Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/02470/2018
HU/02472/2018
HU/02475/2018
HU/02481/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20 December 2018	**On 24 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

GURCHARAN [S] (FIRST APPELLANT)
JASWINDER [K] (SECOND APPELLANT)
[G K] (THIRD APPELLANT)
[J K] (FOURTH APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr Z Raza, of Counsel instructed by Messrs Marks & Marks Solicitors
For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal with permission against a decision of Judge of the First-tier Tribunal Grimmett who in a determination promulgated on 11 July 2018 dismissed their appeals against a decision to refuse to grant them leave to remain on human rights grounds.

2. The first applicant had asserted that he had been in Britain for over twenty years, a claim which was later abandoned. In any event he had been in Britain for a very considerable time. It was not accepted that he was entitled to leave to remain. The claims were also refused because the second appellant did not meet the requirements of the partner route and the claims of the children. The third appellant was born in May 2011 and the fourth appellant was born on 6 January 2010 were refused as the refusal would not lead unjustifiably harsh consequences for them or other family members.

3. It is of note that of relevance in this case is the terms of Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 which states that:-

> "(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –
>
> (a) a person has a genuine subsisting parental relationship with a qualifying child; and
>
> (b) it would not be reasonable to expect the child to leave the United Kingdom."

4. Under the terms of Section 117D a qualifying child is a child who has lived in the United Kingdom for a continuous period of seven years or more.

5. The judge carefully considered all relevant factors setting out in some detail the terms of paragraph 276ADE which referred to the terms at Section E-LTRPT.2.2 which referred to a qualifying child being a child who had lived continuously in Britain for seven years and the issue of whether or not it would not be reasonable to expect the child to leave the UK.

6. In paragraphs 11 onwards the judge set out her decision. She emphasised that the best interests of the two children were to remain living with their parents. She pointed out that they are both very young and not able to live independent lives. The judge accepted that there was no indication that they were not well cared for and emphasised that they had always lived with their parents and were still significantly dependent upon them. Both children were healthy and doing well at school. The judge accepted that they had never been India and that it was likely to be in their best interests to remain in contact with their close relatives in the United Kingdom and in India in order to provide stability in their family lives.

7. The judge did not accept the evidence of the appellant that they had never had any contact with the second appellant's family in India as the second appellant has been in contact with her family since leaving. Moreover there was evidence that the

children spoke both in Hindi and Punjabi. The judge gave reasons why it was not accepted that the first appellant had shown that he had been in Britain for twenty years stating there was no evidence to show that he had entered Britain in 1998, nor that he had lived in the United Kingdom continuously since that time. It was accepted that he had produced evidence of employment between 2003 and 2015. There was some incomplete medical evidence showing that he had an appointment with the GP in 2004.

8. In paragraph 14 the judge said that she was not satisfied that there were any very significant obstacles to the appellant's integration into India or that his wife or children. The first appellant had lived in India until he was nearly 30. Although he had said that he had no family there to support him and no home or guaranteed employment and that his wife would not be able to work as she needed to take care of the children and he would have no family support and that his family was settled in Britain or Canada, the judge emphasised that both the first appellant and his wife had used a Punjabi interpreter despite living in Britain for fifteen and nearly ten years respectively and she did not accept that where the children who had been brought up in a household where Punjabi was the main language that they could not speak that language. There was nothing to show that the first two appellants met the minimum English requirements.

9. The judge did not accept that the appellant would not be able to support himself and his family in India stating that he had shown the ability to maintain the family when he and they have had no right to be in Britain. She pointed out that his wife still had family and a family home in India. There were no obstacles to the first and second appellants' return. While it was argued that the children's education in India would not be as good as they received in Britain there was no evidence to support that claim. The children would be entitled to education in India and were young enough to adapt to a different way of life. The most important fact was that the children would be to remain with their parents with whom they had always lived. She concluded by saying:

> "Whilst I fully accept the children are happy, well cared for and in education in the United Kingdom at the current time I am not satisfied that it would not be reasonable to expect them to leave the United Kingdom. They will continue to live with their immediate family and will get to know other family members in India."

10. The judge referred to the terms of Section 117B pointing out that both parents had worked in Britain when they had no right to do so and they had received the benefit of significant public funds from the health service as they had had two children in the United Kingdom and in relation to the education of the children. While it was said that they had worked in Britain and paid tax the evidence provided showed a P60 for 2015 showing a total tax paid of £682 in 2014, £816 in 2013, £1,175 in 2012 and £1,268 in 2011. The judge pointed out those sums only went very little way towards the costs incurred by the family in educating the two children and receiving care from the National Health Service.

11. The judge pointed out the first appellant had not shown that he had the ability to earn sufficient to meet the requirements of Section 117B(2) or the financial requirements in Appendix FM which provides that an income of £24,800 would be required for two adults and two children. Moreover she pointed out that Section 117B(4) gave little weight to private life established when the appellant is in the United Kingdom unlawfully. She did take into account the fact the children had both now been in the United Kingdom for over seven years and their parents have a genuine and subsisting relationship with them and that Section 117B(6) provided that the public interest did not require a person's removal where 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.

