



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number IA/26215/2014
IA/26216/2014
IA/26217/2014
and IA/26218/2014

THE IMMIGRATION ACTS

Heard at Centre City House
On 28th May 2015

Decision and Reasons Promulgated
On 10th June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**MOHAN SINGH
SUKHJINDER SINGH
ESHA KAUR GHAG
ABHIJOT SINGH GHAG**

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Singh (Counsel, instructed by Charles Simmons Immigration Solicitors)

For the Respondent: Mr N Smart (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Smith who dismissed their appeals against the Secretary of State's decision to refuse their applications for leave to remain outside the Immigration Rules. The applications were made in June 2012 and initially refused without removal directions thereby denying the Appellants an in-country right of appeal. That was finally obtained, after other legal proceedings, on the 6th or the 30th of June 2014.
2. The Appellants immigration history and the basis of the applications is set out in full in the Tribunal papers and it is not intended to repeat it here. In summary the First Appellant came in 1997 and failed to leave after the dismissal of his asylum claim. The Second Appellant came in May 2005 and overstayed after the expiry of her visit visa. The First and Second Appellants married in a Sikh ceremony in 2005 and have 2 children who are the other Appellants, the Third Appellant was born in the UK on the 15th of December 2006.
3. For the reasons given in the decision it was found that the Appellants did not succeed under the Immigration Rules and their position was considered under article 8 with reference to section 117B of the Nationality, Immigration and Asylum Act 2002, the best interests of the children and the case of EV (Philippines) [2014] EWCA Civ 874, amongst others. The Judge clearly focussed on the position of the children and expressly considered the position of the Third Appellant given that he had been born in the UK more than 7 years before the appeal.
4. The Appellants sought permission to appeal to the Upper Tribunal in grounds of the 17th of September 2014. Permission was refused by the First-tier Tribunal but granted following submission of new grounds to the Upper Tribunal of the 20th of November 2014. The grant of permission by Deputy Upper Tribunal Judge Bruce was on the basis that the First-tier Tribunal may have erred by conflating proportionality with reasonableness and had considered the former but not the latter.
5. At the hearing the Appellants were represented by counsel. The submissions made by both representatives are set out in the Record of Proceedings and referred to where relevant below. A central part of the Appellants' submissions was that the Judge had placed too great an emphasis on the First Appellant's refusal to name the place where he was working illegally and that infected the reasoning applied in the decision. It was argued that the best interests of the children had not been fully considered and that further guidance was needed.
6. It is clear from the decision in EV (Philippines) that the immigration history of the parents is a highly relevant factor in assessing whether the removal of a child who has been in the UK for more than 7 years can be justified. Neither that case, nor Zoumbas [2013] UKSC 74, can be said to assist the Appellants in this case and the Judge was clearly entitled to have regard to the behaviour of the First and Second Appellants in assessing the circumstances of the Appellants overall and to have regard to the fact that they would be removed as a family unit.

7. There was a question raised by the Home Office whether the question of the reasonableness of the children's removal arose as paragraph 276ADE was not engaged. By paragraph 400 of the Immigration Rules in cases where removal is being considered article 8 private life considerations are to be assessed against paragraph 276ADE. On that basis it would be appropriate, by analogy to consider the reasonableness of the removal.
8. Whilst there is some difference between proportionality and reasonableness that is limited and it has not been shown in this appeal that there is any practical difference in the considerations that apply. The differences were discussed in the case of ex p. Daly [2001] UKHL 26. From the observations in that case it appears that the view of their lordships was that the proportionality assessment in the context of the ECHR would be more demanding than a reasonableness review. In effect if the decision could be said to be proportionate it would be a reasonable decision. As Lord Steyn observed at paragraph 27, "Most cases would be decided in the same way whichever approach is adopted."
9. There is nothing in this case to suggest that there would be any difference in the result whichever approach were to be used and for practical purposes this is a distinction without a difference. In order to challenge a proportionality finding it would have to be shown that the Judge had acted irrationally, Mukarkar [2006] EWCA Civ 1045. That is not alleged and is not made out.
10. The addition of a consideration of reasonableness to the question of the removal of a child who has been in the UK for over 7 years must contain an assumption that a child will have settled, received education and, as the get older, become more involved in the wider community and with an extended family. More is needed than the sort of life that one would expect to be established in the time that the rule contemplates otherwise anyone who had lived a normal life in the UK for 7 years or more would succeed.
11. The fact is that the First and Second Appellants had chosen to ignore the rules that apply to them and had obtained for themselves and their children advantages to which they are not entitled including health care and education. The family would be removed together and the parents can assist the children with integration into Indian society and education. The situation they find themselves in is of their own making and could have been avoided if they had returned to their country of nationality when required or at any point in the intervening period.
12. The Judge referred to the First Appellant's refusal to name his place of work at paragraphs 11 and 27. While the First Appellant was the subject of adverse comments in paragraph 27 it cannot be said that this was an issue that unduly infected the decision. The Judge clearly considered all relevant factors and the evidence that had been presented. The decision reached was clearly open to him on the evidence presented and for the reasons given by him. Accordingly I find that the

decision contains no error of law and it stands as the disposal of the Appellants' appeals.

CONCLUSIONS

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

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing these appeals I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal Parkes(IAC)

Dated: 9th June 2015