



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/06967/2015**

**Appeal Numbers:**

**IA/06968/2015**

**IA/06970/2015**

**IA/06972/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 18<sup>th</sup> May 2016**

**Decision &  
Promulgated**

**On 6<sup>th</sup> June 2016**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

**Between**

**MRS HARPREET KAUR (FIRST APPELLANT)  
MR BIKRAMJIT SINGH (SECOND APPELLANT)  
MISS JASMEEN KAUR (THIRD APPELLANT)  
MISS SIMRAN KAUR (FOURTH APPELLANT)  
(ANONYMITY ORDER NOT MADE)**

Appellants

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms C Bexson, Counsel

For the Respondent: Mr S Walker, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellants are nationals of India whose appeals were dismissed under the Immigration Rules and under Article 8 ECHR by First-tier Tribunal Judge Lewis in a decision promulgated on 23<sup>rd</sup> October 2015.
2. The grounds of application were submitted on the basis that the decision contained material errors of law in relation to Article 8 ECHR. Reference was made to **ZH (Tanzania) [2011] UKSC 4** in which the primacy of the consideration of the best interests of the child needed to be made clear in emphatic terms. That had not been done in this case and the judge had only mentioned Section 55 of the 2009 Act as an “afterthought”.
3. Furthermore the judge had failed to properly apply Section 117B(6) of the 2014 Act.
4. Permission to appeal was granted on the basis that it was arguable the judge had failed to give the best interests of the children the prominence required by Section 55 albeit that those interests would not necessarily be determinative.
5. A Rule 24 notice was lodged by the Secretary of State. It was said that the grounds were nothing more than a criticism of the structure of the decision and that the judge had undertaken a holistic analysis of all the issues. He had correctly referred to the principles enunciated in **Azimi-Moayed and Others (Decisions affecting children; onward appeals) [2013] UKUT 00197 (IAC)**. Furthermore the judge had provided cogent reasons why the requirements of 276ADE had not been made out and had undertaken a correct analysis of Article 8 outside the Rules in terms of **Razgar**.
6. Thus the matter came before me on the above date.
7. For the Appellants Ms Bexson said that the judge had applied too much weight to the immigration history of the parents. It was not sufficient just to mention the obligations in respect of the child. These had been presented as an afterthought. The best interests of the child had been dealt with in a summary fashion and only after the proportionality exercise had been carried out. I was asked to find there was an error in the decision and to set the decision aside and allow the appeal outright.
8. For the Secretary of State Mr Walker relied on the Rule 24 notice. The judge had given very careful consideration to all aspects of the evidence – reference was made to paragraph 52 of the decision. I was asked to dismiss the appeal.
9. I reserved my decision.

### **Conclusions**

10. What the judge did not do was to state that the best interests of the children was the starting point in his decision and there is possibly some

merit in the observation contained in the Grounds of Appeal that their best interests as a primary consideration was not made clear in as emphatic terms as it might have been. However the judge noted that the Appellants' cases were essentially put on the basis that the fourth Appellant qualified for leave under the Immigration Rules pursuant to paragraph 276ADE(iv) by reason of the length of time that she has been here. The judge noted that the Appellants' applications were made just after the eldest child's 7<sup>th</sup> birthday.

11. Having said that, the judge indicated very early on in his decision at paragraph 15 that the circumstances of the children – either individually or collectively – were not such as to outweigh the countervailing factors of the parents' immigration history. He clearly had the best interests of the children as a primary consideration in mind and he went on to refer to **Azimi-Moayed**. He found that while the children only had a very basic understanding of Punjabi and otherwise spoke English, the extent of their Punjabi language skills had been underplayed by their parents (paragraph 19). The judge took account of the fact that the child must not be blamed for matters for which they were not responsible – see **Zoumbas [2013] UKSC 74**. He then turned to the history of the adult Appellants and referred to the disingenuousness of some of the evidence and the lack of candour in presenting witness statements given that the application was made only after the fourth Appellant's 7<sup>th</sup> birthday (paragraph 43). There is no challenge to that observation. The judge considered the applicable Immigration rules and was entitled to conclude as he did.
12. When he came to consider Article 8 ECHR he had to follow what was said in **ZH** in that the primacy of the best interests of the children had to be made clear. In my view he did so in paragraph 52. He said that the interests of a child are a primary but not paramount consideration. He found that the best interests were primarily served by remaining with their parents and did not find that there was anything in particular in the prospect of returning to India that would undermine the best interests for either child. He considered Part 5A of the Nationality, Immigration and Asylum Act 2002 in some detail (paragraph 53). He carried out an appropriate balancing act in Article 8 referring to the public interest of maintaining effective immigration control.
13. Contrary to the Grounds of Appeal he was fully aware that under Article 8 the interests of the children were a primary consideration and took that factor fully into account in assessing the proportionality of the decision to remove the family.
14. Given the judge's clear findings and that he plainly did take into account the best interests of the children as a primary consideration there is no error of law in the decision which must stand.

## **Decision**

15. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
16. I do not set aside the decision.
17. No anonymity order is made.

Signed

Date **6<sup>th</sup> June 2016**

Deputy Upper Tribunal Judge J G Macdonald