



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/11450/2016  
HU/13316/2016

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 21 June 2018

Decision & Reasons Promulgated  
On 26 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

NAVINDER KAUR SOHAL  
KARAMBIR SINGH BAJWA  
(NO ANONYMITY ORDER MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Chelliah of Counsel  
For the Respondent: Mr Diwyncz a Home Office Presenting Officer

**DECISION AND REASONS**

**Background**

1. The Respondent refused the applications for leave to remain on human rights grounds on 14 April 2016. The appeal against this was dismissed by First-tier Tribunal Judge Spencer ("the Judge") following a hearing on 12 June 2017.

### The grant of permission

2. Judge Omotosho granted permission to appeal (7 December 2017). She said it is arguable only that the Judge materially erred in the assessment of whether Appellant 2 was a British citizen in light of MK (a child by her litigation friend CAE) v SSHD [2017] EWHC 136 (Admin), and the consequent impact this may have in assessing both Appellants appeal. MK post-dated the Judge's decision.

### Parties' positions

3. No rule 24 notice was issued. Mr Diwyncz submitted that [36 and 41] of MK "seems to bite" given the difficulty in Appellant 1 being able to prove a negative. Mr Chelliah made submissions on evidence that had was not before the Judge which I will accordingly not record as no application was made to adduce new evidence and I do not grant permission.

### Discussion

4. It states in MK at [36] that;

"For the purposes of the statutory provisions in issue, a person is stateless if he has no nationality. Ability to acquire a nationality is irrelevant for these purposes. A child born on or after 3 December 2004, outside India, of parents at least one of whom is an Indian national, and who has not been to India, is not an Indian national unless registration of the birth has taken place in accordance with the provisions of the Citizenship Act 1955 (India) as amended. If the child has no other nationality, the child is stateless for the purposes of paragraph 3 of Schedule 2 to the British Nationality Act 1981 and, if the other requirements of that paragraph are met, is entitled to be registered as a British citizen. If, therefore, C's birth had on the date of the decision under challenge not been registered, she is entitled to British Citizenship."

And at [41] that;

"... the imposition of an inflexible procedural requirement of confirmation from the Indian authorities that C's birth has not been registered in accordance with Indian law and that she is not a national of India was unlawful in the context of the Secretary of State's knowledge of the extreme difficulty or impossibility of fully satisfying that precise requirement."

5. The Judge stated [21] that the 1<sup>st</sup> Appellant;

"... has consistently claimed that Appellant 2's father is British, however I find that she has claimed that despite not knowing whether this claim is correct or not."

And at [23] that;

"There is no reliable evidence that substantiates that Appellant 2's father is British. I am unable to rely upon Appellant 1's claims."

6. MK makes it clear that Appellant 2 may be British and that the issue of what efforts have been made to register her with the Indian authorities is crucial to that issue.

The failure to explore that before the Judge (it being no fault of the Judge as the matter was not raised with him) led the Judge into a material error of law.

7. That plainly impacted on the assessment of whether it would be reasonable to require them both to leave the United Kingdom as Appellant 2 may be a qualifying British child who then was 6 years and 10 months old and had never been to India but has an uncle there (see [27] of the Judge's decision).
8. I therefore set aside the decision.

Consideration of matters having set the decision aside

9. I agree with both representatives that it is appropriate to remit the matter to the First-tier Tribunal for evidence to be adduced and findings to be made on what efforts have been made to register Appellant 2 as an Indian national, and how that impacts on whether removal of both Appellants would be reasonable given Appellant 2 has now been here for almost 8 years.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the matter to the First-tier Tribunal for rehearing on the nationality issue and on the human rights issues that flows from that, not before Judge Spencer.

Deputy Upper Tribunal Judge Saffer  
25 June 2018

