



The Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: IA/13985/2014
IA/13986/2014
IA/13988/2014
IA/13989/2014

THE IMMIGRATION ACTS

Heard at Manchester
On February 9, 2015

Determination Promulgated
On February 16, 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MRS NEENA BHATTI
MR SHAHSI BHUSHAN BHATTI
MR STEPHAN BHATTI
MISS TANIYA BHATTI
(NO ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Welsh, Counsel, instructed by Trent Centre for Human Rights
For the Respondent: Ms Johnstone (HOPO)
Interpreter: Mr Samuel

DETERMINATION AND REASONS

1. The appellants, born June 1, 1967, August 16, 1966, July 6, 1996 and April 29, 1994 respectively are citizens of India. The first named appellant entered the United

Kingdom on September 25, 2009 with leave to enter as a Tier 4 (General) student until April 30, 2011. This leave was extended until July 25, 2013. The remaining appellants are dependants of the first appellant and their leave matched that granted to the main appellant. They all submitted applications to extend their stay under the Immigration Rules on July 18, 2013. The respondent refused their applications on March 11, 2014 under paragraph 245ZX(a) and 322(1A) HC 395 and decisions were taken to remove them by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The appellants appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on March 21, 2014 and on July 14, 2014 Judge of the First Tier Tribunal Davies (hereinafter referred to as the "FtTJ") heard their appeals and in determination promulgated on July 15, 2014 he refused their claims under paragraph 322(1A) HC 395.
3. The appellants lodged grounds of appeal on September 29, 2014 and on October 7, 2014 Designated Judge Zucker extended time and gave permission to appeal finding there were arguable grounds that the FtTJ had erred in his approach.
4. The matter came before me on December 11, 2014 and at that hearing Mr McVeety, the Home Office representative, accepted that the FtTJ had failed to deal with the private and family life claims despite the fact article 8 had been raised in the grounds of appeal. An error of law was therefore made out.
5. Mr Hussain, the appellant's representative, then argued that the FtTJ had erred in rejecting the claim under the Immigration Rules. After hearing submissions I found the appeals were correctly dismissed under paragraph 245ZX(a) HC 395 but the findings in respect of paragraph 322(1A) HC 395 were flawed.
6. I directed that the matter be listed for a hearing on article 8 ECHR and 322(1A) HC 395 and the matter came before me on the date set out above.

PRELIMINARY ISSUE

7. At the previous hearing on December 11, 2014 I gave directions for the future disposal of this appeal. I directed that any additional evidence should be served by January 26, 2015.
8. Although the appellants' representatives served additional witness statements late on January 28, 2015 and a large bundle on February 4, 2015 I nevertheless agreed to admit them into evidence despite submissions from Ms Johnstone to refuse them. The fact they had been served on the Tribunal prior to the hearing was a factor I took into account when allowing their admission.
9. However, when Mr Welsh invited me to admit further evidence namely mobile phones and a bank statement I refused this request. This was evidence that existed

prior to the original hearing. The appellants failed to produce that evidence at that time and also failed to make an application to adduce the evidence prior to the hearing on December 11, 2014. Mr Welsh accepted the appellants had not co-operated with their solicitors and no blame should be placed on the representatives.

10. The evidence should have been documented prior to the hearing and served in accordance with the Rules and in view of the non-compliance and the appellants' own neglect I concluded that it would be unfair on the respondent to adduce this evidence at the eleventh hour.
11. Having ruled on this issue I invited Mr Welsh to call his evidence on the two issues namely whether a finding should be made under paragraph 322(1A) HC 395 and article 8 ECHR.

EVIDENCE

12. The four appellants each gave evidence and were each cross-examined by Ms Johnstone.
13. Ms Neena Bhatti adopted her recent statement and explained that prior to coming to the United Kingdom she had worked in India as a qualified nurse and had obtained a diploma in nursing. She came here to "upgrade" her standing as a nurse internationally. She agreed that on previous occasions she had used an agent or friend or been assisted by the university. For the current application a friend advised her to use a firm called Study Solutions. She told him she wanted to obtain a work permit but he advised her that due to the shortness of time she should apply for a further study visa although she believed she was going to study health and social care. It was all a rush the day she and her family signed the forms partly because Mr Shiv, her representative, was running late. She did not read the contents and was unaware that fraudulent documents had been submitted with them. She stated that she had not provided him with any of the fraudulent documents. When she went to enrol on the course she discovered it was an accountancy course so she contacted Mr Shiv who told her not to worry and that once the visa was granted she could change course. After she received her refusal letter she tried to speak to Mr Shiv but he was evasive and would not return her calls or answer her texts. She believed that if she had to leave then she would be unable to resume her nursing career in India because she had not been doing that type of work and would have to go back to study before she would stand any chance of obtaining work.
14. In cross-examination by Ms Johnstone she agreed that on every previous occasions she had had to produce financial evidence to support her application but on this occasion she had not had to because she was supposed to be applying for a work permit. It was put to her that when she signed the form she would have been aware she needed to show she had over £20,000 and that she had failed to produce any evidence based on the account she was giving. She blamed the agent for this. She was questioned why she needed more training to be a nurse when she had worked for

