



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

Appeal Numbers: IA/41419/2013  
IA/41420/2013  
IA/41421/2012  
IA/41422/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 27 August 2014**

**Determination**

**Promulgated**

**On 4 September 2014**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**FAHIM SAHABOOLEEA  
BEEBEE SHAKILA SAHABOOLEEA  
JAMEEL SAHABOOLEEA  
ABDOOL KALEEM SAHABOOLEEA**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr J Martin, instructed by Raj Law Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellants are nationals of Mauritius. The first two appellants are husband and wife and are the parents of the third and fourth appellants. They have been in the United Kingdom since 2003. Their leave expired in November 2005. An application prior to that made by the first appellant to

extend leave to remain as a student was refused. Thereafter they were in the United Kingdom illegally until they applied for discretionary leave to remain in October 2010, which application was refused. There was a further application and refusal followed by an appeal to the First-tier Tribunal subsequent to which an appeal to the Upper Tribunal was allowed. Thereafter there were further representations made to the respondent for discretionary leave to remain and unsuccessful applications for judicial review.

2. The first appellant said he had a cooking and catering business. The third appellant, Jameel is in a relationship with Zahraa Bhuttoo which has lasted for some three years. Mrs Sahabooleea has been diagnosed with Fabri disease which is a rare disease for which she has been receiving treatment. Jameel gave evidence to say that he and Zahraa Bhuttoo planned to marry once she had finished university. At the moment they saw each other a couple of times a month and kept in touch in the usual way otherwise. Abdul had completed his A levels and had applied to college but was refused admission because he had no valid leave to remain in the United Kingdom and thereafter had to assist his father in the catering business.
3. The judge accepted a great deal of the evidence of the appellants. He had reservations about language in that although he accepted that the second appellant had a good command of English he found it difficult to believe that she spoke nothing but English in a family where her husband and sons were brought up speaking Creole for all their formative years and in her husband's case for a substantial part of his adult life. As regard Jameel's relationship with his girlfriend he noted that Zahraa Bhuttoo had not made a witness statement and they did not spend a great deal of time together and he doubted whether their future together was as assured as Jameel indicated. He had some reservations about the extent to which they had cut themselves off from their families in Mauritius. He did not accept the second appellant's evidence as to the treatment for Fabri disease in Mauritius including not accepting that chemotherapy was not available there.
4. The essential issue was that of Article 8 private life. The judge noted the relevant legal tests in this regard and considered the matter on the basis of whether the removal of the appellants would be proportionate. He took into account such authorities as MM, MF, and Izuazu. With regard to the issue of delay he noted that the delay had been longer than might reasonably have been expected but said that it had to be seen in the context of the appellants' willingness to remain without leave in the United Kingdom rather than return home. The appellants, he said, had chosen to remain in the United Kingdom knowing that they had for part of the time no basis for remaining and for part of the time no more than a hope for being able to remain. They had built up their family life in the United Kingdom to a significant extent during the period when they had not had leave to remain. He took account of all the evidence before him, noting

that they had built up substantial private lives in the United Kingdom and that there were particular factors such as the second appellant's illness, the development of the family business, Jameel's development of his working life and his relationship with his girlfriend and so on. On the other hand, as he noted there were the requirements of immigration control and the economic welfare of the country. He said that the family were not a drain on the resources of the United Kingdom, although he had noted earlier that it was the case that they were not paying tax since they were not allowed to work. He had not been told whether or not the second appellant's medical treatment had been paid for privately. He said that the maintenance of immigration control was something to which the Secretary of State gave considerable weight and he was bound to accept the importance which she accorded to that consideration. He concluded that the appellant's case was heavily outweighed by the considerations put forward by the Secretary of State and that they could not succeed either individually or collectively.

5. The appellants sought and were granted permission to appeal against this decision on the basis that it was arguable that the judge had erred in law in his assessment of proportionality, in particular with regard to the medical evidence concerning the second appellant and the issue of delay. It was argued that insufficient weight had been given to the relationship between Jameel and Ms Bhutto, and it was unclear what weight had been attached to the various arguments.
6. In his submissions Mr Martin adopted and developed the points set out in his grounds. He argued, with regard to the second appellant's illness, that although the evidence was not as comprehensive as it might have been, it showed that she suffered from a rare illness, and it was clear from the doctor's letter that she was undergoing tests and had been for years while the diagnosis was made and that further tests were needed. He did not challenge what the judge said about evidence of treatment in Mauritius, but it was clear that there had to be a proper diagnosis and that had not yet been completed and the judge was in error in that regard. Also the second appellant said that the doctors wished to study her for the purposes of research and that was a relevant factor in bearing in mind the interests of the United Kingdom.
7. As regards delay, although it was the case that they could have left at any time, that was true of anyone who is the victim of delay, and the judge had not applied the guidance set out in EB (Kosovo). He had not given weight to the appellants' increased connection to society and the fact that the delay diminished somewhat the force of the Secretary of State's arguments. He had not given proper weight to Jameel's relationship with his girlfriend and it was unclear what weight had been given to the evidence.
8. In her submissions Ms Isherwood argued that the determination was well-reasoned. The family could have left at a time when they had no leave

