



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/07907/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Bradford, Phoenix House**

**Decision &  
Promulgated**

**Reasons**

**On 16 May 2016**

**On 20 May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAFFER**

**Between**

**SARANGKUMAR AMRUTLAL PATEL  
(NO ANONYMITY ORDER MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Miss Thomas a Legal Representative

For the Respondent: Mr Diwnycz a Home Office Presenting Officer

**DECISION AND REASONS**

Background

1. The Respondent refused the Appellant's application for leave to remain on 13 February 2015. His appeal against that decision was dismissed by First-tier Tribunal Judge Dickson ("the Judge") following a hearing on 8 July 2015. This is an appeal against that decision.

The grant of permission

2. Designated Judge Appleyard granted permission to appeal (17 February 2016) on the grounds that it is arguable that the Judge failed to consider the best interests of the children in the context of the totality

of the evidence, may have relied on old evidence, and may have erred in the approach to the evidence on the children's language ability.

### The Judge's findings

3. The Judge noted [1-3] that the Appellant was born on 4 April 1978 and is married. His children were born on 14 January 2007 (R) and 23 August 2011 (V). They are all citizens of India. The Appellant claims to have entered the United Kingdom clandestinely in 2002. On 3 September 2005 his wife entered the United Kingdom with leave to enter as a visitor valid until 12 February 2006. The Appellant submitted 2 human rights applications in 2007 that were eventually dismissed in the circumstances set out below [4]. Appeal rights were exhausted on 28 February 2008.

4. The Judge referred to Judge Sarsfield's determination promulgated on 14 February 2008 and noted that it was found that;

[26] "The Appellant entered the United Kingdom without valid entry clearance with the assistance of an agent via Switzerland. The Appellant worked in the United Kingdom illegally. The Appellant had not regularised his status in the United Kingdom and had flagrantly disregarded the immigration rules. The Appellant deceived the United Kingdom authorities and his employer and his wife was an over stayer. The Immigration Judge considered that his family and private life could be continued in India and there would be no obstacles to the Appellant returning to India with his family."

5. The Judge noted that;

[27] "Even after the determination, the Appellant took no steps to leave the United Kingdom with his family... The Appellant continued to disregard the immigration rules as well as continuing to work illegally. He was encountered with his wife working illegally... On 25 January 2013."

[35] "...on one occasion the Appellant acted as a witness in some criminal proceedings and helped to bring a miscreant to justice. I accept that the Appellant, his wife and children are well-established and live in the Wakefield area. Their children are making the most of their opportunities and are making good progress at their respective schools."

[36] "the Appellant and his wife have shown a quite blatant disregard of the immigration laws. The Appellant made no effort to regularise his status from 2002 to 2007 and then continued to work illegally..."

[37] "Mrs Patel has in my view deceived the entry clearance officer. Although she had a return ticket to satisfy the immigration officer, Mrs Patel had no intention of returning to India and indeed she

married the Appellant on the following day after arriving in the United Kingdom...”

[40] “I do not consider I have been given a credible account of the circumstances of the family of the Appellant and his wife in India although their respective parents may now be living in the United States. Children are adaptable and the children do in my view have some knowledge of Gujarati. They would easily be able to pick up Gujarati on return though the Home Office letter refers to various schools in India where the medium of teaching is in English.”

[41] “...the Appellant will be able to seek employment on return and furthermore he will initially have some family assistance and he and his family return to India as a family unit.”

[42] “With regard to the report of Lynn Coates, I accept that the children will prefer to stay in the United Kingdom where they were happy in their respective schools. This is not the only consideration and the children are adaptable and would be able to reintegrate into Indian society on their return as well as learning Gujarati and any other Indian language... If the family does return to India it may be that the children’s progress and development will be affected for some time until they readjust. The children will however have the benefit and support of their parents and other family members and friends in India.”

[43] “it is reasonable to expect the children to leave the United Kingdom with their parents... There would be no significant obstacles to the Appellant and his family reintegrating into India even though they have not been in that country for some years. I accept that the children have never been to India but the Appellant and his wife spent a significant period of time in India with their friends and family prior to coming to the United Kingdom.”

[44] “with regard to the Article 8 claim I accept that the Appellant’s removal will interfere with his private and family life and indeed the private and family life of the whole family. I have also taken into account Section 117B which refers to the maintenance of effective immigration controls being in the public interest. The Appellant and his wife may have some knowledge of English and be able to speak it although they did use a Gujarati interpreter during their evidence. The Appellant and his wife have been in United Kingdom without leave and unlawfully for many years and little weight can be given to their relationship and private life at a time when they have been in United Kingdom illegally... I have reached the conclusion that the Appellant’s removal would be both necessary and proportionate.”

#### Appellant’s position

6. Ground 1 is that the Judge failed to consider the best interests of children. The Judge failed to consider the anxiety through the children’s

lack of language skills in India will have upon them. The Judge did not have evidence as to how long the readjustment process would last. In oral submissions it was indicated that R fulfilled the immigration rules as she was over the age of 7 and it would be unreasonable to require her to leave.

