



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

Appeal Numbers: HU/04987/2016  
HU/04990/2016  
HU/04991/2016  
HU/04992/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2 March 2018**

**Decision & Reasons  
Promulgated  
On 27 March 2018**

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**HARPREET [A]  
KULWINDER [A]  
[GP A]  
[GN A]**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr E I Raw, of Counsel, instructed by Middlesex Law Chambers

For the Respondent: Mr S Walker, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of India. They are respectively husband, wife and two children. The dates of birth of the children are [ ] 2009 and [ ] 2015 respectively.

2. The first, second and third appellants came to the United Kingdom as visitors on 2 September 2010. They did not leave upon expiry of the visa but rather overstayed. In September 2014 the second appellant was encountered by Immigration Officers and arrested. Upon being released it was then recorded that both first and second appellants absconded from immigration controls until encountered in November 2015 when Immigration Officers executed a warrant at their home.
3. The appellants sought to remain in the United Kingdom on the basis of private and family life but the applications were refused by the respondent in a decision of 10 February 2016.
4. The appellants sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Cockrill on 14 July 2017. In a determination promulgated on 25 July 2017 their claims were dismissed in all respects.
5. The appellants sought to challenge that decision as being one made in fundamental error of law. Permission to make that challenge before the Upper Tribunal was granted on 17 January 2018 on the basis that it was arguable that the Judge may have given insufficient regard to the hostility claimed to be exhibited to the appellants by their respective families.
6. Thus the matter comes before me to determine the issue.
7. The burden of the case, as presented on behalf of the appellants at the hearing before the First-tier Tribunal, was that there were very significant obstacles to integration, not least the hostility of their respective families by reason of their marriage in the first place.
8. The evidence of the first appellant in his statement of 7 December 2015 was to confirm that the parents were against the marriage in India. It was a love marriage and the parents were furious and angry with them. They disowned the first and second appellant, who then found themselves living in a friend's house in India as the family had disowned them. He said that his mother disinherited him from her property because he married against her wishes. He said that the second appellant's family had threatened to kill them because they had gone against their wishes and got married.
9. The evidence of the second appellant in her witness statement was in identical terms.
10. There is little by way of further details are set out other than those in the statement. The third appellant had been approximately 11 months old when the appellants had come as visitors to the United Kingdom in 2010. The only other evidence in support of that matter would seem to be a handwritten letter at page 70 of the appellant's bundle from Mr Santeev Kumar who said that the first and second appellants had married against

the wishes of their families and they ran away from home, got married and moved to his village and started living there. The families had stopped meeting both of them. The mention of threat is made in that particular document.

11. Indeed, as a matter of commonsense, it is difficult to understand as a matter of commonsense, that if they have been disinherited by their families and disowned the family would have any continuing interest in them or would wish to attack them.
12. It is clear, even on that evidence of the witness taken at it highest, that the couple lived in his village for nearly two years. There was no indication that they were ever subjected to threat or danger. Indeed no reason has been clearly established as to why they left the village and came to the United Kingdom.
13. The Judge in paragraph 13 of the determination did not find there to be any evidence as to ongoing hostility towards the appellants from their family. Challenge is made to the wording of that paragraph as the Judge has indicated that there had been no evidence whatsoever adduced by the adult appellants to show some ongoing hostility towards them and their respective families as a result of their own marriage. Clearly, some evidence had been presented, namely that of the appellants themselves, but perhaps a commonsense reading of that passage as a whole is that the Judge did not accept what they have asserted, without more. Indeed the point is made that if they had any real fear from their parents then they could have lodged an asylum claim for that matter to be properly tested in the usual way. The handwritten statement, which presumably was that referred to by the first appellant in saying that he had evidence, did not support that aspect.
14. In any event the reality of the issue was whether there were any very significant obstacles to integration upon a return to India. The Judge found that there was not. The first appellant had been involved in agricultural work. He and his wife had spent most of their life living in India and indeed the third appellant was born there. There is nothing to indicate that they could not otherwise make their living in India, if need be without the support of the families.
15. The best interests of the two children was also properly considered and significantly, although the third appellant was not precisely a qualified child at the time of the hearing, it is abundantly clear from the determination that the judge treated him as such and accordingly had paid careful regard to Section 117B(vi) of the 2002 Act provided that in the case of a person who is not liable to deportation the public interest does not require the person's removal when the person has a genuine and subsisting parental relationship with a qualifying child and it would not be reasonable to expect the child to leave the United Kingdom. Thus the

Judge not only focused upon the best interests of the children to remain but whether it was reasonable to expect them to depart with their parents as a family unit to India.

16. In that connection a report of Jasmine Smith, a social worker, dated 12 July 2017 had been relied upon at the hearing. It was suggested indeed that the Judge had failed to give adequate weight to it in the determination. It was noted that the first and second appellants were said to be stable and integrated members of their community, living in housing of their friend. [GnA] attends a local nursery at a children's centre and [GpA] attends [ ] Primary School and attends a local Sikh Temple and friendships and relationships have been established in the local area. [GpA] indicated that he liked to attend the local park with his parents and enjoyed going to McDonalds and having chicken burgers. He presented as a pleasant engaging 6 year old boy, speaking fluent English. He said that he was happy at school. He has been seen by the ophthalmology team in Great Ormond Street Hospital with regards to an eye matter and an EEG was to investigate the possibility of epilepsy.
17. Concerns as expressed by the first appellant was the difficulty he might find in finding employment and accommodation for his family in India and whether he can afford any medical treatment that may be necessary. The conclusion of the report was that the best interests of the children were of course to remain in the United Kingdom. That report was considered in some detail by the Judge in paragraph 17 of the determination. There would seem to be no evidence to confirm one way or another whether the third appellant had epilepsy, nor indeed any indication that adequate care in India would not be available to him. Schooling and the friendships were noted in particular. It found however that there was no situation which would make it unreasonable for the third appellant to return to India with his parents. The same would be said of the fourth appellant.
18. In determining the issue of reasonableness the judge properly followed judicial guidance on that matter. Although the children should not be punished for the illegalities of their parents, nevertheless in assessing whether it was reasonable for the family to return, the overall immigration context was properly considered as well as the children's situation in particular.
19. The Judge concluded that the public interest in removal was tipped in favour of the family being removed to India, not especially heavily, the overall judgment being that the public interest should prevail given the proper consideration of the age and circumstances of the third appellant.
20. Mr Raw contends that a lack of family support in India, that balance may have tipped in favour of the appellants to remain. I find little merit in that contention. The Judge had looked at the family situation in India and had concluded that it was not quite as dire as was painted but nevertheless

that the appellants could live as a family unit economically in India. The Judge's conclusion was there was no very significant obstacles to integration and clear reasons were given for that finding.

21. It was clearly a situation where none of the appellants met the Immigration Rules or were there any compelling circumstances outside those Rules which would render return in breach of a fundamental human right. The parents had very little basis to remain, particularly in the light of their adverse immigration history. The strongest factor in permitting the family as a whole to remain lay of course in the situation of the third appellant as a qualifying child. That was well-recognised by the judge in the proportionality assessment that was made with the overall conclusion that the family could reasonably return.
22. I find that the reasoning of the judge was clear and properly open to be made and that no error of law results therefrom. It was a careful determination.
23. In the circumstances therefore the appeal to the Upper Tribunal is dismissed. The findings of the First-tier Tribunal shall stand, namely that the appeals in respect of the Immigration Rules and human rights stand to be dismissed in all respects.

### **Notice of Decision**

The appeal is dismissed in all respects.

No anonymity direction is made.



Signed  
Upper Tribunal Judge King TD

Date 26 March 2018