



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

Appeal Numbers: HU/16360/2018
HU/16363/2018
HU/16364/2018

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice
On 5 August 2019**

**Decision & Reasons Promulgated
On 14 August 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**JK
HS
YS**

(ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer

For the Respondents: Mr Y Din, Counsel instructed by Global Legal Solutions
Ltd Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal to allow the appeals of the respondents, hereinafter, "the claimants", against the decision of the Secretary of State to refuse them leave to remain on human rights grounds relying on Article 8 of the European Convention on Human Rights. For the reason that I have explained below I have allowed the Secretary of State's appeal and I have

substituted a decision in each case dismissing the claimant's appeal against the Secretary of State's decision.

2. The First-tier Tribunal has made an anonymity order in this case. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to leave members of the public to identify the claimants. A breach of this order can be punished as a contempt of court. I make this order because the first claimant had shown that she is a victim of domestic violence and I am satisfied that it is possible that publication of her identity could not only risk embarrassment but also, and much more importantly, make it difficult for her to re-establish herself in India. Given my findings that is unlikely but it would be undesirable if publicity created a case that does not otherwise exist.
3. The first claimant was born in November 1975. She is the mother of the second claimant who was born in August 1996 and the third claimant who was born in September 1999. It seems that the first claimant had visited the United Kingdom on an earlier occasion but all three claimants entered the United Kingdom in June 2010 with visitor visas valid from November 2009 until November 2011. They have not had permission to be in the United Kingdom since their visas expired. They applied to remain in the United Kingdom on the basis of their private and family lives in July 2015 but the application was refused in circumstances that did not generate a right of appeal. On 19 July 2017 they applied for leave to remain on private and family life grounds when the second claimant was 20 years old and the third claimant was 17 years old. That application was decided on 20 July 2018 and refused leading to the appeal that was allowed by the First-tier Tribunal and which the Secretary of State now appeals.
4. Although not mentioned in the previous application the first claimant said that she had been the victim of domestic violence and that prompted her to leave India and not return. The First-tier Tribunal Judge accepted that and went on to allow the appeal of each claimant.
5. The Secretary of State's grounds of appeal comprise seven paragraphs but essentially make two points. First, it is said that the First-tier Tribunal erred in accepting that the first claimant had been the victim of domestic violence and, second, that the First-tier Tribunal erred in allowing the appeals on human rights grounds because the circumstances did not satisfy the Rules and there were no circumstances that justified their being given leave to remain on human rights grounds when the Rules were not satisfied.
6. Paragraph 7 of the grounds asserts:

"It is submitted that the determination lacks adequate analysis and is devoid of adequate reasoning. There is also a lack of consideration of relevant guided case law."

7. I deal first with the criticism that the First-tier Tribunal Judge accepted that the first claimant had been the victim of domestic violence.
8. The Secretary of State's grounds assert, correctly, that the only evidence to support the claim emanated from the first claimant. There were no medical reports of any kind even though the first claimant said that she was scarred as a result of an attack by her husband.
9. The judge is criticised for appearing to have regard to the observations of the translator when considering that evidence. The judge said at paragraph 26:

"although, I did not see it, [the claimant] pointed to a scar on her arm which she said was caused during that incident, and the interpreter (who was sitting next to her) appeared to acknowledge its existence."
10. If that was the reason the judge accepted the evidence that the first claimant was the victim of domestic violence then there may be much to criticise. I do not know why the judge made any reference to the body language of the interpreter. However although that observation is recorded the judge's reasons for accepting the evidence are much wider. The judge said at paragraph 47 of the Decision and Reasons that he did:

"not find it unreasonable or significant that the issue was not raised until some considerable time after the abuse took place, or, indeed, was not mentioned when the 2015 application was made."
11. This finding arises from the judge's understanding that people can be very reluctant indeed to admit to being victims of domestic violence. The judge found the claimants to have given a coherent account. It is not clear to me if the second and third claimants witnessed their mother being stabbed or noted that was a contemporary explanation for their leaving the family home with her but they were entitled to say, as they did, that their father was showing signs of alcoholism. Further the chronology fitted her account of claiming to have been the victim of domestic violence and then being rejected by her own family and then looking for a place of refuge which she found in the United Kingdom.
12. In the Secretary of State's Reasons for Refusal she said of the first claimant:

"you have stated that you cannot return to India as you have suffered from domestic violence at the hands of your husband. However you can return to a different part of India."
13. Whilst recognising that this is not strictly a concession by the Secretary of State that the first claimant was the victim of domestic violence no issue is taken with that part of her evidence. I find that significant. Looked at from the first claimant's point of view she may well have been reluctant, for example, to instruct a medical practitioner to prepare a report showing her scars, said to be on her arm and stomach, to support her claim that she was a victim of domestic violence when she had no reason to think

that that part of her evidence was challenged. I decline to criticise the Presenting Officer in the First-tier Tribunal for challenging credibility. That was a matter for him. It is easy to imagine circumstances (although they do not appear to exist here) where it is apparent that a point not put in issue should have been put in issue and it may well be wrong to close down the opportunity of taking points that had not been properly determined on an earlier occasion. However it is not impressive for the Secretary of State to criticise the first claimant for not producing additional evidence when she had no reason to think that additional evidence would be required.

14. The judge is criticised in his approach to the evidence that the first claimant is the victim of domestic violence because he referred at paragraph 47 of his Decision and Reasons to a “well-known statistic” that it “takes an average of 35 incidents of abuse before a victim of abuse eventually takes action by reporting it to the police”. As the judge was quick to say, that “well-known statistic” relates to applicants in the United Kingdom and it is of limited value in illuminating the conduct of someone from India.
15. I think it is also right to say that it is not “well-known” to me even though my professional consideration of domestic violence cases began almost 40 ago. However I have no difficulty at all in accepting the judge’s underlying point that the experience of the courts is that the victims of domestic violence can be reluctant to say that they are victims and I am entirely satisfied that the judge was entitled as a matter of law to regard late disclosure as a point of little importance.
16. The judge was entitled to accept that the distress shown by the first claimant as she gave evidence was genuine rather than a result of histrionics to bolster her claim. The judge did not, as is suggested in the Secretary of State’s grounds, need medical expert evidence before reaching that conclusion. An incident happened in the hearing room about which he had to make a finding and there is no basis for criticising the finding that he made.
17. The First-tier Tribunal Judge has made an odd observation about the scarring but his finding that the first claimant was the victim of domestic violence is based on the quality of the oral evidence, including the first claimant’s clear distress and having to recount her experiences, and how the evidence fits with the chronology and also his view that victims of domestic violence can be very reluctant to admit it and rely on it in support of a remedy.
18. In all the circumstances, and particularly given the way the case was decided by the Secretary of State, I find no basis for criticising the judge’s finding that the first claimant was the victim of domestic violence.

19. However this does not dispose of the appeal. It was the Secretary of State's case all along that the first claimant's status as victim did not prevent her return to India.
20. The judge accepted at paragraph 49 that as well as being the victim of domestic abuse the first claimant was evicted by her husband's family from their home in India, that her own family rejected her for cultural reasons and that prompted her decision to bring her children to the United Kingdom.
21. The judge noted that the first claimant had established herself in the United Kingdom where she had built up a wide network of support and also found that she would have "little by way of support" if she was returned to India. The judge was also:

"satisfied that the first [claimant] still bears some of the emotional scars of those experiences and might be considered to be relatively vulnerable as a result."
22. These findings were clearly open to him.
23. The judge further found that there were bonds between the claimants that "go beyond the normal emotional ties existing between parents and adult children and between adult siblings". This should not be a controversial finding. The judge had accepted that the family removed from India when the first claimant was frightened for her safety and at least considered herself unable to find a place of safety in India to establish a new life. The claimants together had formed a single parent family in the United Kingdom where they had established themselves and the children had done well in their education. The second and third claimants are young men who have not yet established their own homes. It was clearly open to the judge to accept that their emotional dependence was unusually strong and entitled to respect. It does not necessarily follow from this that any interference with these relationships is disproportionate.
24. The judge went on to find that there would be "very significant obstacles" to the first claimant's integration into India if she returned there (see paragraph 57). This appears to be based on her vulnerability and the length of time spent in the United Kingdom away from the culture with which she was once familiar. I cannot see how the judge reached that conclusion on the evidence before him.
25. At paragraph 50 the judge found that "after such a long period in this country and because of the reasons for her departure from India, that she would have little by the way of support if she was to return to India. That may be right but it does not, of itself, explain why there are "insurmountable obstacles" in the way of her establishing herself in India or how she would fare with the help of her sons.
26. I have found little or nothing in the papers before the First-tier Tribunal that illuminated this point. Mr Din referred to the Country Policy and

Information Note India: Women fearing gender based violence (version 2.0) July 2018. This referred to relocation for single women and women with children being difficult “because of the need to provide details of their husband’s or father’s name to access government services or accommodation” but it does not deal with single women living with their adult sons.

27. It is conceivable that there could be problems where a vengeful rejected spouse was looking to settle a score although hard to think that there is any real risk of such a person finding his former or estranged partner. There is no reason to think that first claimant’s husband has either the wherewithal or inclination to seek her out.
28. I consider now the case of the second claimant. He was 22 when the judge made his decision. He was 13 when he entered the United Kingdom. I note that at some stage the second claimant had relied on a close personal relationship to support his case but that was not subsisting when his appeal was heard and, properly, he did not pursue the point. Although the second claimant has lived in the United Kingdom for some time he has not lived there for more than half of his life and therefore does not come with the Rules and statute that give considerable weight to that fact.
29. The First-tier Tribunal Judge accepted the (considerable) evidence that the second claimant had established himself in the United Kingdom and was a credit to his mother’s parenting skills. He clearly wants to remain in the United Kingdom and clearly can be expected to contribute to society if he is allowed to remain. That is very different from saying that he has a human right to remain. The judge found that in the case of both the first and second claimants that all the factors “are sufficiently compelling reasons in the circumstances to outweigh the public interest in effective immigration control”. That finding is reasoned but I find explained inadequately.
30. The third claimant probably has the strongest case under the Rules. He was 10 when he entered the United Kingdom and 19 when his case was heard by the First-tier Tribunal Judge. Again he fails to meet the “most of his life” requirement. Nevertheless he has been in the United Kingdom for a long time. When the case was considered by the respondent the third claimant was still a minor and entitled to have his case considered with reference to paragraph 276ADE(1)(iv) of HC 395. This identifies as a requirement to be met by a person seeking leave to remain on private life grounds that at the date of application the applicant “is under the age of 18 years and has lived continuously in the UK for at least seven years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK”. Clearly the third claimant had lived in the United Kingdom for at least seven years and was under the age of 18 years of age. Nevertheless the respondent took the view that it would be reasonable to expect the third claimant to leave the UK. There is said in the reasons for refusal:

“However you have spent the majority of your life living in India. You, your mother and brother are all Indian nationals in the UK with no valid leave to remain. Therefore it is not considered unreasonable to expect you to leave the UK with your mother and brother as a family unit and to return to India.”

