



IAC-UT

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

Appeal Number: IA/09478/2015
IA/09479/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 4 February 2016**

**Decision & Reasons Promulgated
On 24 February 2016**

Before

**Mr H J E LATTER
(DEPUTY UPPER TRIBUNAL JUDGE)**

Between

**ROOMILA OREE
PRIYA DARSHINI OREE
(Anonymity order not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Otchie, instructed by Lawrence and Associates, solicitors.

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

DECISION AND REASONS

1. This is an appeal by the appellants, citizens of Mauritius, against a decision of the First-tier Tribunal (Judge PJ Holmes) dismissing their appeals against decisions made by the respondent on 21 January 2015 refusing their applications for further leave to remain on human rights grounds.

Background

2. In brief outline the background to this appeal is as follows. The first appellant, born on 25 August 1972, is the mother of the second appellant, born on 19 March 1993. The first appellant was granted leave to enter the UK as a visitor in 2005 and subsequently further leave to remain as a student. In December 2009 the second appellant and her father entered the UK with leave to remain as the first appellant's dependants. The second appellant's younger sister is also present in the UK as a dependant of her mother. There was no clear evidence about her date of entry but the judge accepted that it may well be that she arrived with her father and older sister.
3. The first appellant's leave as a student was valid until 29 November 2011. Before the expiration of her leave she made a further application on a form for use by dependent relatives of a settled person. This application was refused on 14 November 2012. The first and second appellants made a human rights application on 14 March 2013 which was refused on 13 May 2013. A notice informing the first appellant of her immigration status and liability to removal was served on 14 May 2013 and similar notices on the second appellant and her father and sister on 16 September 2014. A third daughter was born to the first appellant and her husband in June 2014 and she was served with notice of liability to removal on 6 January 2015. Further representations were made on behalf of the appellants and their family. These were treated as an application on human right grounds and refused for the reasons set out in the decision letter of 19 January 2015, the respondent not being satisfied that removing the appellants to Mauritius would be in breach of their rights under article 8.
4. The first and second appellants appealed against this decision and in their notices of appeal they indicated that they wished the appeal to be decided without a hearing. The judge therefore did not hear oral evidence or submissions but decided the appeal on the basis of the documents before him: the appeal bundle filed by the respondent, the grounds of appeal and statement of additional grounds filed by the appellants and their bundles of documents containing supporting letters and photographs.

The Findings of the First-tier Tribunal Judge

5. The judge reminded himself of the relevant legal points including relevant case law and the provisions of s117A and B of the Nationality, Immigration and Asylum Act 2002 as amended: [12]-[15]. He set out his findings at [16]-[28] and his conclusions at [29]-[34]. He accepted that the first appellant had entered the UK in December 2005 at the age of 33 and subsequently had been joined by the other members of her family (all citizens of Mauritius) but none of them had had any valid leave to remain since the end of November 2011 and their current immigration status was that of overstayers. In the decision letter the respondent had taken the view that the appellant had family ties in Mauritius and the judge commented that the evidence before him showed that the appellant had

done nothing to address that issue. They had also provided no evidence to show that any relatives were currently in the UK. He noted that the respondent had made it clear that the intention was that the family would be returned as a unit to Mauritius.

6. The judge noted that there was no account of how the first appellant and her husband had been supporting themselves and their dependants in recent years nor any explanation of how the second appellant's proposed course at the University of Westminster was to be funded. He accepted that the appellants and their family would have established a private life in the UK save for the youngest child who was so young that this would be most unlikely. There was no suggestion that the family suffered from ill health or any significant disability and the appellants had provided no information about the qualifications, skills or employment history of the first appellant's husband, the judge commenting that on the face of the matter he might reasonably be expected to be a significant contributor to the support of the family in Mauritius.
7. He went on to consider the provisions of s.55 of the Borders, Citizenship and Immigration Act 2009 and considered the welfare and best interests of the children as a primary consideration but for the reasons he gave in [25]-[27] he concluded that there was unlikely to be any significant detriment to their welfare if they now had to return to Mauritius with their parents and older sister. He found that the appellants could not meet the requirements for leave to remain under the immigration rules set out in appendix FM. He took the view there was a case for considering that the appellants' appeals merited further consideration under article 8 outside the rules. He was satisfied that article 8 was engaged and that the decision was in accordance with the law and was made for a legitimate aim within article 8 (2). The issue for him to resolve was whether the respondent's decisions were proportionate to that aim. For the reasons summarised in [34] he found that the respondent's decisions in respect of each appellant was proportionate and should be upheld.

The Grounds of Appeal and Submissions

8. In the grounds of appeal it is asserted that the appeal notices were prepared by the appellants' previous legal representatives and in consequence evidence relating to the children and the private life of the appellants was never produced and they did not therefore obtain a fair and just hearing. It is further argued that the judge did not take into account the appellants' remaining family members who had received notices of decision. The judge had commented that he had not been provided with documents relating to the refusal on 14 November 2012 and that he had seen no documents relating to the application on 14 March 2013. It is argued that he erred in law as there was a procedural irregularity in relation to the fact that the notices relating to the first appellant's husband and the remaining children did not form part of the appeal which had therefore proceeded on the basis of a number of missing documents. It is then argued that the judge failed to carry out the relevant

assessment under s.55 and to take into the account the relevant statutory guidance. In consequence, the grounds argue that the article 8 assessment was flawed.