and chose not to. They had set up a business and did not pay tax and she assumed that the medical treatment had not been paid for. They had minimised their connection to Mauritius. It could be seen from paragraph 25 that the second appellant had seen a doctor in Mauritius in connection with her illness and clearly had had some treatment there. All the matters which formed the basis of the claim could be addressed by returning to Mauritius and applying for entry clearance. The judge had given appropriate consideration to the issue of delay. The positive factors had been noted and set against the negative factors. The grounds under challenge amounted to disagreement and there was no material error of law in the determination.

9. By way of reply Mr Martin argued that the issues of tax and medical treatment had not really featured in the judge's decision and could not be read into it. There had been no diagnosis of the second appellant's illness until she came to the United Kingdom and it was relevant to her that the diagnosis was made correctly and was important for her private life. The judge had missed the point. As regards delay the important point was the length of time they had been in the United Kingdom and the development of stronger roots during that time and the diminution in the respondent's argument as to the impermanence of their stay as a consequence. The judge's approach would remove the efficacy of the EB (Kosovo) guidance.
10. I reserved my determination.
11. I have set out above in some detail the judge's findings.
12. As regards the issue of the second appellant's illness, I note from paragraph 9 of her statement that the results were awaited of a meeting with a panel of doctors on 6 May 2014. She also gave evidence that the doctors said that they would like her to take part in a study of Fabri's disease. The judge set out her evidence at paragraphs 23 to 25 of the determination. He did not accept her claim that there were no chemotherapy facilities available in Mauritius. He accepted that she had benefited from sophisticated diagnostic processes in the United Kingdom and noted that such facilities might not be available in Mauritius but there was no evidence that the diagnostic process would be continuing but even if it were that aspect of the appeal fell a long way short of Article 3 and as the evidence stood there was little which it contributed to the Article 8 claim. He bore in mind what had been said by the Court of Human Rights in Bensaid [2001] ECHR 82 in this regard. Clearly therefore he bore in mind that treatment which does not reach the severity of Article 3 treatment may nonetheless breach Article 8 in the private life aspect where there are sufficiently adverse effects on physical and moral integrity.
13. It seems to me that the judge did address adequately the issue of the second appellant's health and the evidence in that regard. He bore this in mind in the context of Article 8 private life including noting that there was

no evidence that the diagnostic process would be continuing. The challenge in this regard is a matter of disagreement only.

14. As regards the issue of delay, the judge noted that the delay had been longer than might reasonably be expected but considered that this had to be seen in the context of the appellants' willingness to remain without leave in the United Kingdom rather than return home. He said that the delay that had played a part in this case strengthened their claim to remain in the United Kingdom as had been indicated by Lord Bingham in EB (Kosovo) [2008] UKHL 41, having earlier noted at paragraph 38 Mr Martin's submissions quoting from EB (Kosovo) with regard to the three relevant factors which are summarised in that paragraph of the determination.
15. Again I consider the judge has not been shown to have erred in his assessment of delay. He took account of the guidance in EB (Kosovo). It was open to him to comment as he did on the fact that the appellants had had a choice and could have returned to Mauritius and had elected not to do so. He did not substitute his reasoning in that regard for the EB (Kosovo) guidance, but, on my reading of the determination, took all these matters into account in concluding as he did.
16. Thereafter he went on to summarise the relevant factors that favoured the appellants and those that went against them in assessing proportionality. I cannot see any relevant material factors that were omitted from the positive points set out at paragraph 72 of the determination. In noting the adverse factors he was entitled to attach the weight he did to the maintenance of immigration control, and to conclude as he did on the proportionality of removal. I consider his determination in this regard as elsewhere to be clearly and soundly reasoned. The challenge in my view amounts to one of disagreement only, ably though it has been argued by Mr Martin. I find no error of law in the judge's decision and that decision dismissing the appeal is maintained.

Signed

Date

Upper Tribunal Judge Allen