



IAC-AH-LEM-V1

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

Appeal Numbers: IA/48899/2014  
IA/48927/2014  
IA/48940/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 September 2015**

**Decision & Reasons Promulgated  
On 5 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

**MR EVGENY YARGUNKIN (FIRST APPELLANT)  
MISS ANASTASIA SAFONOVA (SECOND APPELLANT)  
MS AVRORA ELIZABETH SAFONOVA (THIRD APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr T Gaisford (Counsel instructed by AKL Solicitors)

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the appellants who are citizens of Russia against a decision by the First-tier Tribunal (Judge Norton-Taylor) who dismissed their appeals on immigration and human rights grounds in a decision and reasons promulgated on 22 April 2015. The first and second appellants made applications for leave outside of the Rules refused on 25 January

2010 and their appeals dismissed on 11 February 2010. A further application was made following the birth of the third appellant on 4 November 2012. The applications were refused on 18 November 2014.

2. Their appeals came for hearing before the First-tier Tribunal on 21 April 2015. The first and second appellants were husband and wife and the third appellant is their daughter. The first and second appellants entered the UK with entry clearance as seasonal workers which expired on 24 November 2006. Thereafter the first and second appellants were overstayers. Their daughter was born on 4 November 2012 and thereafter the appellants made further representations based on Article 8.
3. The Tribunal considered Article 8 outside of the Rules, it being accepted by the appellants' representatives that there was no evidence to support a claim under Appendix FM. Family life outside the Rules would also fail given that there would be no interference with the family life that they enjoyed together and they would be removed to Russia as a family unit.
4. The Tribunal considered the relevant case law focusing on consideration of Article 8 outwith the Rules, together with Section 117 of the Nationality, Immigration and Asylum Act 2002 as amended. [11- 15]
5. The Tribunal set out the relevant burden and standard of proof and acknowledged that whilst there was no proper respondent's bundle produced, it had notices of immigration decisions and Reasons for Refusal Letters together with the bundle for hearing from the appellants. The evidence given by the first and second appellants was set out in the determination together with submissions.
6. The Tribunal made its findings from paragraph 26-33. It concluded that there was no evidence of any significant ties or private life on the part of the first and second appellants in the UK. Both appellants had familial ties in Russia where they would have family support on return and both were young, willing and able to work. The Tribunal dealt with the third appellant Avrora at paragraphs 33 - 36.

### **Permission to Appeal**

7. Permission to appeal was granted by First-tier Tribunal Judge McDade on 22 June 2015. The grant finds that the Tribunal's apparent omission to consider Section 55 of the Borders, Citizenship and Immigration Act 2009 ("section 55") arguably constituted an error of law.
8. The respondent in a Rule 24 response opposed the appeal confirming that the Tribunal referred to the "best interests of the child" as a primary consideration at paragraphs 17, 33 and 36. There was no other outcome that could have been reached by the Tribunal.

### **Error of Law Hearing**

9. At the hearing before me Mr Gaisford confirmed that he was new to the appeal and had not drafted the grounds. He submitted that the best interests of the child had been overlooked in terms of Section 55 and under Article 8(2) ECHR. The essential omission was consideration of the fact that the child was not registered as a Russian citizen and there was no certainty as to how or on what basis she could be removed from the UK and returned to Russia. The Tribunal's failure to consider the child's immigration status specifically had an impact on its consideration of Section 55 issues. There had been no direct consideration by the Tribunal of the child's immigration status notwithstanding the Tribunal's consideration and assessment of the respective positions of the parents in the UK.
10. Ms Isherwood opposed the appeal. There was no evidence, objective or subjective, produced in support of the suggestion that the child would not be able to return to Russia and/or obtain Russian nationality. The appellants had been represented throughout and there had been no reference made to the issue of the child's immigration status whatsoever. Ms Isherwood submitted that the grounds amounted to a disagreement with the decision and that both the respondent and the Tribunal had given proper consideration to the best interests of the child based on the evidence produced by the appellants.

### **Discussion and Conclusions**

11. At the end of the hearing I confirmed my decision that the grounds disclosed no material error of law in the decision.
12. My reasons are as follows. The Tribunal properly and fully considered all of the relevant issues before it. Whilst no specific reference was made to Section 55 of the 2009 Act, it is clear from the decision that the Tribunal did consider the third appellant and where her best interests lie having regard to the evidence that was before the Tribunal. I am satisfied that there was no reference either from the appellants' evidence or any independent objective evidence to any difficulties faced by the third appellant on return to Russia. There can be no criticism of the Tribunal for failing to consider a matter that was not raised before it. Furthermore there is no evidence adduced before this Tribunal on behalf of the third appellant to support this claim.
13. The determination has fully taken into account that all of the factors relevant to consideration of where a child's best interests lie including her age, health, education, language, contacts, ties, etc.
14. Accordingly I am satisfied that the grounds disclose no material error of law and that such objections raised amount to a disagreement with the decision made and an attempt to introduce new matters that were clearly not in evidence before the Tribunal. There could be no other outcome to

the decision made by the Tribunal and it is arguable that in this matter permission ought never to have been granted.

**Notice of Decision**

The determination discloses no material error of law and the decision shall stand.

No anonymity direction is made.

Signed

Date 2.10.2015

Deputy Upper Tribunal Judge G A Black

**TO THE RESPONDENT**  
**FEE AWARD**

There will be no fee award.

Signed

Date 2.10.2015

Deputy Upper Tribunal Judge G A Black