31. I have difficulty with this. It appears to be the Secretary of State’s view that it is reasonable to expect the claimant to return because his mother and brother are Indian nationals and he has no valid leave to remain. The First-tier Tribunal Judge’s analysis is no more illuminating. He said that he found that when the third claimant made his application “it would not have been reasonable to expect him to leave the United Kingdom because of the length of time he had been here.” The judge’s reason for finding removal unreasonable appears to be precisely the same reason advanced by the Secretary of State for finding it reasonable namely that the third claimant had lived in the United Kingdom for the time that he had. With respect if this is not circular reasoning it is very close to it and is an inadequate explanation.
32. The judge’s conclusion that it was not reasonable to expect the second claimant to leave the United Kingdom when the application was made is unlawful because it is not explained.
33. The judge does not explain in any detail, if at all, why he was concerned with the requirements of the Rules relating to a minor. The third claimant was not a minor at the time. Clearly an Article 8 balancing exercise can be illuminated by consideration of the Rules because that determines where the public interest lies or certainly illuminates it. However in all cases the judge was required to apply the provisions of Part 5A of the Nationality, Immigration and Asylum Act 2002 and particularly Section 117B(4)(a) which provides that little weight should be given to a private life established by a person at a time when he is in the United Kingdom unlawfully. The judge has given significant weight to private life established in these circumstances and has not explained why, notwithstanding the statutory obligation, he has allowed the appeals.
34. I do not agree that the judge should have applied the rules applicable at the date of application. This is not an appeal under the rules but by an adult male whose case on article 8 grounds fell to be determined primarily under part 5A of the 2002 Act. I do not agree that rules and policies intended to protect children should be applied to adults.
35. I do appreciate that the judge had made some clear and permissible findings that are favourable to the claimants. The second and third claimants, as is to be expected, have a good command of the English language. The first claimant has some understanding. The first claimant has taken part in community life and made friends. The same can be said of the second and third claimants who have taken advantage of the educational opportunities in a way that is wholly to their credit. In the case of the first claimant the judge has decided, in accordance with

paragraph 276ADE(1)(vi) that “there will be very significant obstacles” to her integration into India. That is not explained. In the circumstances I find the First-tier Tribunal has erred in law and I set aside the decisions in each case.

36. I have read carefully the witness statements provided by each of the three claimants. They have closed their minds to return to India and that makes it difficult to analyse any difficulties they might actually face. Obviously there would be an immediate disruption of their social networks. Obviously none of the claimants would have any recent experience of life in modern India and the second and third claimants no experience at all of living there as adults. This is clearly a disadvantage. Nevertheless I cannot see anything that would support a finding that there would be “very significant obstacles” to the claimants’ integration into life in India if they were returned as a family unit. That is important. There are difficulties facing single women in India and particularly single women who have been ostracised after marital breakup. They may well have existed in the case of these claimants and may be the reason that she left India with two young boys. If the claimants had sought asylum things may have taken a different course.
37. I am a very long way from saying that no female citizen of India whose marriage has broken down can return there but I am willing to accept that there may be some who fall into that category. This is not such a case and that is why I have not spent time analysing that chance. I see nothing in the third claimant’s witness statement that would justify a conclusion that there would be very significant obstacles in this case. It follows that I cannot see how his claim could succeed under the Rules, or more importantly, under Part 5A of the 2002 Act.
38. The same has to be said for the second claimant. He is in a less satisfactory position because he has little more experience of life in India but not very much. Both second and third claimants present as able young people who have had a good education in the United Kingdom. However I am obliged by statute to give little weight to their private life established in the United Kingdom where they had been there unlawfully and following that obligation I can see no basis on which their cases can succeed. That being so for the second and third claimants the first claimant is swept along with them. It has been the Secretary of State’s intention throughout to remove them as a family unit. The first claimant would not have the social isolation of a single woman. She would be supported by two able adult sons.
39. I think I understand why the First-tier Tribunal allowed the appeal. He was concerned about the first claimant being the victim of domestic violence. She gave her evidence persuasively and truthfully and had a sad story to tell. The judge was also impressed with the lives they had made for themselves in the United Kingdom but I can see nothing here that would lead to the appeal being allowed without giving unlawful weight to a “private life” established when the person was in the United Kingdom


unlawfully and where a finding that there would be “very significant obstacles” to integration into India is unsustainable on the evidence produced. No application has been made to produce further evidence.

40. This is an appeal that should not have been allowed by the First-tier Tribunal and ought not to succeed.

Notice of Decision

41. I set aside the decision of the First-tier Tribunal. I allow the Secretary of State’s appeal and I substitute a decision dismissing the appeals of each of these claimants.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 7 August 2019