



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

Appeal Numbers: HU/11593/2017
HU/11599/2017
HU/11607/2017
HU/11610/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 8 November 2018**

**Decision & Reasons
Promulgated
On 26 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**MRS JK
MR JS
MISS HK
MASTER SS
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr R Sharma (Counsel)

For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from a decision of First-tier Tribunal Judge R E Barrowclough which was promulgated on 22 February 2018. The

appellants are all India nationals and comprise a mother, father and two minor children. Because two of the appellants are children and in relation to one there are mental health considerations I make an anonymity direction.

2. The appellants appeal the Secretary of State's decision made under paragraph 276ADE of the Immigration Rules, whereby their applications were dismissed.
3. The judge in a lengthy and detailed decision reviewed all of the evidence and gave consideration at paragraph 34 to the children's best interest considerations under section 55 of the Borders, Citizenship and Immigration Act 2009. He then proceeded to weight in the balance the countervailing statutory public interest considerations. In due course he came to the conclusion that the family as a unit should return to India. The judge accorded considerable weight to the fact that, for a substantial period of time, the appellants' immigration status had been precarious.
4. Permission to appeal that decision was given by Upper Tribunal Judge Plimmer in the following terms.

"Although the decision is detailed and carefully drafted it is arguable that the First-tier Tribunal erred in law in attaching little weight to the children's private lives having apparently accepted that significant weight should be attached to their length of residence in the United Kingdom. See **MA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 705** and **MT and ET (child's best interests extempore pilot (Nigeria) [2018] UKUT 00088 (IAC)**.

Judge Plimmer directed that all grounds were arguable.

5. The grounds of appeal are lengthy and detailed, having been settled by Counsel who appeared before the First-tier Tribunal. Mr Sharma, who acts for the appellants are before me, adopted those grounds but with a degree of nuance and careful selectivity.
6. Ground 1 deals with the issue of section 55 best interests considerations. Mr Sharma properly concedes that these matters were the subject of consideration and assessment by the judge and does not press me to consider ground 1 on a stand-alone basis. He submits, however, that these considerations feed into some of the other grounds of appeal. Ground 2 deals with the weight to be attached to the children's private lives and the significant passage of time passed since an earlier decision. Again these matters not of sufficient significance, without more, to be dispositive if this appeal.
7. Mr Sharma placed particular reliance on the manner in which the judge dealt with the expert evidence such as it related to the attempt by the daughter to end her life. He drew to my attention a dissonance between

the judge's recital of the evidence and what was to be found in the expert medical evidence. Because those matters are not recorded in decision I shall set them out in full.

8. In a letter dated 4 January 2016 the following is recorded:

"[H] reported that she continues to experience suicidal thoughts but wants to get better. Currently H is saying that if she finds out that she needs to go back to India she prefers to end her life."

9. The next in time is a letter of 24 June 2016 which states that H reported that her mood had deteriorated and she was experiencing low mood daily with thoughts of self-harm and suicide. It continues:

"H worries about her family a lot. In particular she worries about her family being attacked. She relates this to incidents that happened in India (intrafamily conflict on paternal side of the family) [...] H said that she has started to worry about this a lot within the last year since she found out about changes in immigration status of the family."

10. Finally in a letter of 26 October 2016, it is again recorded by another practitioner that the immigration status of the family continue to have a significant impact on the daughter's mental health as well as that of the family as a whole.
11. The judge fully addresses the issue of the daughter' suicide attempt. It is to be found at paragraph 49 of the decision.

"As noted [the daughter's] self-harm/suicide attempt was on 20 September 2015, that was approximately eighteen months after the appellants' first appeals had been dismissed by Immigration Judge Greasley and looking at the immigration history shortly after the appellants' submission of an application for judicial review following the rejection of their further submissions in June that year that before the JR application was refused in January 2016. [The daughter's] oral evidence was that she drank the cleaning fluid because she then saw some sort of decision letter that she thought was critical for her future and that her high hopes were dashed by what she read. While she was not questioned about that part of her evidence I have great difficulty in accepting it if what is being suggested is that the letter [the daughter] then saw for the first time that an official communication to the effect that she would have to go back to India. I do not see how what she then read can have been the March 2014 determination and reasons the effect of which at least would have been well-known to her by then and from the chronology no other letter really fits. Additionally [the daughter's] later account and her evidence of why she then drank the cleaning fluid contradicts and is undermined by what she was recorded as saying at the time namely that she drank the fluid impulsively because of an argument between her parents (which

her mother confirms). I cannot rule out the possibility that [the daughter's] later account may have been fabricated to bolster the appellants' appeals."

12. For completeness, paragraph 50 reads as follows:

"I have borne in mind [the daughter's] attempt at suicide was as I find taken on the spur of the moment and whilst in the presence of her parents and was triggered by their apparently furious and prolonged argument. Whilst I certainly accept that as recorded in the various reports since she has suffered repeated suicidal thoughts from time to time and has indeed said that she would rather die than go back to India, thankfully there have been no further attempts since September 2015 and as such that was an isolated event."

13. In reviewing the evidence, the judge did not refer to the content of the medical evidence which I have rehearse. The judge apparently formed an adverse view of the daughter, even to the extent of suggesting her evidence may have been fabricated notwithstanding that this was not put to her in cross-examination during the hearing. Further, no reasons are given for apparently rejecting the expert medical evidence.
14. Were this matter taken in isolation, it might be possible to find support elsewhere in the decision, sufficient to satisfy me that it was otherwise robust. However, I cannot find such support. The delicate balancing exercise between a qualifying child's best interest under section 55 and the countervailing public policy considerations has not been conducted with the thoroughness to be expected. It would appear that the judge gave undue weight to the precarious immigration status of the children. It is well-established that the immigration history of parents should not as a general rule act to the prejudice of their children.
15. I am satisfied that this decision cannot survive the anxious scrutiny test. The judge's assessment of the evidence overall is flawed and it would not be appropriate for any findings of fact to be preserved. Notwithstanding that this is already a stale case and one with a lengthy procedural history, the only proper course is to remit it to the First-tier Tribunal so that the matter can be heard afresh. Whilst the same conclusion may be reached, justice demands that any decision is expressed with a clarity which was singularly lacking in this instance.

Notice of Decision

- (1) This appeal allowed and the decision of the First-tier Tribunal is set aside;
- (2) The matter is remitted to the First-tier Tribunal for the appeal to be heard afresh by a judge other than Judge R E Barrowclough.
- (3) No findings of fact are preserved.

(4) An anonymity direction is made as follows.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Mark Hill*

Date 19 November 2018

Deputy Upper Tribunal Judge Hill QC