



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

Appeal Numbers: HU/11555/2017
HU/11549/2017
HU/11546/2017

THE IMMIGRATION ACTS

Heard at Field house

**Decision & Reasons
Promulgated**

On 14 September 2018

On 03 October 2018

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**GURSIMAR [C]
KARANJIT [K]
[G S]**

(ANONYMITY DIRECTIONS NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs M Hare, Solicitor

For the Respondent: Mr L Tarlow, Senior Presenting Officer

DECISION AND REASONS

1. The appellants are nationals of India born on 28 May 1982, 10 November 1982 and 3 February 2006 respectively. They are father, mother and son. They appeal against the decisions of the respondent dated September 2017 to refuse them further leave to remain in the United Kingdom under paragraph 276 ADE and Appendix FM of the Immigration Rules.

2. Permission to appeal was granted by First-tier Tribunal Judge PJM Hollingworth on 15 August 2018 stating that it is arguable that the third appellant's circumstances who has resided in the United Kingdom for a period in excess of seven years have not adequately been taken into account by the Judge in light of the seven-year policy which is now enshrined in the immigration rules and paragraph 117A.
3. The Judge at paragraph 67 of the decision concluded that in all the circumstances in relation to the application of section 55, because of the age of the third appellant and the time the appellant has spent in the United Kingdom his best interests are best served by the third appellant remaining in the United Kingdom. However, at paragraph 69 the Judge stated he was satisfied that it would be reasonable to expect the third appellant to leave the United Kingdom and return to India with his parents. At paragraph 75 of the decision the Judge refers to the question of whether it would be unreasonable for the third appellant to leave the United Kingdom. After finding that the appellant would receive a suitable level of education in India at paragraph 85 the Judge concluded that the third appellant's return to India with his parents is reasonable.
4. The decision made many references as to whether it would be too hot for the appellant to live in India, whether he would have clean water to drink and whether various insects in India will interfere with third appellant's well-being. I find these references to these peripheral and irrelevant matters took away from the judge's mind the main issue in the appeal which was the best interests of the third appellant.
5. The Judges findings are clearly contradictory and amount to a material error of law. The Judge has found it was both reasonable and unreasonable for the third appellant to accompany his parents to India. Even after finding that the appellant's best interest to remain in this country, he went on to conclude that he can return to India and can continue with his education in that country. The Judge made a material errors of law in the decision and I set it aside. I now remake the decision.
6. There is no dispute that the second and third appellants in respect of EX 1 are in a genuine and subsisting parental relationship with the third appellant and the issue remains whether it be reasonable or not reasonable to expect the appellant to leave the United Kingdom who is captured by EX1 of Appendix FM.
7. If the appellants do not meet the requirements of the Immigration Rules, I must consider whether the respondent's decision breaches the appellants rights under Article 8 of the European Convention on Human Rights.
8. There is no issue in the appeal that the first and second appellants are in a genuine and subsisting parental relationship with their son, the third appellant who is a qualified child. I take into account that the best

interests of the child must be based on a careful consideration of the likely circumstances of the appellants and their child if returned as a family unit to India. I must consider all the factors relevant to the child's well-being in all aspects of his life, if returned to India. I must determine whether it would be reasonable to expect the child to return to India with his parents or whether his parents should be allowed to live in the United Kingdom with him.

9. There is no issue in the appeal that the third appellant's parents have lived in this country for short periods of leave which were extended until 2014. The third appellant came to this country dependent of the first appellant's Tier 4 student which was valid until 15 June 2010. The first appellant and his dependents were granted further leave to remain the same category on four further occasions and their application for further leave was refused in September 2014. The third appellant now has seven years continuous residence in the United Kingdom. The entirety of the third appellant's education has in place in the United Kingdom. The third appellant is about to begin his secondary education.
10. In order to answer the question as to whether it would be reasonable for the appellant to return to India with his parents, I have to consider all the circumstances of the qualifying child. I must consider the child's best interests as my primary consideration although it is not a paramount consideration. In order to determine reasonableness of return, I have to first identify what the child's best interests are and where they lie.
11. The requirement that a non-British citizen child has lived in the United Kingdom for a continuous period of at least seven years immediately preceding the date of application recognises that over time children start to put down roots and integrate into life in the United Kingdom to the extent that it may be unreasonable to require the child to leave the United Kingdom. Significant weight must be given to such a period of continuous residence. Continuity of residence is another factor; change in the place of residence where a child has grown up for a number of years when socially aware is important. In the absence of countervailing factors, residents of over seven years with children well integrated into the educational system in the United Kingdom, is an indicator that the welfare of the child favours regularisation of the status of mother and children. The best interests of children will depend on a number of factors such as (a) their age; (b) the length of time they have been here; (c) how long they have been in education; (d) what stage their education has reached; (e) to what extent they have become distanced from the country to which it is proposed that they return; (f) how renewable their connection with it may be; (g) to which extent they will have linguistic, medical or other difficulties in adapting to life in that country; and (h) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens. If neither parent has the right to remain, then that is the background against which the assessment is conducted.

12. In the recent case of **MT and ET (child's best interests; extempore pilot) Nigeria [2018] UKUT 88 (IAC)** which case concerned a parent who had overstayed for many years and with a criminal conviction for using a false document to obtain employment. Yet, these were not considered powerful reasons to require the appellant to return country. The court held that the qualifying child's parent's immigration history was still not so bad as to constitute the kind of "powerful" reason that would render reasonable removal of **ET** to Nigeria.
13. I have to determine whether there are powerful reasons for the appellant who is captured by EX1 of Appendix FM to return to India with his parents.
14. I find the starting point as to what is in the best interests of children is to live with their parents wherever they live. However, the appellant has lived in this country continuously for more than seven years. He is starting his secondary school and powerful reasons are necessary to require him to leave the United Kingdom.
15. In the case of **Azmi Moyed and others [2013] UKUT** it was stated that the children's connections to the United Kingdom become more important from ages of 4 to 11. The appellant is now nearly an adult although he was under 18 at the time of the application. I find that his ties to this country are well established. Taking into account all the jurisprudence in respect of a qualifying child, I find that it not be reasonable for the appellant to return to India and there are no powerful reasons advanced for why he should have to leave given his seven years continuous residence in this country.
16. I find taking into account all the evidence in this appeal, it would be unreasonable for the child to return to India with his parents to continue family and private life in that country. It follows that the first and second appellants appeals must also succeed in line with that of the third appellant.
17. I therefore find that all three appellants' appeals succeed under the immigration rules.

Notice of Decision

Appeals allowed for all three appellants pursuant to the Immigration Rules

I make no anonymity orders.

I have allowed the appeals, but I make no fee order.

Signed by
2018
Deputy Judge of the Upper Tribunal

Dated this 27th day of September

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Mrs S Chana