



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/02996/2015**

Appeal Numbers:

U/03000/2015

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U/03007/2015

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THE IMMIGRATION ACTS

Heard at Field House

**Decision &
Promulgated**

Reasons

On 14th July 2016

On 27th July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**MR GHANSHYAMKUMAR SHANABHAI PATEL (FIRST APPELLANT)
MRS ANITABEN GHANSHYAMKUMAR PATEL (SECOND APPELLANT)
MISS DHRISTY GHANSHYAMKUMAR PATEL (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mr Bramble, Home Office Presenting Officer

For the Respondents: Ms Vencatachellum, Counsel for M-R Solicitors, London

DECISION AND REASONS

1. The Appellant in these proceedings is the Secretary of State however for convenience I shall now refer to the parties as they were before the First-tier Tribunal.

The Appellants are citizens of India born on 16th June 1975, 1st May 1980 and 10th June 2007 respectively. The first and second Appellants are

married and the third Appellant is their child. They appealed against a decision of the Respondent dated 6th July 2015 refusing their application for leave to remain in the United Kingdom on human rights grounds in terms of Article 8 of the ECHR. The appeal was heard by Judge of the First-tier Tribunal Green on 15th January 2015 who dismissed the first and second Appellants' appeals on Article 8 grounds. He allowed the third Appellant's appeal on the grounds that the Respondent's decision is not in accordance with the law as Section 55 of the 2009 Act has not been properly considered and the Respondent is required to make a lawful decision in respect of the third Appellant's rights.

2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Kelly on 20th June 2016. The permission states that the grounds of application appear to be predicated upon the assumption that the Tribunal allowed the appeal on the grounds that "the removal of the third Appellant from the United Kingdom would be unlawful under Section 6 of the Human Rights Act 1988" (the only Ground of Appeal open to it pursuant to Section 84 of the Nationality, Immigration and Asylum Act 2002 as amended by Section 15 of the Immigration Act 2014). The permission states that if that assumption is correct the application is misconceived because despite the suggestion to the contrary it was not open to the Tribunal to allow the appeal on any other basis. In particular it was not open to the Tribunal to allow the appeal on the ground that the decision of the Respondent was "otherwise not in accordance with the law". Alternatively there is a lack of clarity concerning the ground upon which the Tribunal purported to allow the appeal. Permission was granted solely on the basis that the judge failed to explain why, when having had evidence before him in the form of witness statements and oral evidence from the third Appellant's mother and father as well as hearing submissions from both representatives on the issue, the Tribunal did not feel equipped to be able to determine the issue of best interests for itself. The grounds of application state that the burden of proof is on the Appellant and the matter does not require to go back to the Secretary of State for the Home Department as there was nothing unlawful about her decision. Section 55 had plainly been addressed.
3. There were no preliminary issues.
4. The Presenting Officer submitted that there are now clear guidelines in cases like this. He referred to the case of **PD and Others (Sri Lanka) [2016] UKUT (108)**.
5. Counsel for the Appellants submitted that the judge had sufficient information before him to come to his own decision. She submitted that the judge has correctly set out the law and has construed everything. She submitted that the said case of **PD & Others** makes things clearer but the Respondent could have asked for more information about the third Appellant and had this information been available the appeal might well have been allowed unconditionally.
6. It is clear that the judge had sufficient information before him to enable him to reach his own decision relating to the third Appellant and Section

55 of the 2009 Act. There is a clear material error of law in the judge's decision.

7. The way for this appeal to be heard fairly is for it to be set down for a de novo hearing before the First-tier Tribunal relating to the third Appellant's claim.
8. The Presenting Officer submitted that the findings relating to the first two Appellants are satisfactory and the reasons for dismissing their claims are satisfactory.
9. Counsel for the Appellants submitted that at the First-tier hearing the first two Appellants had witnesses who made statements but did not attend the hearing. She submitted that family ties and the family unit have to be considered in the round. She submitted that it has to be considered how this family fits into the United Kingdom and its connections with the United Kingdom. She submitted that if there has to be a rehearing before the First-tier Tribunal, evidence will need to be led from these witnesses who did not attend the First-tier hearing as well as consideration being given to the condition of the third Appellant who is now almost 9 years old.
10. The Presenting Officer submitted that the first two Appellants did not appeal the First-tier Tribunal decision and this has to be the starting point, unless there has been a big change in their circumstances of which there has been no suggestion.
11. I have carefully considered the First-tier Tribunal's decision and I find that there are no errors in the way in which the First-tier Tribunal Judge dealt with the first and second Appellants' appeals. The facts relating to their appeals and how they are dealt with under the Rules and on human rights grounds have been properly dealt with. It was pointed out by the Presenting Officer that the first and second Appellants did not cross-appeal the decisions relating to their claims. I find that the First-tier Tribunal dealt properly with the first and second Appellants' claims but that there is a material error in the way that the third Appellant's claim has been dealt with.

Notice of Decision

As there are material errors of law in the decision relating to the third Appellant I direct that the decision relating to the third Appellant only has to be re-made and it is appropriate to remit the third Appellant's claim to the First-tier Tribunal for rehearing on all issues. The decisions relating to the first two Appellants must stand. Members of the First-tier Tribunal chosen to reconsider the third Appellant's case are not to include Judge Green.

Anonymity has not been directed.

Signed

Date **27th July 2016**

Deputy Upper Tribunal Judge I A M Murray