



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

Appeal Numbers: IA/14901/2014
IA/14902/2014
IA/14903/2014
IA/14904/2014

THE IMMIGRATION ACTS

Heard at Field House, London

Determination

On 19 May 2015

Promulgated

On 20 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MANGLA RAM
BULA DEVI
GOVIND RAM
DEEPAK**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J Reynolds, instructed by MT UK Solicitors

For the Respondent: Ms E Savage, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, nationals of India, appealed to the First-tier Tribunal against the decisions of the Secretary of State to refuse the first appellant's application for indefinite leave to remain as a work permit

holder and the second, third and fourth appellants (his wife and two children) as his dependants. First-tier Tribunal Judge Howard dismissed the appeals and the appellants now appeal with permission to this Tribunal.

2. The respondent refused the applications on the basis that the first appellant did not meet the requirements of paragraph 134 of the Immigration Rules as he had not demonstrated that he passed the Life in the UK test because the certificate was confirmed as false by learndirect limited. The applications were also refused under paragraph 322(1A) of the Rules because a false document was submitted in relation to his application.
3. The Notices accompanying the reasons for refusal letters advised the appellants that they had a right of appeal only after leaving the UK. However the appellants lodged notices of appeal. I note that on 4 April 2014, following submission of the notices of appeal, the appellants were directed by the duty judge to submit evidence to the Tribunal that a human rights claim or other relevant claim was made prior to the decisions in line with the case of Nirula and Alighanbari, R (on the application of) v Secretary of State for the Home Department [2013] EWHC 1818 (Admin). There is a reply to that direction dated 11 April 2014 from the appellants' current solicitors which maintains that the appellants made an online application before the expiry of their leave to remain and that, as the applications were made in time, there was therefore an in-country right of appeal and that the decision in Nirula does not therefore apply. There is a note on the file to indicate that the issue as to whether there is an in-country right of appeal was to be determined by the First-tier Tribunal Judge as a preliminary issue.
4. The First-tier Tribunal Judge did consider the issue of jurisdiction in relation to the decisions to refuse to grant leave to remain. The appellants asserted that they made their applications for leave to remain before the expiry of their leave to remain on 26 February 2014 by lodging applications online on that date. The respondent said in the reasons for refusal letter that the appellants' applications were made on 6 March 2014. The First-tier Tribunal Judge found as a preliminary issue that, as the appellants had not submitted evidence that electronic applications had been made for example by producing electronic records, they had not established that their applications were made before the expiry of their last leave to remain on 26 February 2014, and had not therefore established they have an in-country right of appeal against the decisions not to vary leave to remain.
5. However the Judge did decide that the appellants had a right of appeal against the removal directions and went on to consider the appeal under Article 8 of the European Convention on Human Rights. He decided that, although the appellants had an established family life there would be no interference with that family life as they would all be removed together.

In terms of their private life, he accepted that they probably had established a private life but in the absence of evidence as to the quality of such private life it was not established that there would be consequences of such gravity as potentially to engage Article 8.

6. The appellants appealed against the decision of the First-tier Tribunal on the grounds that the First-tier Tribunal Judge erred in failing to engage with the allegation of deception. It was secondly contended that the Judge erred in failing to consider the appellants' private life under Article 8 within the Immigration Rules in particular the 'very significant obstacles' test. It was further contended that the failing to adequately consider the evidence as to the nature of the private life established by the appellants in the UK.

