



IAC-AH-CO-V1

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

Appeal Numbers: IA/39832/2014  
IA/39840/2014  
IA/39839/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 September 2015**

**Decision & Reasons Promulgated  
On 6 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**BDP  
RBP  
RP**

**(ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr G Davison, instructed by Sangat Advice Centre  
For the Respondent: Mr Duffy, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of India. The first and second appellants are husband and wife and the third appellant is their child who was born in 2006. The appellants appealed to the First-tier Tribunal (Judge Thomas) against the decision of the respondent dated 28 September 2014 to refuse them leave to remain in the United Kingdom on grounds outside the

Immigration Rules. The First-tier Tribunal in a decision dated 16 January 2015, dismissed the appeals. The appellants now appeal, with permission, to the Upper Tribunal.

2. The appeal before the First-tier Tribunal proceeded on the ground of Article 8 ECHR only; the appellants are not entitled for leave to remain under the Immigration Rules. The third appellant was born in the United Kingdom and has lived in the United Kingdom continuously for seven years but, having regard to Section 55 of the Borders, Citizenship and Immigration Act 2009, the respondent considered that it was reasonable to expect the child to leave the United Kingdom with the first and second appellants. Judge Thomas heard oral evidence and considered the documentary evidence before him. At [14 - 24] he made a series of findings of fact. He did not accept evidence from the first and second appellants that they had been told by an agent that further applications had been made for them to remain in the United Kingdom. He found that the appellants had entered as visitors and were well aware that leave was required in order to continue living here legally. He observed that the onus was on the appellants to ensure that their immigration status remained in accordance with the law. The fact that the appellants had remained without status for a further six years undermined their credibility as witnesses. The judge also noted [15] that the appellants gave contradictory evidence regarding contact with the first appellant's parents. The judge found that the first appellant's parents are not settled in the United States of America as he claimed. The judge found that there was a home or land in India which could offer a means of support for the appellants if they were removed to that country. The judge found there was "no evidence" to prove that it was not reasonable to expect the third appellant to live in India with his parents. The third appellant had benefited from education in the United Kingdom and, although he may not speak Gujarati very well, he would have every opportunity to develop his language skills upon return to India. The judge found that the third appellant was not of a "particularly crucial examination stage of his education." He observed that the third appellant was not a British citizen although he had been born here and neither he nor his parents had any clear entitlement to remain in the country. He gave little weight to the private life of the appellants developed in this country at a time when they had no right to be here.
3. The grounds of appeal make reference to the guidance document produced by the respondent. This document provides guidance for case workers concerned with the application of Appendix FM of the Immigration Rules. In the guidance at 11.2.4, it is stated that "strong reasons will be required in order to refuse a case with continuous residence of more than seven years." Mr Davison, for the appellants, submitted that no strong reasons had been established in this case for removing the third appellant who had lived his life in this country and was now aged 9 years. Mr Davison referred to an Immigration Minister's written response to the Joint Committee on Human Rights during the passage of the Immigration Act

2014. Both the decision of the Court of Appeal in *EA (Nigeria)* and the minister's response drew attention to the fact that, when a child has lived in a country of his birth for 7 years, he may well have developed ties within the wider community and beyond the family life of his own home. Mr Davison submitted that the judge had failed to deal with these important aspects of the case and that the decision should be set aside.

4. I do not agree with Mr Davison's submission. Judge Thomas' decision is a model of concise analysis. It is true that he has not referred to the respondent's guidance but, equally, there is nothing whatever perverse regarding the judge's decision to agree with the reasons given in the refusal letter by the Secretary of State for refusing leave to remain to these appellants under Article 8 ECHR. The judge has properly considered the public interest [22] and, in doing so, has had regard to the findings of fact, many of which are not favourable to the appellants' credibility, which he made at [14] *et seq.* The judge might well have added there is a strong public interest concerned with the removal of adult individuals who have entered the United Kingdom as visitors and who have sought to give untruthful evidence regarding the absence of ties with family members abroad in order to seek to remain in the United Kingdom. The judge made reference to the relevant jurisprudence (*EV (Philippines) [2014] EWCA Civ 874*). Furthermore, although the judge had before him evidence showing that the third appellant was well settled and doing extremely well at school, there was no specific evidence which indicated that the third appellant had established ties in a community beyond his own family to require the protection of Article 8. So far as his own education was concerned, the fact that he is doing well at school is not enough to make it unreasonable for the third appellant to transfer that education abroad and the judge was right to point out at the trial that the child had not reached a particularly crucial stage of his education; it will be several years before he takes any public examinations. I acknowledge that there is some tension between the "strong reasons" referred to in the respondent's guidance paper and the "reasonableness" of expecting a child to move abroad with his or her parents when there are no obvious obstacles in the way to such a course of action. However, ultimately there is nothing whatever regarding this judge's decision which might be described as perverse either by reference to the facts which he found or to the relevant law. Another Tribunal may, on the same facts, have reached a different outcome but that is not the point. The Upper Tribunal should hesitate before interfering with the decision of the First-tier Tribunal which is in accordance with statute law and jurisprudence and which is supported by clear cogent reasoning. I find that is the case here. In the circumstances, therefore, these appeals are dismissed.

### **Notice of Decision**

These appeals are dismissed.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 10 December 2015

Upper Tribunal Judge Clive Lane

**TO THE RESPONDENT  
FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 10 December 2015

Upper Tribunal Judge Clive Lane