



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/14472/2015
IA/14478/2015
IA/14484/2015

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre
On 14th November 2018

Decision & Reasons Promulgated
On 19th December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) MRS P V V

(2) MR V G V

(3) MISS V V V

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr B Hawkin (Counsel)

For the Respondent: Ms H Aboni (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge J L Bristow, promulgated on 28th March 2018, following a hearing at the Birmingham Civil Justice Centre on Thursday 15th March 2018. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent Secretary of State, subsequently

applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are Indian nationals. The first Appellant is the wife of the second Appellant. She was born on 23rd August 1985. The second Appellant is her husband and he was born on 2nd May 1976. The third Appellant is their child, a daughter, and she was born on 16th February 2005. She is currently 13 years of age.

The Appellants' Claim

3. The Appellants' claim is that they came to the UK on a visitor's visa in August 2009 and have remained here ever since. Further grants of leave were made. On 14th March 2013 the first Appellant applied for a Tier 2 (General) visa and this was accompanied by supporting documents and two letters dated 4th March 2013 purporting to be from Teleca Ltd, and offering the first Appellant employment as a quality controller. It is a feature of this appeal that both these letters were false. On 17th October 2013 the first Appellant applied for a Tier 4 (General) Student visa and the second and third Appellants were included as dependants on that application. The application of 14th March 2013 was not decided by the time of 17th October 2017. The initial application was subsequently amended on the basis that the first Appellant wished to undertake further studies in the UK and therefore what had happened was that she had her grounds of application by submitting an application for a variation. The Respondent refused the 17th October 2013 application on 27th March 2015 and did so on the basis of paragraph 322(1A) of the Immigration Rules that false documents had been submitted.

The Judge's Findings

4. The judge, in what was a clearly crafted and structured determination, set out the relevant questions to be determined by him under the law, and went on to conclude that this was a case where, false documents had been submitted by a Mr Rakesh Patel, whom the first Appellant had paid £5,000, but that she herself was not aware of the submission of false documents (paragraph 57). Given the presence of a child of the first and second Appellants, regard was given to paragraph 276ADE in this context.
5. The judge noted that there were a number of reasons why it would be entirely reasonable for the Appellants to return back to India together with the third Appellant, their child, because the third Appellant
"will be leaving with her parents and generally in the child's best interests to remain with their parents; schooling will be available in India; and a private life has been established during a time when her immigration status was precarious" (paragraph 34).

The judge also, however, considered that there were a number of reasons why it would not be reasonable for the third Appellant to return to India and these included the fact that,

“she has been in the UK for nearly nine years; she came to the UK when she was 4; her formative years were spent in the UK; she is doing well at school here; she is about to select her GCSE options; she does not understand the local language in India; the English schools in India are around 50 kilometres in relation to her home; and she has close relationship with friends and family in the UK” (paragraph 35).

6. On this basis, the judge concluded that “the third Appellant meets the requirements of paragraph 276ADE(1)(iv)” and that in “balancing the competing factors together, it will not be reasonable to expect the third Appellant to leave the UK” (see paragraphs 36 to 37).
7. The judge then went on to consider whether the decision reached by the Secretary of State was proportionate (see paragraphs 45 to 48). The judge in the end concluded that the decision will be disproportionate in its interference with the right to respect the private lives of the Appellants, and gave ten specific reasons for this (at paragraph 49).
8. The appeal was allowed.

Grounds of Application

9. The grounds of application state that the judge failed to apply **AA (Nigeria) [2010] EWCA Civ 733** in that it was clear that in cases where there had been a submission of a “false document” the legal position was that
“the mere fact that a dishonest document has been used for such an important application is understandably a sufficient reason for a mandatory refusal. That is why the rule expressly emphasises that it applies ‘whether or not to the applicant’s knowledge’.”
10. Secondly, the grounds allege that the decision by the judge, in his application of paragraph 276ADE(1)(iv) was one that was “manifestly wrong in law” in that it failed to treat the assessment of reasonableness as a proportionality exercise which included also the elements of immigration history of the parents.
11. Finally, that the judge engaged in a material error in importing the unlawful finding about the child’s qualification for limited leave to remain into the assessment of proportionality outside the Immigration Rules (at paragraph 49).
12. On 4th July 2018 permission to appeal was granted on the basis that the judge had arguably failed to follow the approach in **AA [2010] EWCA Civ 773** and that had failed to take into account all the relevant circumstances.

