



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/01799/2016**

Appeal Number:

IA/01800/2016

THE IMMIGRATION ACTS

**Heard at FIELD HOUSE
On 30th January 2018**

**Decision & Reasons Promulgated
On 8th February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MR DHAVAL NARENDRABHAI BAROT
MRS NIKITABEN DHAVAL BAROT
(NO ANONYMITY ORDER MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Martin (Counsel)

For the Respondent: Mr P Nath (Home Office Presenting Officer)

DECISION AND REASONS

1. I shall refer to the parties as “the appellant” and “the Respondent”. This is an error of law hearing to consider whether or not there is a material error of law in the decision of the First-tier Tribunal (Judge MPW Harris)(“FTT”) promulgated on 30th October 2017 in which the FTT dismissed the appellants appeal against a decision to refuse to grant their applications for leave to remain under Tier 4 (general student migrant).

Background

2. The appellants are citizens of India and are the parents of a child who was born in the UK and who had not been registered as a citizen of India. They

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had another son who was aged 8 years of age and a citizen of India. The respondent relied on deception used by the appellant to obtain his English Language certificate with reference to paragraph 322(1A). The appellants argued that their youngest son was in fact stateless and was eligible for British citizenship, which was a relevant factor in the proportionality assessment.

FTT decision

3. The FTT proceeded on the basis that it was accepted that the appellants could not succeed under the Rules as there was no valid CAS [15]. The FTT considered the appeal outside of the Rules under Article 8 ECHR and found that there was no interference with family life as the “stateless” child could be removed as part of the family unit [24] and the Indian authorities would issue appropriate travel documents [25-26]. The FTT found that private life was engaged and in the proportionality assessment took into account the statutory public interest factors under section 117B Nationality, Immigration & Asylum Act 2002 (as amended) [32]. The FTT found that section 117B(2) and (5) applied, and considered where the best interest of the children lay [41-47]. The FTT considered the issue of deception having regard to **SM & Qadir [2016] UKUT (IAC)** and **Abbas [2017] EWHC 78 (Admin)** and found that there was evidence to show that deception had been used [63] having regard to the burden of proof, and placed weight on the same in the proportionality assessment [64].

Application for permission to appeal

4. In grounds it was contended that the FTT failed to determine properly the issue of statelessness and/or placed no weight on that fact, failed to apply paragraph 276ADE Immigration Rules and failed to correctly decide the deception issue under paragraph 322.

Permission grant

5. Permission was granted by FTJ Ford who found that there were arguable grounds that the FTT erred in finding that an application could be made to register the child as an Indian national was relevant to the proportionality assessment, whilst accepting that no application had been made and the child was not a citizen of any country. The FTT may also have erred in its consideration of paragraph 276ADE.

Rule 24 Response

6. The respondent opposed the application.

Submissions

7. Mr Harris argued that the situation was similar to that in **MK [2017] EWHC 1365 (Admin)** (paragraph 37) and that the FTT ought to have treated the child as stateless in its proportionality assessment, rather than speculating as to the outcome of an application for Indian citizenship, in the absence of any evidence in support. The fact that the child was stateless and thus eligible for British citizenship was a material fact both in terms of the assessment of best interests and proportionality.

8. The FTT failed to consider paragraph 276ADE when counsel argued that the second appellant would meet paragraph 276ADE (1)(vi). The FTT failed to look at the specific issues relevant to the second appellant and took a generalised view.
9. The FTT misapplied **Abbas** as regards its findings in respect of Professor French's evidence. The FTT considered the generic evidence only and there was no additional evidence to show the deception, unlike in **Abbas**. It would have been possible to conclude that the legal burden had not been satisfied. There was evidence to show that the appellant had no reason to cheat and had little to gain from the deception [63].
10. Mr Martin argued that cumulatively the errors were sufficient to set aside the decision.
11. Mr Nath responded that the decision was thorough and reasoned. The FTT properly found that the child could apply for citizenship given the nationality of his parents and given that his parents had taken the decision not to apply for registration of Indian citizenship in the hope of obtaining British citizenship. The FTT had identified and made it clear what issues were to be determined and the appeal was pursued outside of the Rules. In any event the FTT had looked at factors relevant to paragraph 276ADE at [39]. The FTT properly considered the burdens and standard of proof for deception and was entitled to adopt its view of **Abbas** in reaching the conclusion that it did.

Discussion and conclusion

12. I have decided that individually and cumulatively the appellant has failed to make out the grounds of appeal. In a detailed and clearly reasoned decision the FTT identified and considered all the relevant issues in its assessment of proportionality and the decision made was open to the FTT to make having regard to the evidence.
13. In effect the FTT had treated the child as stateless [24] but concluded that there was no interference with family life taking into account the best interests of the children [44 & 45] and the fact that the family would be removed as a unit, and in light of the interference with their private lives and the public interest applied in **Patel [2013] UKSC 640** [38]. The fact of statelessness provided the child with eligibility for British citizenship and in respect of which no steps had been taken and even if successful was not in all the circumstances a trump card in the proportionality assessment. Accordingly I am satisfied that there was no material error in the FTT approach to statelessness that was capable of altering the outcome of the decision. The child was very young indeed and his sibling had entered the UK in 2016, and there was no evidence to show that there would be any difficulties to re-establishing family or private lives in India. The FTT found no reliable evidence to support the claim that the second appellant would

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face discrimination and/or violence [39 & 46]. In effect the FTT considered the factors relevant to paragraph 276ADE (1)(vi). The FTT found that it was possible for the family to take reasonable steps to obtain Indian citizenship for their child so as to avoid any difficulty associated with a lack of registration as an Indian citizen [45] and with reference to **MK [2017] EWHC 1365 (Admin) paras 9-14** [22] which set out the law and practice regarding the right of a child born outside of India to Indian citizenship and which included the possibility of making such an application when the child came to live in India. The findings and decision as to deception used in the IELTS test was sustainable as was the FTT's view taken of **Abbas** [59]. The FTT took into account all relevant evidence including the appellant's qualifications and standard in English and applied **MA** (paragraph 57) as to the range of reasons why a person may engage in TOEIC fraud [61- 63]. Having regard to all of the evidence before the FTT I am satisfied that the FTT's consideration of Article 8 was properly made and which involved no material error in law.

Decision

There is no material error of law disclosed in the decision which shall stand.

Signed

Date 5.2.2018

GA Black

Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER
NO FEE AWARD

Signed

Date 5.2.2018

GA Black

Deputy Judge of the Upper Tribunal