Jurisdiction

7. At the outset of the hearing before me Ms Savage raised a preliminary issue as to whether the First-tier Tribunal had jurisdiction to hear the appeal at all. She submitted that the Notices of Immigration Decision issued to each of the appellants under section 10 of the Immigration and Asylum Act 1999 advised that the right of appeal was exercisable after the appellants had left the UK. She relied on the decision of the Administrative Court in Nirula v First-tier Tribunal [2011] EWHC 336 (Admin) and on section 82 (2) and 92 of the Nationality, Immigration and Asylum Act 2002. She submitted that the appellants had made applications out of time and therefore had no appeals against the decisions to refuse to grant leave to remain. She submitted that they therefore had no in country right of appeal against the decision to remove them.
8. Mr Reynolds submitted that the appellants did make the applications before the expiry of their leave to remain but accepted that he had no concrete evidence to establish that it was made on time as asserted. He submitted that the appeal should be remitted to the First-tier Tribunal to give the appellants an opportunity to address the issues raised in the reasons for refusal letter.
9. I have considered the First-tier Tribunal Judge's decision that the appellants did not make an in time application for variation of leave to remain and I am satisfied that this decision was a proper decision based on the evidence before her. There was then, and is now, no evidence to support the assertion that the appellants made online applications on 26 February 2014. The application form in the respondent's bundle, the same as that submitted by Ms Savage at the hearing before me, was signed by the first appellant on 6 March 2014. The covering letter is dated 5 March 2014 and does not refer to any previous online application. The First-tier Tribunal Judge made no error in deciding that the applications were not made within the currency of the appellants' previous leave to remain.

10. Section 82 (2) of the Nationality, Immigration and Asylum Act 2002 provides for a right of appeal arising from an 'immigration decision'. The immigration decisions in this case are to remove the appellants, not, as asserted in the grounds of appeal to the First-tier Tribunal, to refuse to vary their leave to remain. This is because they did not have leave to remain at the time of their applications. Accordingly the immigration decisions appealed against are under section 82 (2) (g) as the appellants are to be removed from the UK as overstayers under section 10 (1) (a) of the Immigration Act 1999. Section 92 of the 2002 Act provides that appeals under section 82 may not be exercised from within the UK unless set out in that section. Appeals against immigration decisions specified in section 82 (2) (g) are not included in those appeals which may be exercised from within the UK. However section 92 (4) provides for a right of appeal within the UK if, inter alia, the appellant has made an asylum or human rights claim while in the UK.
11. The Court of Appeal in Nirula, R (on the application of) v SSHD [2012] EWCA Civ 1436 considered the wording of section 92 (4) and said;

"17. The use of the auxiliary perfect tense in the phrase "has made ... a human rights claim" strongly implies that the claim must precede any appeal and that must mean before the institution of an appeal rather than the date of hearing of the appeal. The reason why Parliament has chosen those words is, presumably, in order to give the Secretary of State the opportunity to give a decision on any human rights claim before the appeal is determined so that her decision on that question can become part of any appeal. This orderly process will be disrupted if, without any prior notification to the Secretary of State, an appellant can simply put a human rights claim in his notice of appeal."
12. The application form submitted on 5 March 2014 makes no asylum or human rights claim. The reasons for refusal letters do not deal with any such claim. The grounds of appeal to the First-tier Tribunal do not make any asylum or human rights claim. The appellants did not show, in response to the direction of 4 April 2014, that there had been any human rights claim. The first indication of any human rights issue came in the skeleton argument and the First-tier Tribunal Judge decided to treat the letter to the Tribunal submitting additional grounds of appeal as an application to amend the grounds to include human rights grounds. In so doing the Judge fell into error. This is because the appellant's only had a right of appeal exercisable from outside the UK unless they had made a human rights claim whilst in the UK. The Judge erred in failing to consider the provisions of section 92 of the 2002 Act and the decision in the case of Nirula. This is a material error going to the heart of the jurisdiction issue.
13. I therefore set aside the decision of the First-tier Tribunal to amend the grounds of appeal to include Article 8 grounds and in relation to the Article 8 issue. I preserve the findings of the First-tier Tribunal Judge in relation to the date of submission of the applications for indefinite leave to remain.

There is no further evidence before me in relation to that issue and that decision was properly made by the Judge.

14. The appellants did not provide evidence that they made a human rights claim before the decision or the lodgment of the appeal in this case. There was therefore no in-country right of appeal. The First-tier Tribunal had no jurisdiction to determine the appeal. The appeal is dismissed for want of jurisdiction.

Conclusion:

The making of the decision of the First-tier Tribunal did involve the making of an error on point of law.

I set it aside and remake it by dismissing the appeals for want of jurisdiction.

Signed

Date: 19 May 2015

A Grimes

Deputy Judge of the Upper Tribunal