12. Turning to the issue of the children she stated that:-

> "I can find no reason for concluding that it would not be reasonable for the children to leave the United Kingdom with their parents. Their lives are inextricably intertwined in view of the ages of the children. I am satisfied that they have contact with extended family members in India and are able to speak at least three languages of India, Punjabi as their parents speak, Hindi as the appellant said they spoke it and English. They are used to interacting with persons of Indian descent as they have many UK based relatives of Indian origin. According to their father's evidence they will be able to continue their education in India and will have access to healthcare there."

13. She went on to state that no doubt they would miss family and friends in Britain but it was pointed out that many children moved away from their family homes to live elsewhere when their parents move jobs or simply decided to change lifestyle and she said there was no evidence to suggest any harm would come to the children moving to India. They were of an age when they were adaptable and would have to do so if their parents are required to leave the United Kingdom. Their children must accompany them. She could find nothing unreasonable requiring these children to move to India their country of nationality of their Indian parents will be returning to extended family there who, she was satisfied, would be able to support the family while it re-established itself in India. She therefore found that the appellant had not shown that he met the requirements of Section 117B(6)(b).

14. The judge then went on to consider the issue of the human rights of these appellants outside the Rules.

15. The grounds of appeal on which Mr Raza relied argued that the judge had inadequately reasoned the assessment of the best interests of the children. They referred to paragraph 88 of **MA (Pakistan)** which emphasised that when a child had been in Britain for seven years significant weight will need to be given in the proportionality exercise to that because of its relevance to determining the nature and strength of the child's best interests and also because it established a starting point that leave should be granted unless there are powerful reasons to the contrary.

16. It was stated that the judge had not given any weight to the children's length of residence and how that impacted upon their best interests. The fact that she had said that she had found no reason that it would not be reasonable for the children to leave Britain with their parents ignored case law which establishes the importance of seven years residence for a child. Moreover the grounds argue that the judge had been wrong to place weight on the fact that under Section E-LTRP-1 £24,800 required for a family to meet the financial requirements of the Rules. It was argued that that was irrelevant. The fact was that the family were financially independent because of the earnings of the parents.

17. Having referred to **ZH (Tanzania) [2011] UKHL** and to the Convention on the Rights of the Child it was argued that the judge had not made a proper best interests assessment.

18. At the hearing before me Mr Raza argued that the judge had not properly assessed the best interests of the children and had erred when he has inferred that harm must come to the children if they were removed for them to succeed under the Rules or Section 117B(6). He argued that the judge had not referred to the children's ties and their best interests and although he accepted that the judgment of the Supreme Court in **KO (Nigeria)** made it appropriate that the judge should have taken into account the immigration status of the parents and whether or not they would be returning as a family – he argued that **KO** had not overturned the provisions in paragraph 88 of the Rules that significant weight should be given to the length of time the children had been in Britain. Moreover he argued that the judge was wrong to place weight on the fact that the financial requirements of the Rules could not be met.

19. Ms Pal merely argued that the judge had made relevant findings of fact and made proper reasons for the decision.

Discussion

20. I consider that there is no material error of law in the determination of the judge in the First-tier Tribunal. The reality is the judge very carefully set out and indeed focused on the best interests of the two children. She set out the detailed findings to the children. Mr Raza was not able to point to any factors which the judge had not taken into account. The judge was correct to point out the children's lives were focused on their parents. She took into account that they would be returning as a family unit to India, that their mother had family and a family home there and there was nothing to indicate that the children's parents - the first and second appellants - would not be able to work in India. She weighed up all relevant factors and was entitled to find that it was not unreasonable to accept difficult for the children to be expected to return to India with their parents. She was entitled to take into account the fact that the first appellant had it appeared entered Britain without authority, had lived in Britain without leave for the period which he had lived here and indeed was

entitled to find as was eventually conceded that the first appellant had not lived in Britain for twenty years. She was also entitled to point out that the Rules made it clear that an income of £24,800 will be required for two adults and two children. That requirement is an indication of what the State considers is the necessary income for a family. The fact that this is a human rights claim does not mean that the possible income of a family should be taken into account.

21. It is clear that the parents have simply no basis of stay in Britain as they have lived here illegally and do not meet any of the requirements of the Rules. I consider that the judge did properly consider all relevant factors and reached a conclusion that was entirely open to her. Although Mr Raza stated the judge had indicated that there must be evidence the children will come to harm in India that is simply a misreading of the determination. The fact that the judge stated that the children would not come to harm in India did not indicate that for them to succeed there must be evidence that they would come to harm.

22. In all the judge weighed up at some considerable length and very carefully all relevant factors and reached a conclusion - that it is entirely reasonable the children should leave Britain with their parents - which was fully open to her on the evidence before her. I therefore find that there is no material error of law and the determination of the judge in the First-tier Tribunal and find that her decision dismissing this appeal must stand.

Notice of Decision

The appeal is dismissed

No anonymity direction is made.

Signed:  Date:11 January 2019

Deputy Upper Tribunal Judge McGeachy