nineteen years as one in India and she responded that she intended to do an English exam that she had never taken and that she would need. It was put to her that it made no sense that she wanted to do a course in health and social care when she just said she wanted to take an English exam and she said Mr Shiv said she had to do it this way as there was insufficient time to apply for what she wanted. She explained that she did not contact the Home Office to tell them what had happened after she was refused because she was upset and nervous.

15. I asked her to tell me details about her personal situation and she indicated that she had two sisters and a brother in India but that her brother had fallen out with her because her husband was a Hindu and she was a Christian. She agreed that she spoke to her siblings occasionally on the telephone but maintained she had no one to turn to in India.
16. She claimed she would be unable to carry out her religious beliefs in India in the way she could here but agreed that this was not something she had raised until this hearing although she claimed to have told her solicitors about the problem.
17. Stephen Bhatti adopted his recent statement and confirmed his mother's claim that they had all come to London to sign the application forms but that he was not aware fraudulent documents were used. He confirmed his mother's account they had tried to contact Mr Shiv after the application was refused and he stated they had no letters had been sent to him or received from him. He confirmed, albeit for a different amount, that money had been paid to Mr Shiv for him to file their applications. He stated that he wanted to embark on an air traffic controller course that was not taught in India and he felt that he needed his family with him to financially and morally support him.
18. In cross-examination he also accepted that in the past financial documents were submitted to support applications and that his mother had sent them to them. He claimed they were not required to bring any financial documents for the current applications only cash. He confirmed that he had made no enquiries about studying in India.
19. Taniya Bhatti adopted her statement and stated she had never seen the fraudulent documents but was aware her mother was told to bring between £4,000 and £5,000 but eventually only paid £2,000. She indicated she was studying for a BTEC in maths and English and then she hoped to commence an Access to Science course and then go to university to study medicine. She indicated she had many friends in the United Kingdom and liked to play the piano and sing songs. Family was very important to her although she would be all right if her mother had to leave but she would miss her support.
20. Under cross-examination she stated she had been attending boarding school and living with her grandmother before coming to the United Kingdom. She had not made any enquiries about courses in India.

21. Mr Shahsi Bhushan Bhatti confirmed his wife's account regarding the current application forms and the fact they were required to pay Mr. Shiv up to £5,000 albeit the amount eventually paid (£2,000) was less. He explained that he had been working until January 2015 when he had an operation for glaucoma. He also suffered from diabetes and his wife helped him with his medication. He had no ongoing treatment or problems albeit he wore a patch for a month after the operation. He explained his wife came to the United Kingdom to expand her knowledge and to brighten her future and theirs. She decided this was a nice country and then brought the remainder of her family over as dependants. He emphasised he wanted to be a father to his children be that here or in India and he did not believe it would be easy for his wife to follow her religion in India.
22. Under cross-examination he reiterated what the other witnesses had said about financial paperwork namely that on previous applications his wife had submitted the necessary paperwork. He confirmed that in India he had worked for thirteen to fourteen years before coming here and that he had been a Christian, like his wife, since 1991 when he was baptised.

SUBMISSIONS

23. Ms Johnstone invited me to uphold the finding under paragraph 322(1A) HC 395. She said it was not disputed that false documents had been submitted and it was also not disputed that the first named appellant had signed the declaration on the application form. Her case was she did not know what she sent off but Ms Johnstone invited me to find against her because her actions undermined her claims of innocence. She had always provided financial documents so her claim none were needed this time for a student application lacked credibility. She went to her course but said nothing about being on the wrong course until her application was refused and she submitted that if the first-named appellant was genuine then why had she not spoken to Mr Shiv before the refusal or contacted the home office. There was no evidence she had the funds required and to this day she had not produced any. The simple truth was her post-study visa was expiring and could not be extended and she was correctly told she could not apply for a work permit. She was blaming an agent when in reality the fault lay on her shoulders. Her oral evidence was she wanted to take an English course but this contradicted her claim she wanted to take a health and social care course even though she had nineteen years experience as a nurse. Ms Johnstone invited me to find she had knowingly acted dishonestly.
24. Ms Johnstone went onto address me on the Immigration Rules and submitted they could not meet the Rules. They came on temporary visas with no expectation of being allowed to stay and both children would be able to continue their studies in India and the husband had indicated he had worked for many years in India. With the exception of the main appellant all of the others had come as dependants and would all be able to continue their lives in India. Friendships could be continued other than by direct contact and there was no evidence that the first-named appellant

could not practise her religion. Applying Section 117B of the 2002 Act she submitted the public interest was in maintaining immigration control because the parents did not appear able to speak English to the required level with both using the interpreter at the hearing and the main appellant admitted she wanted to study an English course. Their private lives were precarious since July 2013 and the younger appellants had only been here for fourteen months whereas they had all spent the majority of their lives in India. Ms Johnstone submitted it would not be disproportionate to require the family to be removed.

