



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

Appeal Number: IA/23629/2014
IA/23632/2014
IA/23630/2014
IA/23631/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On 3 July 2015

Date Sent: 13 July 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL KAMARA

Between

**MRS CARMEN PIEDAD VASQUEZ PINA
MR CESAR RAMON GODOY ORTIZ
MASTER ALBERT STEVE BELTRAN VASQUEZ
MISS RUTH PAMELA GODOY VASQUEZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Harris, counsel instructed by Farani Javid Taylor LLP
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellants appeal the decision, promulgated on 9 February 2015, of First-tier Tribunal Judge Wright, hereinafter referred to as the FTTJ.

Background

2. The first appellant entered the United Kingdom, unlawfully, on 19 June 2002. She gave birth to the third appellant, in this country, on 10 November 2005. At some point during February 2007, the second appellant entered the United Kingdom unlawfully. The fourth appellant, born on 7 July 2011, is the child of the first and second appellants. On 10 January 2012, the first appellant sought leave to enter the United Kingdom outside the Immigration Rules, with the remaining appellants as her dependants. That application was refused on 19 May 2014 owing to the ineligibility of all parties for leave to remain under the Rules on the basis of their nationality and lack of settled immigration status. In addition, it was not accepted that the adult appellants had lost ties to their respective countries. It was considered reasonable for the minor appellants to leave the United Kingdom with their parents and continue their family life in either Ecuador or Paraguay.
3. During the course of the hearing before the First-tier Tribunal which took place on 23 January 2015, the first appellant, her sister and the second appellant gave evidence. It transpired that the first appellant's sister suffered from HIV infection and the remainder of the first appellant's immediate family resided in Ecuador. The second appellant's immediate family reside in Paraguay bar one sister who lives in the United Kingdom. The third appellant's father was no longer living in the United Kingdom.
4. Judge Wright found as follows:
 - a. The appellants could not meet any of the requirements of the Immigration Rules.
 - b. That it would not be unreasonable to expect the third appellant, who had resided in the United Kingdom for 7 years since birth, to leave the United Kingdom as part of his family unit.
 - c. The removal of the appellants would not be disproportionate to the legitimate aim of a coherent and fair system of immigration control.

Error of law

5. Permission to appeal was granted by FTTJ PJM Hollingworth, who considered that it was arguable that the judge failed to consider whether there would be a breach of Article 8 independently of the Rules. It was also said that it was arguable that the judge had "*provided insufficient analysis of the application of the criteria in Razgar*" and that the criteria in section 117 had not been adequately applied.
6. The Secretary of State responded to the grant of permission on 27 April 2015. In essence, the appeal was opposed. It was argued that the FTTJ found no compelling circumstances and had regard to case law and section 117 of the 2002 Act.

7. At the outset of the hearing, Mr Jarvis handed up the cases of EV (Philippines) and others v SSHD [2014] EWCA Civ 874; AM (s117B) Malawi [2015] UKUT 0260 (IAC) and Nasim and others (Article 8) [2014] UKUT 00025 (IAC).
8. Mr Harris placed little reliance upon the grounds of appeal, which he did not draft. Instead he placed his emphasis on what he believed were shortcomings in the decision in relation to the circumstances of the third appellant who had been residing in the United Kingdom for 7 years since birth. He made little of the first ground of appeal. In essence, Mr Harris argued that the judge failed to assess the third appellant's ties to the United Kingdom independent of the rest of the family.
9. He referred me to Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 00197 (IAC), arguing that it was not impossible for a child aged 7 to succeed. Mr Harris accepted that the judge considered relevant matters at various parts of the decision but that he had concentrated on the adult appellants in his consideration of Article 8 outside the Rules before looking at the position of the third appellant and this was the wrong way round.
10. For the respondent, Mr Jarvis acknowledged that the third appellant was the only one of the four who could engage with the Rules but that the judge recognised that the decision concerned the third appellant even if there appeared to be a lack of engagement with his circumstances.
11. I consider that the FTTJ appropriately directed himself within paragraph 36, in relation to the case law, specifically Azimi-Moayed. There are multiple references to the position of the the third appellant throughout the reasons section of the decision as well as in the parts of the decision setting out the evidence before him. It is plain to me that the FTTJ had in mind the strength of the third appellant's private life, which was, in reality, the main issue in the appeals.
12. The judge considered the third appellant's circumstances in line with paragraph 276ADE(1)(iv) of the Rules. He acknowledged the third appellant's length of residence and accepted that his best interests were to remain in a family unit with the other appellants but that his interests were capable of being outweighed by the cumulative effect of other considerations. The FTTJ also records that the third appellant received regular telephone calls from his natural father who lived in the USA, that he was at school and that he spoke both English and some Spanish. Other than a reference to having friends in the first appellant's witness statement, the FTTJ set out all the relevant components to the third appellant's private life. I also find that the focus of the FTTJ's decision was on what would happen to the minor appellants in either Paraguay or Ecuador. In view of the fact that the third appellant is still only aged 8, is only receiving primary education,

that there were no compelling circumstances relating to the appellants or the third appellant in particular and the unlawful nature of the adult appellants' residence in the United Kingdom, I consider that there was only one outcome in this case.

13. In these circumstances I am not satisfied that there are errors of law such that the decision ought to be set aside to be remade.

14. The decision of the FTTJ stands.

Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

No application for anonymity was made and I saw no reason to make such a direction.

Signed

Date: 11 July 2015

Deputy Upper Tribunal Judge Kamara