7. Ground 2 is that the Judge did not consider the evidence in the round. The Judge did not consider the evidence that the English speaking schools are private and charge tuition fees and that given the lack of education and work experience of the Appellant and his wife they would struggle to find a job education in addition to food accommodation and essentials. The Judge failed to take into account that the Appellant and his wife were too old for many marginally better paid jobs and has not taken into account that the children would not be able to gain admission to schools given their lack of language ability in Gujarati and Hindi. The Judge failed to take into account that the children require a complete education rather than just lessons at improving English. The Judge failed to take into account that the money the Appellant borrowed from his father came from other relatives and had to be repaid. It was submitted orally that the Judge did not consider the social workers report. There were differences between the cultures and language here and in India.
8. Ground 3 is that the Judge relied on old evidence from 2008 whereas the heart of this case relies on circumstances since then.
9. Ground 4 is that the Judge did not consider Article 8 in the round. He did not consider the importance of the children's adoptive grandparents or the impact on them and their children of the family's removal. The Judge noted that the children's biological grandparents live in the USA but took no account of the fact that the relatives identified in India are virtual strangers with whom they would have difficulty communicating. The Judge placed inadequate weight on the ties they have with family and friends here. It was submitted orally that the only family remaining in India is an uncle.
10. Ground 5 is that the Judge erred in his assessment of credibility. It is unclear whether the children have little or no knowledge of Gujarati or that they mostly speak English and forgot Gujarati. Inappropriate weight has been placed upon the parent's conduct and the children should not be penalised for their behaviour.

#### Respondent's position

11. The Respondent asserted in her reply (24 February 2016) in essence that the Judge directed himself appropriately, carefully considered the best interests of the children, gave significant scrutiny to the expert's report, and was entitled to find that the children were adaptable, had knowledge of Gujarati, and would be returning as a family unit with the benefit of support from their parents and other

family members. The Judge carried out the appropriate assessment and the grounds are merely a disagreement with the decision.

12. It was submitted orally that the children could have returned when the application was refused whatever language they spoke. They can be integrated in India. The case boils down to what the parents want. The best interest of the children were considered throughout.

### Discussion

13. There is no merit in ground 1. The Judge plainly considered the children's best interests as remaining with their parents as he plainly identified that the family would be leaving together (see above 5 [41]). He looked at their individual circumstances in detail and gave detailed consideration to their schooling and life here. He was fully aware of the concern regarding their language skills. However, he determined they would be able to learn the language used locally easily [40] which would inevitably reduce any possible theoretical anxiety in that period. The parents are of course able to speak Gujarati as they use that at the hearing and could ameliorate any possible anxiety by teaching the children that language now. Their failure to do so is just one of the many examples of their mendacity in that irrespective of their appalling immigration position and deception they have placed their children deliberately at a disadvantage. The Judge however was entitled to conclude that despite that abject failure in parenting, the children would be able to learn the language used locally easily. The Judge did not need to have a timetable on how long readjustment would last.
14. The Judge was fully aware that R had been here for over 7 years. That does not mean that she met paragraph 276ADE (iv) of the immigration rules. In addition to the age requirement she has to show that it would not be reasonable to require her to leave the United Kingdom. The Judge gave multiple sustainable reasons for finding that it would be reasonable to require her to leave which included that she could be housed, educated, and supported by her parents and extended family.
15. There is no merit in ground 2. When I looked at the evidence produced in relation to the schooling in India, it was clear that the only evidence in fact related to one school. Miss Thomas was unable to identify from the evidence provided for the Judge any other school that had been considered. The Judge fully considered the evidence in relation to the ability of the adults to obtain work and made findings that were sustainable. The grounds ignore the fact that the Appellants have worked illegally here for many years and have developed skills that would enable them to work in India. The grounds fail to take into account that the word of the Appellant was worth very little given the multiple assertions he had made that had been rejected both in 2008 and 2015. Given the sheer size of India and the number of schools, the suggestion that a child cannot get a complete education in India or that the evidence relating to only one school is indicative of the general

position and lack of alternative provision in India is absurd. The Judge considered the evidence that had been presented to him both specifically and in the round and made findings available to him.

16. There is no merit in ground 3. The Judge was obliged to identify the findings made in the decision from 2008 and to have that as the starting point of his consideration of the facts in this case. That is precisely what he did.

17. There is no merit in ground 4. The Judge identified that the children were well-established [35] and that they had a private and family life here [44]. He had detailed the documents he had taken into account [24 (b)] and referred to those [35] and noted Lynn Coates's observation that they had many friends in the community and at school [32]. He does not have to do detail individually every piece of evidence. He did not need to summarise the evidence of the "adoptive grandparents" who were adults and who had adult children. The bald assertion made in their statement that they would be greatly affected by the family being removed was in the scheme of things a tangential and almost irrelevant issue. The Judge did not have to deal with every minor point particularly when he dealt with it generally. The grounds entirely fail to engage with the finding the Judge made that the children would have the ability to learn to speak Gujarati if that was required (see above 5 [40]). It was a matter for the Judge what weight to place on the ties they had with family and friends here. That was part of the balancing exercise that he had to undertake within Article 8. The Judge attached the weight he felt was appropriate on the competing factors.

18. There is no merit in ground 5. Whether the children have little or no knowledge of Gujarati, or have forgotten it is utterly irrelevant. The Judge was entitled to find they could easily learn it. The Judge was entitled to place the weight he did on the parents' conduct. He was not penalising the children for their parents' behaviour but was determining whether removal from the United Kingdom of the Appellant and his family was proportionate to the need to retain the integrity of immigration control. He struck the balance he felt was appropriate. The decision he reached was open to him.

#### Decision:

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.

Deputy Upper Tribunal Judge Saffer  
17 May 2016