IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-000394
UI-2023-000395
UI-2023-000396
UI-2023-000397

First-tier Tribunal Nos: HU/52625/2022
HU/52628/2022
HU/52629/2022
HU/52630/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 31 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

DALWINDER SINGH
DALJIT KAUR
HARNOOR SINGH
AISHLEEN KAUR
(ANONYMITY ORDER NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. J. Wilson, Refugee and Migrant Centre
For the Respondent: Mr. P. Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 10 August 2023

DECISION AND REASONS

1. This is an appeal by the Appellants against a decision of First-tier Tribunal Judge Borsada, (the "Judge"), dated 13 January 2023, in which he dismissed the Appellants' appeals against the Respondent's decision to refuse to grant further

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leave to remain. The Appellants had applied for further leave to remain on Article 8, family life grounds.

2. Permission to appeal was granted by Upper Tribunal Judge Norton Taylor on 21 March 2023 as follows:

> "1. The first and second appellants are husband and wife and are citizens of India. The third appellant is an Indian citizen and is the son of the first and second. It is said that the fourth appellant, also the child of the first and second, is a British citizen, although if that were the case I cannot see how she could have been an appellant in these proceedings (it might be that she had previously been stateless, but had been registered as a British citizen during the course of the proceedings - I am assuming that this is the correct position for the purposes of my decision on permission).
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> 2. The appellants' Article 8 claim was based on the assertion that it would be unreasonable for the third and, in particular, the fourth appellants (born in 2012 and 2017 respectively) to accompany their parents to India. The third appellant arrived in United Kingdom with his parents in 2016 and was not a qualifying child at the time of the judge's decision. By virtue of her British citizenship, the fourth appellant was a qualifying child.
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> 3. The judge concluded that it would not be unreasonable for the fourth appellant to leave the United Kingdom: [9]-[12], [14]. Relevant matters were taken into account by the judge in her overall assessment. However, as contended in the grounds of appeal, it is arguable that the judge failed to have any, or any adequate, regard to the significance attached to British citizenship (even if that status had been acquired during the course of proceedings in the First-tier Tribunal)."

The hearing

3. Mr. Singh attended the hearing. At the outset of the hearing, Mr. Lawson stated that the Respondent agreed that the decision involved the making of a material error of law. He accepted that the decision should be set aside. He asked me to remake the decision, allowing the Appellants' appeals on Article 8 grounds. He submitted that it was not the Respondent's policy to remove British citizens from the United Kingdom, and that therefore, given that the fourth Appellant was a British citizen child, the appeals fell to be allowed. He submitted that this was especially the case given that the third Appellant had been in the United Kingdom for seven years as at the date of this hearing, and was therefore also a qualifying child for the purposes of section 117B(6). He apologised for not being able to communicate this to the Appellants prior to the day of the hearing.

4. Given this concession, I set aside the decision of the Judge, and remade the decision allowing the Appellants' appeals.

Error of law

5. The Judge considered the fourth Appellant's British citizenship at [12] of his decision as follows:

> "As to the fourth appellant's British citizenship: it is not clear and no evidence has been provided to me that clearly indicates her foreign national status would prevent her from living a normal life even as a foreign national in India and/or being properly educated. It is not clear that the fourth appellant could not in the fullness of time

obtain Indian nationality and there is nothing in the Indian Citizenship Act 1955 which has been quoted to me that would indicate that as a resident of Indian descent this would not be possible or that she would forever after be prevented from naturalising. No clear evidence was provided either that the fourth appellant would not be able to apply for long term residence in India as an ex-patriot i.e. there was no clear evidence that this would not be possible. If such evidence had been made clearly available to the Tribunal then this may have been such as to potentially alter the considerations in this appeal but as of to date, it has not. Similarly, if evidence had been provided that indicated that she would be prevented from accessing the same/similar benefits of citizenship in India because of her foreign national status, then again this may have altered the considerations in this appeal."

6. I find, as set out in the grounds, that there is no consideration of the fourth Appellant's British citizenship in the context of whether or not it is reasonable for her to leave the United Kingdom, but rather the Judge focuses on her "foreign national status" in India. There is no consideration of the implications for the fourth Appellant in relation to the potential loss of this citizenship, given that she will not be able to hold dual nationality with India.

7. I find that it is an error of law not to consider the fourth Appellant's British citizenship when considering whether it would be reasonable for her to leave the United Kingdom. There is no consideration of it on this basis, rather there is only a consideration of her status in India as a foreign national. Given the basis of the Appellants' appeals, this failure is material as it goes to the reasonableness of the fourth Appellant leaving the United Kingdom which materially impacts on the position of her parents and sibling.

Remaking

8. As conceded by Mr. Lawson, the Appellants' appeals fall to be allowed on the basis that the Respondent does not consider it reasonable to remove the fourth Appellant, a British citizen, from the United Kingdom. Further the third Appellant is now also a qualifying child for the purposes of section 117B(6). Given this concession, it is not necessary for me to consider the proportionality of the Respondent's decision in any detail as it has been accepted by the Respondent that it is not proportionate.

Notice of Decision

9. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.

10. I remake the decision allowing the Appellants' appeals on human rights grounds, Article 8.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
10 August 2023