



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

Appeal Numbers: HU/02589/2016
HU/02590/2016
HU/02591/2016
HU/02592/2016

THE IMMIGRATION ACTS

**Heard at Birmingham Employment Decision & Reasons
Centre Promulgated
On 6th October 2017 On 31st October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) KALPESH [R]

(2) DIPTIBEN [R]

(3) [S R]

(4) [S K R]

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr T Mahmoud (Counsel)

For the Respondent: Miss H Aboni (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge S Aziz, following a hearing at Birmingham Sheldon Court on 6th January 2017. In the determination, the judge allowed the appeals of the Appellants,

© **CROWN COPYRIGHT 2017**

whereupon the Respondent Secretary of State subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me. For the avoidance of doubt, the reference to the Appellants here is to a reference of the Appellants in the same manner as it was in the Tribunal below and the Respondent is correspondingly a reference to the Secretary of State for the Home Department.

The Appellants

2. The Appellants are a family of Indian nationals. The principal Appellant, the father, was born on [] 1972. His wife, the second Appellant, was born on [] 1974. Their daughter, the third Appellant, was born on [] 2008. Their son, the fourth Appellant, was born on [] 2009. On 5th August 2015, they made an application for leave to remain in the UK on the basis of family and private life.

The Appellants' Claim

3. The Appellants' claim is that having entered the UK in 2003 on an EEA family permit visa, they were able to successfully extend their leave until 8th November 2011, but after which they unsuccessfully sought to vary their leave on two occasions, with them eventually becoming unlawful overstayers in the UK. The final application was refused on 26th May 2011. It is a feature of this appeal that the third and fourth Appellants were born in the UK. They have never been granted any form of leave by the Respondent.

The Judge's Decision

4. In what is a comprehensive, and extensively compiled, and clear determination, the judge observed, how this was a case where "there has been a deliberate attempt by the first and second Appellants to remain in this country and carve out a family and private life, irrespective of whether or not they had leave". The judge concluded that he did not find that the Appellants "ever had any intention of returning to India voluntarily" (see paragraph 51(v)).
5. Nevertheless, this was a case, where the two children, the third and fourth Appellants, were both born in the UK and had been in the education system from the ages of 4 to 5 years onwards, and both children were making good academic progress, and they had a circle of friends and, engaged in extracurricular activities, with being fully integrated in UK society and culture (paragraph 55). The judge also noted that the connections of these children to their country of origin was minimal, "extending barely beyond the facts that they are persons of internationality and they attended their local temple" (paragraph 56). The judge concluded that the children's best interests under private life lay in remaining in the UK (paragraph 57).
6. The appeal was allowed.

Grounds of Application

7. In what are detailed Grounds of Appeal, it is stated that the judge failed to have proper regard to the Court of Appeal decision in **MA (Pakistan) [2016] EWCA Civ 705**, which required a decision maker to make a holistic assessment, in the assessment of the reasonableness of the interference with private and family life rights, and this included the public interest consideration. The judge's conclusion in terms of Section 117B(6) was flawed in that it would be reasonable for the third Appellant to go to India. In particular, the assessment by the judge focused on what the third Appellant would lose, rather than considering that the family would be returning to India together.
8. On 2nd August 2017, permission to appeal was granted.

Submissions

9. At the hearing before me on 6th October 2017, Miss Abone relied upon the Grounds of Appeal. She submitted that the judge had not carried out a proper balancing exercise, factoring in the public interest considerations, in deciding whether the third Appellant and the fourth Appellant could reasonably relocate to India, given that they were going to do so as a single family unit with their mother and father. There were inadequate findings made with respect of the unreasonableness, as found by the judge, of the eldest child being able to relocate to India.
10. For his part, Mr Mahmoud submitted that this was an extensive determination and that at paragraph 75 to 76, the judge had given express consideration to the "public interest question" with the maintenance of effective immigration control being properly noted. In fact, even though the Grounds of Appeal were predicated on the judge having overlooked the strictures in **MA (Pakistan) [2016] EWCA Civ 705**, the reality was that the judge's recital of the relevant case law extended beyond that to the latest cases on this subject, and in particular the case of **Kaur [2017] UKUT 00014 (IAC)**, which had seen the Tribunal conclude that the judgments in **Zoumbas [2013] UKSC 74**, do not mean that the public interest will always prevail over the rights of the child in the maintenance of effective immigration control.
11. In reply, Miss Abone relied upon the case of **MA (Pakistan)**, and submitted that at paragraph 47 of that decision, it was pointed out that even on a narrow reasonableness test, it was not unreasonable to expect the child to leave with the Appellant to return back to their country of origin.

No Error of Law

12. I am satisfied that the making of the decision by the judge did not involve the making of an error of law such that it falls to be set aside (see Section 12(1) of TCEA 2007). My reasons are as follows. First, this is a case where the judge is perfectly cognisant of the fact that there has been "a

deliberate attempt by the first and second Appellants to remain in this country” (paragraph 51(v)). Second, the judge has balanced this against the best interest of the children (paragraphs 55 to 57). The judge has then referred extensively to the applicable case law (from paragraph 67 onwards). He has noted that he has to weigh in the balance, on the one hand, that the removal of the Appellants “would be hugely disruptive for the third and fourth Appellants”.

13. On the other hand, the judge observed, over a period of time, the third and fourth Appellants could “with the help and support of a stable family unit adapt to life in India” (paragraph 69).

14. On this basis, the judge went on to consider

“the factors to which I give determinative weight are the length of the third Appellant’s residence in the United Kingdom (nearly nine years as at the date of the appeal hearing; a very deep emotion in all aspects of life in this country; a full integration into the British education system and the minimal connections that she has with her country of origin” (paragraph 71).

15. In coming to these conclusions, the judge was not unmindful of the public interest considerations in the maintenance of effective immigration control (see paragraph 75 to 76).

16. Nevertheless, it remained the case that the third Appellant was “a qualifying child” as was the fourth Appellant, and this being so the only question now left for the judge to determine was “whether it would be reasonable to expect the third Appellant to leave the United Kingdom” (paragraph 79).

17. The reasons that the judge gave, it was not reasonable to expect them to leave the United Kingdom. That was a finding that the judge was perfectly entitled to come to.

Notice of Decision

18. There is no material error of law in the original judge’s decision. The determination shall stand.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

30th October 2017