Submissions

13. At the hearing before me on 14th November 2018, Ms Aboni, appearing on behalf of the Respondent submitted that she would rely upon the grounds of application and that this was a case where the judge had failed to properly follow the strictures in **AA (Nigeria) [2010] EWCA Civ 773**. Whilst the first Appellant may have given evidence that she was innocent of any fraudulent activity on the part of her agent, she was an educated woman, and must have realised that false documents were being used on her behalf, and the judge failed to properly take into account this dishonesty.
14. For his part, Mr Hawkin relied upon his Rule 24 response, together with the recent Supreme Court judgment in **KO (Nigeria) [2018] UKSC 53**. He made the following three submissions. First, as far as the first Ground of Appeal was concerned this was nothing to the point. What had been said in the first ground (at paragraph 27) was that the judge had erred (at paragraph 27) in failing to heed the strictures of **AA (Nigeria)** and recognising that the mere fact that a dishonest document has been used is a sufficient reason for a mandatory refusal. Mr Hawkin submitted that this was simply not correct because the judge had expressly noted that the submission of such documents did provide the Secretary of State with grounds for a mandatory refusal and this was so “whether or not to the applicant’s knowledge”. However, what the judge had then gone on to say (at paragraph 27), was that the Appellant did not know that the documents were false.
15. Second, the suggestion that the judge’s approach to reasonableness was “also manifestly wrong in law” was equally untenable because the judge had set out all of the reasons for why the return of the Appellants, together with the third Appellant, to India would be reasonable (see paragraph 34). He had then gone on to also explain it would not be reasonable (at paragraph 34). Having compared the various different considerations, he had then concluded that “balancing the competing factors together, it would not be reasonable to expect the third Appellant to leave the UK” (paragraph 36). In this, the judge had not departed from the latest Supreme Court judgment in **KO (Nigeria)** where it had been recognised that “it will normally be reasonable for the child to be with them” where the parents have no right to remain in the UK and that “to that extent the record of the parents may become indirectly material” (paragraph 18). The judge had recognised that this was the case.
16. However, he had then gone on to conclude that notwithstanding this, for the reasons that he had set out (at paragraph 35) in the case of this particular child who had been here for nearly nine years, having come to this country at the age of 4, her formative years were spent in this country and that it will not be reasonable to expect her to go to India. This was a conclusion that the fact-finding Tribunal alone could properly make. There was no error in this.
17. Finally, the judge had expressly looked at the disproportionality of the decision and for the ten reasons given in paragraph 49, had concluded that the decision of the

Secretary of State was unsustainable. The judge had taken as his starting point the status of the parents in this country, and the fact that they had no right to remain here, and that was the correct approach to take. The judge had also taken into account the Section 117B considerations, and that too was correctly taken into account. There was no error.

No Error of Law

18. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of the TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are those that have been given by Mr Hawkin.
19. This is a case where the judge carefully and in a structured fashion sets out the relevant considerations, recognising that there was false documentation presented on the Appellants' behalf, which made the application invalid and one that stood to be rejected on the basis of paragraph 322(1A). However, subsequently going on to consider whether the first Appellant was aware that the documents were false, the judge concluded that she did not know this to be the case (paragraph 27), and proceeded even to conclude that the Appellants could not succeed under a partner route under Appendix FM and could not succeed also on the basis that they had been in this country for twenty years. The judge had also stated that there were a number of reasons why the removal of all the Appellants would be reasonable (paragraph 34).
20. However, when considering the issue of proportionality the judge had concluded that it will not be reasonable for the third Appellant in particular to return back to India after being in this country for nine years (paragraph 35), in circumstances where she was about to select her GCSE options and had been doing quite well at school in this country (paragraph 35). In this respect only, the judge had concluded that the third Appellant met the requirements of paragraph 276ADE(1)(iv).
21. Thereafter, the judge had gone on to say that the number of factors favoured a finding in favour of the Appellants that there will be disproportionate interference with the right to respect for their private lives in this country (paragraph 49) and these were set out. The decision was one that was open to the judge to make as a fact-finding Tribunal and there is no error of law.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall stand.

The appeal of the Secretary of State is refused.

An anonymity order is made.

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

Deputy Upper Tribunal Judge Juss

17th December 2018