25. Mr Welsh adopted his skeleton argument that had been faxed on February 6, 2015. He submitted that the witnesses all confirmed that the main appellant relied on Mr Shiv and that money had been paid to him. Her actions were not dishonest although they may be described as naive. The application form suggested someone other than the appellants completed them and the fraudulent documents were ham-fisted and basic errors were made. The appellant should not be blamed for the actions of her representatives. He submitted that MR Shiv was a confidence trickster and he had duped the family.
26. Mr Welsh then addressed me on article 8 claims, accepting they did not meet the Rules. He submitted the main appellant was a positive influence on society and the family had not been a burden on the taxpayers. The main appellant had come here to develop her skills and the family had joined her lawfully. They wanted to live together here as a family and continue their studies and work. The fact they used the interpreter should not be held against the appellants and it would be disproportionate to remove them.
27. I reserved my decision.

DISCUSSIONS AND FINDINGS

28. There were two issues for me to consider. Firstly, I had to consider whether the appellants had established a right to remain under article 8 and secondly I had to consider whether a finding under paragraph 322(1A) HC 395 should be made.
29. It was not disputed that the Immigration Rules were not met and following a recent line of cases I was invited to consider their claims outside of the Rules. Ms Johnstone did not suggest I should not consider them under article 8 so I proceeded to consider them following the principles set out in Razgar [2004] UKHL 00027 and Section 117B of the 2002 Act.
30. The argument advanced was that the family had family life and I find it is probably just arguable they demonstrated this they are parents and children and whilst the children are over eighteen they had recently been living as a family unit. The decisions to remove them would not interfere with family life if they were removed as a family unit. The main appellant had been here the longest and her husband and children had subsequently followed. I am satisfied that if they were removed

together then family life would not be interfered with as they would be removed as a unit. I therefore find that the family life claim falls at the second Razgar question.

31. Turning to the issue of private life I accept that the family have established a private life and that removal would interfere with their respective plans. The children both want to study or train and the mother wanted to also work or study. The father had been working as well. Any removal would be in accordance with the law and for one of the reasons set out in article 8(2) ECHR.
32. The issue in each of their cases was whether removal was proportionate and in considering proportionality I have to have regard to the evidence and when considering the public interest I have to have regard to section 117B of the 2002 Act.
33. The first-named appellant has been in the United Kingdom since September 2009. The second-named appellant came in November 2010 and the other appellants came in April 2012 when they were 16 and 18 respectively.
34. I am satisfied that three of the appellants came as dependants whereas the main appellant came initially as a student and then progressed to a Tier 1 post study migrant. At the time of her last application she found herself unable to extend her stay as a Tier 1 migrant and whilst she talked of extending her stay as a work permit holder no explanation has ever been advanced as to how that was to be achieved. I am satisfied that when her visa was about to expire she sought to extend her stay by returning to the classroom.
35. Mr Welsh's submission to me is that she has provided a positive influence on society and has not been a burden on the British tax payer and both those comment may be correct so far as she is concerned but I cannot lose sight of the fact her status here has always been temporary and by failing to meet the Immigration Rules her right to remain here ended unless removal would breach her right to private life.
36. The second appellant came as a dependant and has no right to remain in his own right. He worked legally until recently. He had an operation at an NHS hospital presumably at public expense because no evidence was provided that he paid for his treatment. He admitted he could be a father to his children either here or in India and he also admitted he had previously worked in India. There is nothing in his medical condition that would engage article 8 specifically as he told me that following his operation he had recovered albeit he wore a patch for one month after the operation.
37. The third and fourth appellants came as children and studied here. The third named appellant would like to do an air traffic controller course but admitted he had made no enquiries about a similar course in India. The impression I gained was that he simply expected to be allowed to do the course because he was here. His sister was studying Maths and English and wanted to then take an Access to Science course with the intention of going to study medicine at university. She too seemed to think that she was able to take what courses she wanted in the United Kingdom albeit

clearly there was an education system in India. I do question whether her qualifications would enable her to take medicine but ultimately that would be a matter for someone else to decide and is not a judicial decision.

