



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

Appeal Number: IA/49280/2013
IA/49281/2013

IA/49283/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 5th September 2014**

**Determination
Promulgated
On 10th September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR SATWINDER VIR SINGH (1)
MRS BALJIT KAUR (2)
MR KULWINDER SINGH (3)
(NO ANONYMITY DIRECTION MADE)**

Respondents

Representation:

For the Appellant: Mr P Nath, Home Office Presenting Officer

For the Respondent: Ms R Baruah, Counsel, instructed by G Singh Solicitors

DETERMINATION AND REASONS

Introduction

1. Although this is an appeal by the Secretary of State I will refer to the parties as they were before the First-tier Tribunal.

2. The appellants are all citizens of Indian. The first appellant was born on 31st January 1971, the second appellant on 15th April 1969 and the third appellant on 8th May 1996. The first and second appellants are husband and wife, and the third appellant is their son. The first and second appellants arrived in the UK in March 2004 as visitors. The third appellant arrived as an accompanying child in 2006. They all overstayed their visas.
3. The appellants applied to regularise their stay on 5th March 2013. This application was refused on 12th July 2013 without a right of appeal. The appellants issued judicial review proceedings, and as a result of a consent order another refusal with a right of appeal was issued on 6th November 2013. The appeal against this decision was heard on 10th March 2014. It was allowed under Article 8 ECHR by First-tier Tribunal Judge JC Hamilton in a determination promulgated on the 3rd July 2014, although only to the extent it was said that it would be unlawful to remove the family until the third appellant had finished his A level studies at the end of the academic year at which point removal of the whole family could lawfully take place.
4. Permission to appeal was granted by Judge of the First-tier Tribunal Kelly on 22nd July 2014 on the basis that it was arguable that the First-tier judge had erred in allowing the appeal on the basis of Article 8 ECHR outside of the Immigration Rules as in accordance with Zoumbas v SSHD [2013] UKSC 74 the third appellant did not have a right to be educated in the UK and because it was reasonable to expect the third appellant to follow his parents, see EV (Philippines) and Others v SSHD [2014] EWCA Civ 874.
5. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions

6. Mr Nath relied upon the grounds of appeal. These contended as follows: that as Judge JC Hamilton had found that the appellants could not succeed under the Immigration Rules relating to Article 8 ECHR he should not have allowed the appeal under Article 8 ECHR outside of these Rules as he did not identify any exceptional circumstances for so doing. Further the appeal should not have been allowed in this way as by the time it was promulgated the appellant was no longer a child and had finished his examinations.
7. I asked Mr Nath to point to the paragraphs in the determination of Judge JC Hamilton in which there were legal errors, but he could not do so. I also asked Mr Nath to explain the public interest in bringing an appeal when the effect of the determination was that the appellants were all removable at the date the appeal was lodged, but again he could not explain this. This particularly concerned me as it seemed to be a waste of public money to bring an appeal where even if there were errors they could no longer be material at the time of lodging the appeal.
8. I told Ms Baruah that I did not need to trouble her for submissions as I was satisfied that there were no errors of law in the determination of Judge JC Hamilton. I set out my reasons for this decision below.

9. Ms Baruah then said that she wanted to appeal on the appellants' behalf. I refused to accept this oral application, which was also opposed by Mr Nath.
10. Ms Baruah handed in a document which was entitled "response pursuant to Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008". However she accepted that she had not complied with the Asylum, and Immigration Tribunal (Procedure) Rules 2005 at paragraph 24 which required such an application to be made in writing to the First-tier Tribunal, and given that this was more than five days after the date the determination of Judge JC Hamilton was deemed to be received, also needed grounds justifying the special circumstances why it would be unjust not to extend time. The Upper Tribunal only has power to entertain an application for permission to appeal if the First-tier Tribunal has received this application and either refused it or it has not been admitted, see paragraph 21(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Conclusions

11. Judge Hamilton determined the human rights appeal correctly in making findings as of the date of hearing. At the date of hearing the third appellant was a minor and in full time education finishing his A levels. It is not legally correct to say that he should have changed his determination to reflect the situation when it was written or promulgated.
12. Judge Hamilton was fully and correctly aware of the third appellant's stage of education and when it would end as he had before him a letter from the Head of Year 13 at the third appellant's school (paragraph 9 of the determination). At paragraphs 31, 33 and 41 of his determination Judge Hamilton made findings that the third appellant had special needs and particular assistance had been put in place for him at his school and that it would not be right for him to be removed prior to the very imminent end of this stage of his education, particularly as this would deny him the opportunity to complete his current studies and obtain his qualifications as this could not be replicated abroad. He thus concluded that it would not be proportionate to remove the third appellant prior to the imminent conclusion of his sixth form studies as he was a child who was not responsible for his situation, and indeed was the victim of his parents' abuse of the immigration laws.
13. Judge Hamilton directed himself properly with reference to Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00640 and other cases, and was aware that he should only consider the appeal outside the Immigration Rules if there were arguably good grounds for doing so, see paragraph 21 of his determination. He acknowledges that the starting point is that it is in the best interests of children to be removed with their parents if this is the correct decision in relation to those parents, see paragraph 26 in which he refers to Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 00197. He is clearly aware throughout his determination that none of the appellants is entitled to be in the UK or receive services here.

14. I find that Judge Hamilton makes a very limited and legally proper decision in the appellants favour that they should not be removed prior to the end of the third appellant's schooling in June 2014, making the best interests of the child (who in this case had lived in the UK for 8 years and whom he finds has a strong private life with friends and social attachments in this country - see paragraph 40 of the determination) a primary consideration whilst giving proper weight to the importance of a consistent system of immigration control, see paragraphs 38 and the decision at paragraph 48.
15. I find no legal errors in the determination of Judge JC Hamilton.

Decision

16. The decision of the First-tier Tribunal did not involve the making of an error on a point of law.
17. The decision of the First-tier Tribunal allowing the appeal under Article 8 of the ECHR is upheld.
18. It is to be noted that the decision of the First-tier Tribunal was only that removal prior to completion of the third appellant's sixth form studies would be a breach of Article 8 ECHR. These studies have now been completed, and thus the effect of the determination is that the appellants are now lawfully removable.

Deputy Upper Tribunal Judge Lindsley
8th September 2014