9. Mr Otchie adopted these grounds. He submitted that the s.55 assessment had not been carried out adequately, there being no proper consideration of the interests of the two younger children of the family. There had been no true engagement with their best interests. He argued that the first appellant's husband was very much part of the appeal and he should have had an opportunity to take part in the proceedings.
10. Ms Isherwood accepted that decision notices had been served on all members of the family but so far as the respondent was aware appeal notices had only been served by the first and second appellants. She submitted that the judge had reached a decision properly open to him on the available evidence and it was not arguable that he had erred in law. The appellants had requested a hearing on the papers and had had the opportunity of producing the evidence they wished to rely on. The judge had properly considered the welfare and best interests of the children.
11. On the issue of whether notices of appeal had been filed by other members of the family, Mr Otchie accepted that he was not in a position to produce copies of those notices or any further evidence to support the assertion that they had in fact appealed.

Assessment of Whether there is an Error of Law

12. The issue for me at this stage of the hearing is whether the First-tier Tribunal judge erred in law such that the decision should be set aside. In the grounds it is asserted that the appellants were badly served by their previous representatives and that accordingly they did not have a fair hearing. It is also argued that there was a procedural irregularity in that appeals by two members the family were decided when there were pending appeals by other family members. It was this argument that persuaded Judge Osborne to grant permission to appeal. He said that it was clear from the notice of appeal to the First-tier Tribunal that the appeal was intended to be pursued by all four members of the family and that the tribunal appeared to have linked only the appeals of the first and second appellants and that due to no fault on their part, the appeals of the other two members of their family appeared not to have been processed by the tribunal and that they had been denied the opportunity of being parties to the appeal. He said that it was arguable that their non-participation, through no fault of their own, adversely affected the appeals of the two appellants.
13. However, no evidence has been produced to show that the first appellant's husband and her middle daughter did in fact file notices of appeal. Both the appellant's notices of appeal at section F identify the other appellant as a family member intending to appeal and both identify the first appellant's husband. But instead of giving a Home Office reference, the

form sets out an appeal number from 2007 (OA/64437/2007). No evidence was produced to support the assertion that notices of appeal had been filed from these other family members and although the grounds complain of the way their previous representatives advised and acted for them, nothing has been produced to show that these allegations have been put to them or that they have been given any opportunity to comment in accordance with the guidance given by the tribunal in BT (Former solicitor's alleged misconduct) Nepal [2004] UKIAT 00311.

14. I am, accordingly, not satisfied that notices of appeal were in fact filed by the first appellant's husband and daughter. This is not a case where they have been deprived of the opportunity of being parties to this appeal. In any event, the appellants indicated that they wanted the appeal to be decided without a hearing. They received notice that this would be the case and were given the opportunity of filing any further evidence or documents they wished to be taken into account by the notice in form IA35 issued on 26 May 2015. Documents were submitted and there was nothing to indicate that there were pending appeals by other family members. Further, the documents dealt with all members of the family and it is clear that the judge was fully aware that this was an appeal involving a family of five. I am not satisfied that there has been any procedural irregularity causing unfairness to the parties arising from any failure or errors by the previous representatives.
15. In the grounds it is argued that the judge erred by speculating on the contents of a previous refusal letter at the previous appeal. The judge had to deal with the appeal on the basis of the evidence before him. He was entitled to comment on the absence of documents which could have been produced. More significantly nothing has been produced to support an argument that any missing documents had any material bearing on the outcome of the appeal.
16. It also argued that the judge did not carry out a full assessment of the best interests of the children of the family. There is no substance in this ground. The judge properly directed himself on the law and the relevant authorities. In particular he took into account the guidance in Azimi-Moayed (Decisions affecting children; onward appeals) Iran [2013] UKUT 197. He noted that neither child relevant to the appeals was currently within the age-group identified in that decision as being of the greatest significance for the development of social, cultural and educational ties. He commented that so far as the middle child was concerned she came to the UK when she was 11 and her most significant formative years were therefore spent in Mauritius. There was no evidence that she had special educational needs or any learning disability and the evidence produced was not such that he could assess her own perceptions of who she was or which culture and society she belonged to.
17. When the decision is read as a whole there was no reason to believe that the judge failed to take into account the statutory guidance. This is not a case of a cursory or superficial examination of the issues relating to the

children but one where the judge has carefully considered all the evidence before him and, taking into account the guidance given in EV (Philippines) v Secretary of State [2014] EWCA Civ 874 referred to by the judge at [25]), reached a decision properly open to him.

18. For these reasons I am not satisfied that the judge erred in law.

Decision

19. The First-tier Tribunal did not err in law and it follows that the decision to dismiss the appeals stands. No anonymity order was made by the First-tier Tribunal.

Signed H J E Latter

H J E Latter
Deputy Upper Tribunal Judge Latter

Date: 15 February 2016