IAC-TH-CP-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/29387/2014
IA/29389/2014
IA/29392/2014
IA/29396/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 February 2016	**On 23 March 2016**

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

MR SACHIN RASIKBHAI PATEL
MRS NIMISHABEN SACHIN PATEL
MASTER DHRUV SACHIN PATEL
MISS PREEMA SACHIN PATEL
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms L Targett-Parker
For the Respondent: Mr S Staunton

DECISION AND REASONS

1. The four appellants are a family who live together. They comprise mother, father, and two children. There is considerable background history which is set out in the decision of First-tier Tribunal Judge Whalan. That decision

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was promulgated on 21 April 2015. In essence the appellants appealed the refusal by the respondent to grant their human rights applications and her decision to remove them all as illegal entrants.

2. The F-tT Judge dismissed the appeals under the Immigration Rules and also on Article 8 human rights grounds.

3. The appellants sought permission to appeal the decisions. The grounds of appeal stretch over some eleven pages. The F-tT Judge considering those summarised them as follows:-

> "The submission is that the judge erred in law by failing to properly (a) consider the relevant issue which is whether or not it was lawful to remove the appellants during the middle of the third and fourth appellants' examinations; (b) assess that it would not be in the children's best interests to be removed in any event and (c) consider Section 117A–D of the Nationality, Immigration and Asylum Act 2002 in that the children are qualifying children in terms of Sections 117B(6) and 117D(1)(b)."

4. The judge concluded that no arguable error of law had been shown.

5. On a renewed application to the Upper Tribunal the grounds were to the effect that the judge did not consider the circumstances of the children, which included their age, time spent in the UK and their education; the removal of them from the UK would have a recognisably negative impact on their education as they are in the process of sitting for their A levels and GCSE examinations; any "discrepancies" experienced by the children at this stage of their academics will have an adverse lasting impact on their future; in dealing with the issue of proportionality the Tribunal did not direct itself as to whether there were exceptional circumstances; the proportionality exercise was "skewered" in that there was no focus on the consequences and impact on the family unit on return to India; it was necessary that the court direct itself as to whether the circumstances of the return of the appellants to India were unduly harsh; the First-tier Tribunal Judge did not consider that the appellants would face a number of obstacles if forced to relocate, such as housing, language, social life and finances; the judge did not give due weight to Section 55 of the Borders, Citizenship and Immigration Act 2009; and Section 117A-D of the 2002 Act was not "accurately applied in the decision dated 19 June 2015".

6. An Upper Tribunal Judge granted permission to appeal noting that the parties agreed that had the fourth appellant applied for leave to remain under paragraph 276ADE(1)(iv) at the date of the appeal hearing she would have been successful. It was said that that factor did not feature at all in the First-tier Tribunal's reasoning on Article 8, which is all predicated on the appellants' failure, collectively and individually to meet the requirements of the Rules. Consideration had not been given either to

paragraph 276AO(iii) of the Immigration Rules which expressly obviates the need to make a valid application if 276ADE is argued on appeal.

7. At the oral hearing before me the respondent stated that no indication could be found on the documentation available that there was any concession by the parties at the hearing that the fourth appellant would be successful under the Rules.

8. I heard submissions from both parties and have taken them into account in this decision. I have also taken into account the skeleton argument filed on behalf of the appellants dated 12 February 2016.

9. At paragraph 36 of the decision the F-tT Judge acknowledges the concession by Counsel on behalf of the appellants that none could succeed under either Appendix FM and/or paragraph 276ADE of the Rules. The F-tT Judge then acknowledged that if the fourth appellant was to reapply under paragraph 276ADE she would now satisfy the provisions of 276ADE(iv) but acknowledged also the respondent's detailed reasoning in the decision letter dated 4 July 2014.

10. Of interest in relation to the respondent's decision letter is the fact that specific consideration was given to the circumstances of the fourth appellant that includes an acknowledgment that she has lived in the UK for at least seven years. However, to meet the Rules there would also need to be a finding -- or a concession -- that it would not be reasonable to expect an applicant who has been here for that period to leave the UK. The decision letter set out why the respondent considered that it was reasonable to expect the fourth appellant to leave the United Kingdom and this is because she would be returning to India with her parents who are both Indian citizens. They would be returning as a family unit and could help her adjust to change and provide her with maintenance and accommodation.

11. It was obvious from the decisions made by the respondent that the entire family was expected to return to India from whence the appellants arrived some years ago and they would take up family life there. It was not envisaged that one or both children would remain in the United Kingdom without their parents.

12. The case for the appellants was put firmly on the basis that the children should be allowed to complete their education and to enable them to do that their parents would and should be allowed to remain with them. The appellants wished to be treated as a family unit.

13. In the light of the decision letter it would be surprising indeed if a concession was made by the respondent that the fourth appellant was able to satisfy the requirements of the Rules as at the date of hearing and I do not accept that such a concession was made. The respondent had already argued that it would be reasonable to expect the fourth appellant to leave the UK. The F-tT judge considered the position as at the date of

hearing and reasoned also why it would be reasonable for the fourth appellant to leave the UK in the company of her parents. None of this points to the fourth appellant being able to meet the requirements of the Rules either at the date of decision or at the hearing.

14. Viewed in the round and for these reasons, although the judge may have made an error by recording the "concession" in the way that he does I don't find that it is of any materiality.

15. Regarding other matters this is a very carefully and thoroughly reasoned decision by the F-tT Judge in relation to Article 8. The judge has set out the circumstances of each appellant individually. He has referred to the voluminous documentation in support of (in particular) the children's private lives and it cannot be argued with any hope of success that there has not been thorough consideration of all relevant matters. He considers education in the UK and in India (paragraph 43). The judge did not exclude other relevant factors such as the third and fourth appellants' society and friendships in the UK (paragraph 44 of the decision) and he was clearly cognisant of and took into account that the children must not be blamed for matters for which they are not responsible, such as the conduct of their parents – see paragraph 35 and also paragraph 40 where **Zoumbas v SSHD [2013] UKSC 74** is quoted; neither can it be successfully argued that the judge has failed to take into account relevant parts of Section 117 of the 2002 Act (see paragraphs 47 and onward of the decision).

Notice of Decision

16. It is for these reasons that such errors as there may be in the decision are not such as to bring about a position that if the errors had not been made a different result would have ensued.

17. The decision of the First-tier Tribunal is upheld and the appeals of all four appellants are dismissed.

18. No anonymity direction is made.

Signed Date

Upper Tribunal Judge Pinkerton