



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

Appeal Number: HU/24316/2018
HU/24319/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 17th May 2019**

**Decision & Reasons Promulgated
On 20th May 2019**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MRS PARAMDEEP [K]
MR GURPREET [V]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Sowerby (instructed by Harrow Solicitors)
For the Respondent: Ms L Kenny (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the appellant, permission having been granted by Tribunal Judge Hollingworth on 29 March 2019. The appellants are husband and wife who had sought leave to remain on the basis of their family and private life in the United Kingdom. They are citizens of India. The couple had made application on the 23 March 2016

for leave to remain on compassionate grounds. That application was refused as were subsequent applications made in August 2016 February 2017 and October 2017. The decision appealed against was made on 16 November 2018.

2. The first appellant, the wife, came to the UK with the second appellant as her dependant in September 2012 with a Tier 4 student visa valid until February 2014. Since that date, due to unsuccessful applications they have had no leave.
3. The couple have a daughter born in the UK in 2014. Before the First-tier Tribunal the respondent's case was that the appellants had been in the UK for only five years and had lived in India the vast majority of their lives. They had retained cultural and social ties to India and had family there. Their friends in the UK speak Punjabi and their roots and cultural ties remain within India. The first appellant has a Diploma in Tourism and Hospitality from the University of Sunderland in October 2014.
4. The Secretary of State's case was that the child was spoken to by her parents in Punjabi as a baby and could pick up Punjabi again.
5. The appellants' case was that it was not in the best interests of the child to return to India as she does not speak or understand Punjabi. It was also argued that she is stateless because she has not been registered as an Indian citizen. She should remain with her parents and the only country where she can maintain family life with her parents is in the UK. Although the family has family members in India, they are of limited means. It would be unsettling for the child to return to India.
6. The judge made brief findings. He noted that both the appellants have family in India where they had spent the majority of their lives prior to coming to the UK in September 2012.
7. The judge noted that there was a letter in the bundle from the High Commission of India dated 16 April 2018 stating that the child had not been registered as a citizen of India. It was explained by the appellants that this was due to their failure to provide ID documents. He noted that no explanation was provided as to why they had not provided the necessary ID documents. The judge then went on to say that in any event, for a person to be accepted as stateless, an application needs to be made under paragraph 403 of the Immigration Rules and no such application has been made.
8. The judge went on to say there were no very significant obstacles to the family returning to India as a family unit. Both the appellants have family in that country where they had lived the majority of their lives. The child concerned is aged four and would have no difficulty integrating in India. She already understands some of the language of Punjabi and in any event, is fluent in English. The judge found it was obviously in the interests of the child to return as part of the family unit and he was not satisfied

that sufficient efforts had been made to ensure that she is registered as an Indian citizen at the High Commission of India in the UK so they could return as a family unit.

9. The judge noted that the appellants could not meet the requirements of the Immigration Rules under paragraph 276 ADE and that the child had not been accepted as a stateless person under paragraph 403 of the rules. He found it was not disproportionate or a breach of their human rights as protected by article 8 for them to return to India as a family unit and be required to leave the UK.
10. In a Decision and Reasons promulgated on 6th February 2019 he dismissed the appeal.
11. Permission to appeal was granted on the basis that arguably the judge had not set out a sufficient analysis in relation to the proportionality exercise under article 8.
12. Before me Mr Sowerby referred to paragraph 16 of the First-tier Tribunal's decision which is where the judge referred to the fact that in order for a person to be accepted as stateless they need to make an application under paragraph 403 of the Immigration Rules. In that regard he referred me to the case of MK (a child by her litigation friend CAE), R (on the application of) the Secretary of State for the Home Department [2017] EWHC 1365 (Admin). That is a decision of the Vice-President of the Upper Tribunal, Mr Ockelton, sitting as a High Court Judge. In that judgment Mr Ockelton cites paragraph 3 of Schedule 2 to the British Nationality Act 1981 which provides: -
 - '3. (1) a person born in the United Kingdom or a British overseas territory after commencement shall be entitled, on an application for his registration under this paragraph, to be registered if the following requirements are satisfied in his case, namely`
 - (a) that he is and always has been stateless; and
 - (b) that on the date of the application he was under the age of 21; and
 - (c) that he was in the United Kingdom or a British overseas territory (no matter which) at the beginning of the period of five years ending with that date and that (subject to paragraph 6) the number of days on which he was absent from both the United Kingdom and the British overseas territories in that period does not exceed 450.
 - (2) a person entitled to registration under this paragraph-
 - (a) shall be registered under it as a British citizen if, in the period of five years mentioned in subparagraph (1), the number of days wholly or partly spent by him in the

