Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/19452/2018
HU/19454/2018
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THE IMMIGRATION ACTS

Heard at Field House
On 14th August 2019

Decision & Reasons Promulgated
On 2nd September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

ALAPI [M] (FIRST APPELLANT)
VAIBHAV [M] (SECOND APPELLANT)
[B M] (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr Lourdes of Counsel
For the Respondent: Mr Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. These are linked appeals against the decision of First-tier Tribunal Judge P-J S White promulgated on 22nd March 2019 in which the respective appeals of the Appellants were dismissed on human rights grounds.

2. The Appellants are a family of three. They are citizens of India. The second Appellant is the husband of the first Appellant. The third Appellant

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is their son, date of birth 21st September 2004. The first Appellant is the principal Appellant in matters in relation to the family's immigration history. Both the second and third Appellants entered the UK as dependants upon her immigration status.

3. For the purposes of this decision, the following details of the Appellants' immigration history are relevant. The first Appellant entered the UK in November 2009 with leave as a Tier 4 student. The second and third Appellants joined her in June 2010 as her dependants. The third Appellant was 5 years of age at that point.

4. The first Appellant made various applications extending her leave, but by a decision dated August 2015, the Respondent refused to grant further leave. An appeal against that refusal was dismissed. The Appellants did not leave the UK. In October 2017 they made application for leave to remain on human rights grounds. That application was refused by the Respondent on 14th September 2018. The Appellants appealed that refusal to the First-tier Tribunal, and it is that decision which forms the basis of the instant matter before me.

First-tier Tribunal Hearing

5. The appeal before the First-tier Tribunal came to be considered by FtTJ P-J S White. The Appellants were represented at the hearing by Counsel, Mr Lourdes who also appeared before me. They submitted a 93-page bundle of documents which included a statement from the third Appellant outlining his educational achievements together with his school reports. Those reports included details of third Appellant's academic achievements. The FtTJ heard oral evidence from each of the Appellants.

6. The judge noted at [8] the following:

> "Mr Lourdes in his submissions accepted that the outcome revolved around the position of the third appellant. He did not submit that either of the adults could succeed under any Immigration Rule, or on any basis other than that the third appellant should succeed and therefore they should stay with him. I have no doubt that was correct. They lived most of their lives in India and still have family there, with whom they are in touch. They came here in a purely temporary capacity and have not in fact qualified for any grant of leave since the expiry of the last Tier 4 leave in February 2015 ..."

7. Further, at [9] the judge records the following:

> "I asked both adult appellants why they had not returned to India some time ago when their leaves ran out. I did not consider their answers entirely satisfactory ... [The first appellant said] she put the decision to try to stay down to seeing her son doing well and in particular his results in the 11+ ... [The second appellant] said they could not go back because it would disrupt the child's education. He also told me that he did not agree to the having to leave. It seems to me likely that it was their intention to stay here from a very early stage, if not from

> the outset. None of that, of course, reflects in any way on the third appellant."

8. Further, at [10] when analysing evidence concerning the third Appellant's position, the judge said the following:

> "In respect of the third appellant I have evidence from his school showing that he is a very bright child and doing very well, evidence which I have no hesitation in accepting. I have letters from some of his teachers who regard him as well settled here ... and someone who will be adversely affected by return to India, which they consider will harm his education ... My reservation about this evidence is that none of them identifies any knowledge of the Indian education system ..."

9. Subsequently at [13], the judge noted the following:

> "All three appellants told me that the education system in India was completely different and that the third appellant would have great difficulty adapting ... I am bound to note that no independent or objective evidence about what would or would not be available to the third appellant in India was produced."

10. Having considered both the documentary and oral evidence, the judge self-directed himself upon the relevant test. Having concluded that the Appellants could not meet the Immigration Rules, the judge was satisfied that their appeals fell to be dismissed under Article 8 ECHR.

<u>Onward Appeal</u>

11. The Appellants applied for permission to appeal. Permission was refused initially in the First-tier Tribunal but on a renewed application before the Upper Tribunal was granted in the following relevant terms:

> "2. I remind myself that 'arguable' is a low hurdle to cross and I am just persuaded that the grounds advanced are arguable. The Judge appropriately identified the question of reasonableness and considered the judgment of the Supreme Court in <u>KO (Nigeria) v. Secretary of State for the Home Department</u> [2018] UKSC 53; [2018] 1 WLR 5273, where it was held that when considering section 117B(6) of the Nationality, Immigration and Asylum Act 2002, which incorporates the substance of paragraph 276ADE(1)(iv) of the Immigration Rules, it is relevant to consider where the parents are expected to be, since it will normally be reasonable to expect their child to be with them. The third appellant has been present in this country for over 8 years, much of it lawfully, and at the time of the hearing had just over a year of GCSE studies before him before he sat examinations that are of great importance in his life. It is arguable that the Judge asked himself too narrow a question as to the impact of removal upon the third appellant's education at [13], limiting it to potential language difficulties, rather than assessing the impact of leaving this country upon securing important educational qualifications. The importance of the examinations is identified at [17], but arguably not lawfully considered in the proportionality exercise, at [20]."

