



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

Appeal Number: HU/14250/2015
HU/14251/2015
HU/14255/2015
HU/14256/2015
HU/14258/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 9 January 2018**

**Decision & Reasons Promulgated
On 31 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

KAMALDEEP [K]

[M S]

RAJU [D]

[A S]

[A K]

(NO ANONYMITY DIRECTION IS MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Karim, Counsel, for Cranbrooke Solicitors, Ilford, Essex

For the Respondent: Mr Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The first and third appellants are partners and the second, fourth and fifth appellants are their children. They were born on [] 1977, [] 1970, [] 2009, [] 2009 and [] 2008 respectively. They are citizens of India. They appealed against the decision of the respondent dated 10 December 2015 refusing their applications for leave to remain in the United Kingdom on human rights grounds on the basis of family and private life.
2. The appeals were heard by Judge of the First-Tier Tribunal Moore on 23 March 2017. The appeals were dismissed under the Immigration Rules and on human rights grounds in a decision promulgated on 18 April 2017.
3. An application for permission to appeal was lodged and permission was granted by Judge of the First-Tier Tribunal Brunnen on 30 October 2017. The application was lodged late but Judge Brunnen extended the time limit, having assessed the merits of the substantive application. The permission states that the grounds refer to the Judge failing to consider the appeals outside the Immigration Rules and failing to have regard to the fact that as at the date of the hearing all three of the minor appellants had lived in the UK for over seven years. At paragraph 25 of the decision the Judge had regard to the length of residence of these appellants immediately preceding the date of application. Arguably this was the correct approach when considering the appeals under the Immigration Rules, but not when considering the appeals outside the Rules when the applicable point in time is the date of the hearing. The permission goes on to state that arguably Section 117B(6) is applicable and it was necessary for the Judge to decide whether it was reasonable to expect these appellants to leave the United Kingdom. The permission states that it is arguable that if the Judge had taken the date of the hearing as the applicable point in time he might have made a different finding and reached a different decision.
4. There is a Rule 24 response on file by the Secretary of State. This gives reasons for supporting the First-Tier Tribunal's decision but the Presenting Officer at this hearing submitted that there are problems with some of the findings of the First-Tier Judge in particular the finding that it would not be unreasonable for the children to go to India with their parents. He submitted that there are material errors of law in the Judge's decision and I was asked to remit the claim to the First-Tier Tribunal for rehearing on all issues.
5. Counsel accepted the situation.

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6. I find that there are material errors of law in the Judge's decision and I direct that the First-Tier Tribunal's decision promulgated on 18 April 2017 be set aside.
7. I direct that the appeals should be remitted to the First-Tier Tribunal for rehearing on all issues but not before Judge Moore.

Signed

Date 31 January 2018

Deputy Upper Tribunal Judge Murray