United Kingdom exceeds the number of days wholly or partly spent by him in the British Overseas Territories;

(b) in any other case, shall be registered under it is a British overseas territory citizen.'

13. At paragraph 4 of the judgement Mr Ockelton states: -

"The issue, in short, is whether C, for the purposes of paragraph 3 of Schedule 2 to the 1981 Act, "is and always has been stateless". That will (or may) depend on the meaning of (stateless) in the Act, which is a matter of law. It will in addition almost certainly turn on the question whether C is (or ever has been) a national of India. That will depend wholly or largely on Indian law, which in this court is a matter of fact and needs to be proved by evidence.

14. At paragraph 36 of the same judgement Mr Ockelton states: -

"For the purposes of the statutory provisions in issue, a person is stateless if he has no nationality. Ability to acquire a nationality is irrelevant for these purposes. A child born on or after 3 December 2004, outside India, of parents at least one of whom is an Indian national, and who has not been to India, is not an Indian national unless registration of the birth has taken place in accordance with the provisions of the Citizenship Act 1955 (India) as amended. If the child has no other nationality, the child is stateless for the purpose of paragraph 3 of Schedule 2 to the British Nationality Act 1981 and, if the other requirements of that paragraph are met, is entitled to be registered as a British citizen. If, therefore, C's birth had on the date of the decision under challenge not been registered, she is entitled to British citizenship.

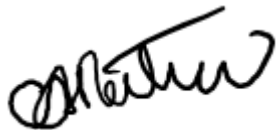
15. Mr Ockelton goes on in the following paragraph to recognise that that conclusion opens an obvious route to abuse. The case before him, he said, might be an example of abuse as the parents were both overstayers and both had sought and been refused further leave. They preferred to allow their child to be stateless all her life to date rather than register her birth and obtain Indian nationality for her. Yet her right to British nationality (and the consequence that she will not be or become a national of India) would immeasurably improve the parents' prospects of being allowed to stay in the United Kingdom.

16. It is quite clear from MK that the child in this case, who has not been registered by her parents as an Indian citizen, is in fact stateless. She is however not entitled to British citizenship as she has not been here for the requisite period. In the final sentence of paragraph 16, where the First-tier Tribunal judge referred to paragraph 403 of the Immigration Rules he erred. However, I find that error is immaterial because the fact remains that although currently stateless, that is a situation that can simply be remedied by the parents registering her as an Indian national, something they have thus far chosen not to do. The fact that the situation can be so easily remedied is thus not a bar to her returning to India with her parents and does not render it unreasonable to expect her to return.

17. This case was always an extremely weak claim under article 8. The adult appellants have close family members in India and have not lost their ties to that country. There are no bars to their integration in that country and it is not unreasonable to expect their child to return there with them. Accordingly, any error of law by the judge in his decision regarding the stateless status of the child is not a material error of law and had he not made that mistake there is no prospect that the decision would have been different.

Decision

18. The Decision and Reasons of the First-tier Tribunal does not contain a material error of law and the appeal to the Upper Tribunal is dismissed.
19. The First-tier Tribunal did not make an anonymity direction and I see no justification for one.



Signed

Date 17th May 2019

Upper Tribunal Judge Martin