset that the judge's decision and reasons are exemplary in their detailed analysis of all the relevant evidence. The judge has acknowledged that the appeals of the second and third appellants succeed under Article 8 ECHR because they follow on from the fact that the first appellant, in the judge's analysis, succeeded in satisfying the requirements of paragraph 276ADE. Not surprisingly, therefore, she has concentrated in her decision on the circumstances surrounding the third appellant, an 8 year old child from whom the judge correctly observed [42] "the parents cannot be separated." Further, it was plainly right for the judge to consider Section 55 as part of her analysis. I am satisfied that the judge did not confuse and conflate Section 55 with the "reasonableness test" under paragraph 276ADE. I say that because she has in at least two instances in the course of the decision made it clear that the tests were separate and different. At [38], the judge wrote, "as I consider the third

appellant fulfils paragraph 276ADE(1)(iv) of HC 395 I do not need to consider more widely the best interests of the third appellant as a separate issue." That sentence is slightly confusing (indeed, Mr Mills relied upon it in support of his own argument) but I consider that it indicates that the judge believed (rightly) that she did not need to consider Section 55 and the best interests of the child having already incorporated that analysis in her consideration of paragraph 276ADE. Secondly, at [30], the judge wrote, "the question is whether it would not be reasonable to expect the third appellant to leave the UK informed by her best interests and the requirements of the statutory duty towards her in relation to the components set out in the code of practice in paragraph 24 above." The code of practice referred to is *Every Child Matters: Change for Children.* The passage which I have quoted indicates that the judge did not consider Section 55 as synonymous with the test of "reasonableness"; rather, she correctly considered that her analysis of paragraph 276ADE should be "informed by" Section 55. Moreover, it is plain that the judge had regard to what she found was the "somewhat unusual" level of activity and connections which the third appellant had outside her family home. Such a finding was clearly available to the judge on the evidence.

7. The judge also did not err in law by regarding the third appellant's private life as an important factor in her analysis of paragraph 276ADE. I also record that the judge's even-handed approach to the evidence is impressive. Her analysis of the report of Ms Seymour, an independent social worker, was nuanced and careful. The judge noted [36] that Ms Seymour "did not base her overall conclusions on the parents' views." Likewise, the judge did not base her conclusions solely upon Ms Seymour's report but, rather, on a proper assessment of all the evidence. Paragraph 276ADE(1)(iv) clearly provides for a child, who has spent at least seven years living in the United Kingdom, to remain in this country subject to the test of "reasonableness"; the Secretary of State's grounds are, in my opinion, little more than a disagreement with the judge's findings and appear to exclude the possibility of any child in the third appellant's situation from acquiring leave to remain. I find that there is no error in the judge's decision as regards the third appellant and that her decision to allow the appeals of the first and second appellants on Article 8 ECHR grounds in consequence was also free of legal error.

Notice of Decision

The appeal of the Secretary of State is dismissed.

Signed Date 10 July 2015

Upper Tribunal Judge Clive Lane