



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

Appeal Numbers: IA/43674/2014  
IA/43675/2014  
IA/43678/2014

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment  
Centre  
On 28 April 2015**

**Decision Promulgated  
On 29 April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

**Between**

**SOHIL SIRAJBHAI VHORA (1)  
SANIYABEN SOHIL VHORA (2)  
NAINISHABEN SOHILBHAI VHORA (3)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Brooks, instructed by Malik Law Chambers,  
Birmingham

For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Given what the Upper Tribunal has reported in MR (permission to appeal: Tribunal's approach) Brazil [2015] UKUT 00029 (IAC) and Nixon

(permission to appeal: grounds) [2014] UKUT 368 (IAC), as I indicated at the hearing, I am totally surprised that permission to appeal was granted in these three linked appeals. The grounds disclose no legal error whatsoever for the following reasons.

*Background to the appeals*

2. The appellants are a family group comprising father, mother and six year old daughter respectively. All are nationals of India. The family group includes another child, born in the UK on 14 August 2014. On 13 August 2014, the first appellant applied for leave to remain as a tier 1 (entrepreneur) migrant. The second and third appellants sought leave in line as his dependents. There was no application in respect of the youngest child although she was mentioned in the other applications. On 15 October 2014 the three applications were refused.
3. Detailed reasons for refusal letters were provided. The Secretary of State did not find that the first appellant met the requirements under tier 1 and refused his application. That decision predicated the decisions relating to the other two appellants. When reaching her decisions, the Secretary of State had regard to her s.55 duty under the Borders, Citizenship and Immigration Act 2009, but concluded that:

“The duty to have regard to the need to safeguard and promote the welfare of children requires the Home Office to consider the effect on any children of a decision to refuse leave, or remove, against the need to maintain the integrity of immigration control. Our aim is always to carry out enforcement of the Immigration Rules with the minimum possible interference with a family’s private life, and in particular to enable a family to maintain continuity of care and development of the children in ways that are compatible with the immigration laws. In the particular circumstances of your case, it has been concluded that the need to maintain the integrity of the immigration laws outweighs the possible effect on your children that might result from you and your children having to re-establish family life outside the United Kingdom.”
4. Although this is clearly a stock paragraph it is clear that the Secretary of State considered her s.55 duty. It is also evident from the fact that the appellants brought appeals against the decisions of 15 October 2014 that they were aware of the decisions.
5. The grounds of appeal included in the notices of appeal that the First-tier Tribunal received on 31 October 2014 do not raise any issue relating to the Secretary of State’s decision in relation to s.55. Neither is there a statement of additional grounds. I am aware that there is no mention anywhere in the grounds of appeal to private or family life rights. It is also clear that the appellants sought to have their appeals determined without a hearing, paying the lower appeal fees.
6. The above summarises the position when First-tier Tribunal Judge O’Rourke was seized of the papers. He had full regard to the grounds of appeal and found that the first appellant did not meet the requirements of

the points based system. As a result the other two appellants could not succeed in their appeals as his dependents. Judge O'Rourke identified at paragraph 15 that the appellants did not seek to rely on any protected rights and found that even if they had the immigration decisions would be proportionate.

### *Grounds of appeal to the Upper Tribunal*

7. The grounds of application for permission to appeal to the Upper Tribunal that were considered by First-tier Tribunal Judge Shimmin (and upon which he granted permission) relied solely on issues that had not been raised before the First-tier Tribunal Judge. The appellants argued that Judge O'Rourke had failed to take account of Article 8 and s.55. Judge Shimmin thought there might be something in the s.55 issue. It is clear that Judge Shimmin failed to take account of the fact that the issues were not pursued before Judge O'Rourke. In addition, it is clear that the appellants had not produced any evidence whatsoever to show how the immigration decisions interfered with their private or family lives, individually or collectively, or how those decisions were contrary to the wellbeing of the child appellant given she was to be remain in the care of her parents.
8. However, permission to appeal was granted, and as Mr Brooks reminded me, I had to decide whether the decision and reasons statement of Judge O'Rourke contained an error on a point of law. He maintained that the statement was fundamentally flawed because it failed to engage with the issues upon which permission to appeal was granted. Mr Brook's skeleton argument did not deal with the issue of whether the decision and reasons statement contained legal error. It is presented as if that is an inevitable finding and therefore merely argues the new issues.
9. Mr Brooks admitted that he had not had sight of the grounds of appeal to the First-tier Tribunal; his instructing solicitors had failed to supply them. He acknowledged that the points now relied on were not pursued before the First-tier Tribunal. He admitted that he knew of no authorities that would support his case that those issues should now be considered even though they could have been raised earlier and were not.
10. I add for completeness that the Secretary of State submitted a rule 24 response to the grounds of appeal and opposed the appeal to the Upper Tribunal on the basis that the issues now being pursued were not ones pursued in the First-tier Tribunal.

### *My decision*

11. As I have indicated, and as should be clear from the comments I have already made, there is no error of law in Judge O'Rourke's decision and reasons statement. This is not a case where it was *Robinson obvious* to consider Article 8 or the wellbeing of the child appellant. The wellbeing of the child had been addressed by the Secretary of State and there was no

challenge to that decision and reasoning when the appellants appealed to the First-tier Tribunal. It is too late to raise that matter now.

12. With regard to the private and family life rights, Judge O'Rourke did engage with that issue even though it had not been raised. There were no cogent arguments or evidence to indicate that the immigration decisions were not proportionate. That decision was open to Judge O'Rourke and cannot be faulted given the failure of the appellants to provide any evidence or argument.
13. As I have indicated, this is a case where there never was an arguable legal error. It is unfortunate that permission to appeal was granted as that has wasted considerable time and resources for the parties and the Upper Tribunal, and probably gave false hope to the appellants. It is not clear why an experienced firm of immigration lawyers submitted the applications for permission to appeal in the first place given what I have said above. But I recognise the time for lodging such permissions is short and such practitioners are under a great deal of pressure.

#### *Costs*

14. Mr Smart indicated that he would not be recommending that the Secretary of State applies for a cost order given that permission to appeal was granted. That, of course, is a matter for the Secretary of State. As no application has been made, I need make no decision on it.

#### **Decision**

The decision and reasons statement of First-tier Tribunal Judge O'Rourke does not contain any legal error and the decision is upheld.

Signed

Date **28 April 2015**

John McCarthy  
Deputy Judge of the Upper Tribunal