Thus, the matter comes before me as an error of law hearing.

Error of Law

12. Before me Mr Lourdes appeared for the Appellants, Mr Avery for the Respondent. At the outset of the hearing Mr Lourdes handed up a document dated 29th March 2019 from the Respondent. It referred solely to the third Appellant. It informed him that following an application made on his behalf on 25th March 2019, he had now been granted a period of 30 months' limited leave on account of meeting the requirements of Section 276ADE(1) of the Immigration Rules.

13. Mr Lourdes' submissions relied therefore on saying that the FtTJ had erred in his assessment of the reasonableness test in the particular circumstances of these appeals. He confirmed that he had no further evidence to submit before me. He relied upon the evidence and submissions made before the FtT and in particular drew my attention to the raft of jurisprudence which has now evolved concerning the "reasonableness" test, including **EV (Philippines) and Ors; MA (Pakistan) and Ors; MT and ET; JG (s 117B(6): "reasonable to leave" UK) Turkey [2019] UKUT 72 (IAC);** and **KO (Nigeria)**.

14. Mr Avery in response addressed firstly the question of the third Appellant being granted further leave for 30 months. He said that this did not change the position of the Secretary of State concerning these appeals. The sole question for me is whether the FtTJ has erred in law such that the decision stands to be set aside. He referred to the grant of permission which he said was framed in terms of whether the judge had erred in his assessment of the reasonableness test because he had focused too much on the issue of whether or not the third Appellant's education would be disrupted because of language difficulties rather than drawing in other factors.

15. Mr Avery continued by saying that in fact a reading of the decision showed that the judge had kept all relevant matters in mind and that Mr Lourdes on behalf of the Appellants had not pointed to any evidence which it was claimed the judge had missed. The grounds were simply a disagreement with the judge's reasons for finding as he did. Those reasons were open to him and therefore the decision should stand. So far as the fact that the third Appellant has now been granted a further 30 months' leave to remain, he said it was open to his parents to make their own application based upon that, but the judge could not be said to have erred when this evidence was not before him.

Consideration of Error of Law

16. In this appeal the core issue to be decided upon is whether the third Appellant could reasonably be expected to return to India with his parents.

17. I am satisfied that the FtTJ noted the central issue and correctly directed himself keeping in mind the decision in **KO**. Permission to appeal was granted on a narrow point although it is correct that the permission grant did widen to include all grounds. It was said that the FtTJ had asked himself too narrow a question when assessing the impact of removal upon the third Appellant's education. It was said that the judge had limited the impact it to potential difficulties with language. That in essence reflects the submissions which were made before me by the Appellants.

18. In my judgment, the Appellants have simply not made out their case. The judge identified that the starting point before him was a consideration of what is in the best interest of the third Appellant (**MA (Pakistan) and Ors)**. He fully set out his consideration in [17]. He noted that the third Appellant is an Indian national as are his parents. He accepted that the third Appellant had lived in the UK for eight and a half years and had attained virtually all his formal education here and that any move to India would be disruptive. He grappled with the issue of the best interests of the third Appellant finding it would be in the third Appellant's best interests to remain with his parents and less strongly to remain in the UK. That was a finding open to him. The judge then had to turn his attention to whether it was reasonable to expect the third Appellant to return to India with his parents, and this he did [18].

19. He noted that the third Appellant's oral evidence and that of his parents, was to the effect that the third Appellant would have difficulty adapting to the education system in India not least because of a claim from his parents that the third Appellant spoke limited Gujarati. The judge clearly considered that he could not take this statement at face value because as he noted there was no independent or background evidence to back up the parent's claim concerning the difficulty of adapting to the Indian educational system. Further in contradiction of this he noted that there are schools in India down to kindergarten level which teach in English.

20. He was satisfied from the evidence before him that the third Appellant was bright enough to adapt to using Gujarati. The third Appellant had lived in India with one or both parents up to almost six years of age and it would be reasonable to suppose he spoke some Gujarati. He noted that the third Appellant's parents were people of sufficient educational qualifications to assist the third Appellant.

21. The judge also kept the evidence concerning the third Appellant's private life in mind. He was well aware that the third Appellant was in his first year of GCSEs and there would be disruption on return to India. He accepted that the third Appellant has a circle of friends in the UK but nevertheless looking at the evidence presented decided that the Respondent's decision to refuse their applications for leave to remain under Article 8 ECHR did not amount to a disproportionate interference with their family/private lives.

22. Altogether, looking at the decision as a whole, I am satisfied that the FtTJ has taken into account all the relevant evidence which was before him and made findings which were fully open to him on that evidence.

23. It follows therefore that the decision of the First-tier Tribunal contains no error of law requiring it to be set aside. These appeals are therefore dismissed.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 22nd March 2019 contains no material error of law. The decision therefore stands.

No anonymity direction is made. I was not asked to make one.

Signed **C E Roberts** Date 28 August 2019

Deputy Upper Tribunal Judge Roberts

TO THE RESPONDENT
FEE AWARD

I have dismissed these appeals and therefore there can be no fee award.

Signed **C E Roberts** Date 28 August 2019

Deputy Upper Tribunal Judge Roberts