38. I am satisfied that none of the appellants have explained why they would be unable to continue their private lives in India. The Tribunal in Nasim and others (Article 8) [2014] UKUT 00025 (IAC) reminded us that an expectation of study or work does not create a private life. Neither of the children is in the middle of critical courses that removal would interfere with their education.
39. Section 117B requires me to have regard to certain factors when considering public interest.
40. I accept all of the appellants can speak English to varying degrees with the two younger appellants speaking excellent English. However, the two older appellants' English abilities are less clear as both used the interpreter, which indicated they were more comfortable in their native language. The main appellant also stated she had intended taking an English course. Balanced against that is the fact the second appellant was able to hold a job down and the first named appellant had attended college and had also worked. On balance I find their levels of English would not mean they would be a burden on the taxpayers although clearly integration would be more difficult if they did not speak English well. The fact they have some command of the English language also means I am able to find they could be financially independent and therefore not a burden on the taxpayers.
41. They have all been here legally but as they did not meet the Immigration Rule under which they applied I am satisfied their stay since July 2013 has been precarious.
42. In considering the issue of removal I find the following factors carry more weight than their desire to remain here. These factors are:
 - a. No expectancy they would be allowed to remain.
 - b. Their private lives have been built around study and work over a relatively short period of time.
 - c. All appellants have lived the majority of their lives in India.
 - d. Failure to meet the Immigration Rules.
 - e. Private life precarious since July 2013.
 - f. No evidence that they could not continue their lives back in India.
43. I therefore find that removal in each case would not be disproportionate and I refuse their applications under article 8 ECHR.

44. I turn to the second issue namely whether a finding under paragraph 322(1A) should be made. That paragraph applies:

“Where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant’s knowledge), or material facts have not been disclosed, in relation to the application.”

45. There is no dispute that false documents were submitted. These included two false letters to the home office and a bank statement. It is these documents that the respondent shows the appellant was fully aware that false documents were submitted.

46. The applications were refused, as long ago as March 2014 but despite this the first-named appellant produced nothing to the FtTJ in July 2014 that supported her claims and even when the matter came before me in December 2014 nothing was produced. The representatives then submitted another bundle of documents only a week or so ago but this bundle contained nothing that may assist her apart an acknowledgement of a letter of complaint that was sent on December 19, 2014. Little effort was made by this appellant to properly argue her case. Today I refused permission to produce mobile phones to show text messages and I did so because it would be unfair to produce evidence at the door of court that could have been produced at anytime over the previous ten months. There would be no way of cross checking the messages and to further allow the admission of a bank statement again at the last minute would also prove little as it would only show withdrawals and the evidential weight would be virtually none as it would not prove anything and the respondent would be unable to counter what was going to suggested.

47. On the one hand I have the appellants’ evidence that the main appellant did not act improperly whereas the respondent submits she did. Ms Johnstone obtained evidence in cross-examination that all of the appellants knew financial documents were needed with the previous applications. No plausible explanation has ever been tended by the appellants to explain why none were needed. They appeared to know that financial documents were needed so what did the first-named appellant think was different this time. She knew she could not extend her Tier 1 status and according to her oral evidence she could not apply for a work permit and so she was applying to study.

48. I simply do not accept she did not know false documents were being submitted with her application. She and her family were desperate to extend their stay because they liked the life here. They were running out of time and whilst they may not have provided the documents I am satisfied she knew full well false documents were being submitted. That may explain why there are so many “ham-fisted” errors in the documents. She signed her application form and that included a declaration the contents were true.

49. The burden of proof in proving a document is false is on the respondent and the standard of proof is on the balance of probabilities. There is no dispute these documents were false. The Court of Appeal in AA (Nigeria) v SSHD [2010] EWCA Civ 773 confirms dishonesty is needed and I am satisfied for the reasons set out above that the first-named appellant did act dishonestly. I therefore confirm that her appeal under the Immigration Rules was properly refused under paragraph 322(1A) HC 395.

DECISION

50. The decision of the First-tier Tribunal did disclose an error in law in so far as article 8 ECHR is concerned and by failing to make a finding under paragraph 322(1A) HC 395.

51. I remake the decision as follows:

- a. I uphold the dismissal of the appeal under the Immigration Rules.
- b. A finding under paragraph 322(1A) HC 395 against the first-named appellant should be made.
- c. I dismiss their appeals under article 8 ECHR.

52. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) an appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order was not made in the First-tier and I see no reason to amend that order.

Signed:

Dated: **February 13, 2015**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I make no award on fees.

Signed:

Dated: **February 13, 2015**

Deputy Upper Tribunal Judge Alis