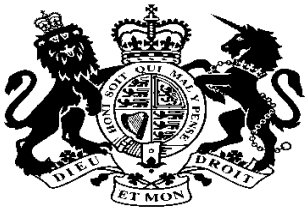

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: **HU/07721/2018**
HU/06964/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On: 2 November 2018	**On: 7 December 2018**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

MR SARABJIT SINGH
MRS CHARANJIT KAUR
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation
For the appellant: Mr T Tabori of Counsel
For the respondent: Mr I Jarvis, Senior Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of India born on and 19 January 1971 and 18 October 1976 respectively. They have a child together who is in education in this country. They appealed to the First-tier Tribunal against the decision of the respondent who refused to grant them further leave to remain in the United Kingdom under paragraph 276ADE and Article 8 of the European Convention

on Human Rights. First Tier Tribunal Judge Freer in a decision dated 2 July 2018 dismissed their appeals.

2. Permission to appeal was granted by First--tier Tribunal Judge SP J Buchanan on 27 September 2018 stating that it is arguable that the Judge's decision contained a material error of law because he found that the tests in section 117B (6) [it would not be reasonable to expect the child to leave the United Kingdom] and paragraph 276 ADE (1)(vi) [very significant obstacles to the applicant integration into the other country] mirror one another.

3. The Judge found that the appellants cannot satisfy the Immigration Rules because they are not any significant obstacles for them to reintegrate into India. He found that their child who has lived in the United Kingdom for more than seven years is an Indian national can adapt to life in India with his parents. He found that the second appellant earns £1906 per month in the United Kingdom and there is nothing to suggest that she cannot find work in India and look after their child.

4. In respect of Article 8 the Judge found that the child is preparing to enter grammar school and is clearly bright and hard-working. He found that the best interests of the child are to live with his parents in India. The Judge found that the child is at an age where he is about to change school anyway so will make new school friends in India. He further found that the child can learn his language and adapt to his culture in India. The Judge found that he does not regard the child's schooling in this country as "a tipping point" and that "it is not a strongly pro-appellant point" but arguably more or less neutral one at his age. He considered the case of is **Azimi Moyed** in relation to the appellant's age and said that the best interests of the child are his primary consideration but not without more likely to be a determinative one. He advised himself that after seven years of residence by a child, there needs to be a strong counter reason to remove, if that is to be outweighed.

5. The reasons that the Judge gave as counter reasons was that the child's parents who have lived in this country unlawfully for a very long time did not renewing the "search for a college to study at the level that they need to allow that to occur". He said that this immigration conduct by the parents strongly undermines the best point that the appellants had. The Judge further found that if the child's parents had prospered here through work, they would have funds and therefore it is not easy to explain why they waited so long to reapply for further leave. The Judge considered that this conduct of the parents reinforces the powerful weight to be given to the respondent's duty of upholding immigration controls according to law. The Judge found that section 117B mirrors section 276 ADE (1) (vi).

6. It was made clear in **MA Pakistan [2016] EWCA Civ 705** the parents conduct is only relevant under the proportionality assessment and not for the

reasonableness of return test. Therefore, the Judge's reasonableness assessment under the immigration rules is materially defective. There was insufficient and consideration of the best interests of the qualifying child by the Judge in this case.

7. The Judge did not consider that strong and powerful reasons are needed to require a qualifying child to leave the United Kingdom. The Judge placed too much weight on the gravity of the appellant's parent's adverse immigration conduct and not whether there are strong and powerful reasons which was the correct test to apply.

8. In considering this appeal I have taken into account the case of **R (Iran) v SSHD [2005] EWCA Civ 982**, where Brooke LJ summarised at [9] the errors on points of law that will most frequently be encountered in practice:

> "9. …
>
> (i) making perverse or irrational findings on a matter or matters that were material to the outcome;
>
> (ii) failing to give reasons or any adequate reasons for findings on material matters;
>
> (iii) failing to take into account and/or resolve conflicts of fact or opinion on material matters;
>
> (iv) giving weight to immaterial matters;
>
> (v) making a material misdirection of law on any material matter;
>
> (vi) committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of the proceedings;
>
> (vii) making a mistake as to a material fact which could be established by objective and uncontentious evidence, where the appellant and/or his advisers were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made."

9. The Judge was required to make an adequate legally and factually finding, a proper assessment of the best interests of the qualifying child in that it must be based on a careful consideration of the likely circumstances of the qualified child, if returned as a unit to India which was not adequately done.

10. Having considered the decision of the First-tier Tribunal Judge, in the round, I am of the view that the First-tier Tribunal Judge did fall into material error by concentrating on the parents' conduct are not the best interests of the child.

11. In the circumstances I direct that the appeal be remitted to the First-tier Tribunal to be heard de novo and placed before any First-tier Tribunal Judge other than Judge Freer.

DECISION

The appeal be remitted to the First-tier Tribunal

I make no anonymity orders

Signed by

A Deputy Judge of the Upper Tribunal
Mrs S Chana Dated this 1st day of December 2018