



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: IA/31393/2014**

**Appeal**

**IA/31397/2014  
IA/31400/2014  
IA/31402/2014**

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On: 11<sup>th</sup> February 2015**

**Decision Promulgated  
On 3<sup>rd</sup> March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**Sheetal Kishor Thakur  
Kishor Ramchand Thakur  
Nisha Kishor Thakur  
Rian Thakur  
(no anonymity direction made)**

Respondents

**Representation**

**For the Appellant:** Ms Everett, Senior Home Office Presenting Officer

**For the Respondent:** Mr Nasim, Counsel (Direct Access)

**DETERMINATION AND REASONS**

1. The Respondents were, at the date of the appeal in the First-tier Tribunal, all nationals of India. They are respectively a mother, father their two minor children. On the 27<sup>th</sup> October 2014 the First-tier Tribunal (Judge MPW Harris) allowed their linked appeals against the Respondent's decisions to remove them from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999. The Secretary of State now has permission to appeal against that

decision<sup>1</sup>.

2. The Respondents had applied for indefinite leave to remain in the UK on the grounds of their long residence/Article 8 private lives. The applications particularly relied on the fact that the eldest child of the family had been in the UK for over 7 years. Nisha was born in the United Kingdom on the 30<sup>th</sup> June 2004.
3. These applications had been made prior to the introduction of the 'new rules' in July 2012. It was for this reason that the family's representatives, the Secretary of State and the Judge all proceeded on the basis that these were simply *Razgar* Article 8 appeals. The determination makes reference to Edgehill [2014] EWCA Civ 402. That framework notwithstanding, the parties agree that the new rules, insofar as they could be applied to Nisha, had some relevance in that they were an indication of where the Secretary of State considered the balance should be struck. If Nisha could show, for instance, that she qualified under paragraph 276ADE(1)(iv) for leave to remain, the Secretary of State would face some difficulty in showing the decision to remove her to be proportionate.
4. Judge Harris started with the position of Nisha. He found that she had an established private life in the UK, having spent at that point over ten years of her life in the UK. Although the decision to remove her would not interfere with her family life (her parents and brother being removed with her) the interference with her private life was of sufficient gravity to engage Article 8. There being no dispute about the legality or purpose of the decision, the question was whether it was proportionate. Judge Harris properly had regard to the 'public interest' considerations set out in s117B<sup>2</sup>. He recognised that her parents could continue to care for her should she be removed to India, but noted the established caselaw on the weight to be attached to lengthy residence of children who have established social, cultural and educational ties to the UK: see for instance Azimi-Moeyed [2013] UKUT 197 (IAC). He gave consideration to those factors, noting *inter alia* that the right to education is not itself protected under Article 8 and that he attached rather more weight to the relationships Nisha had developed in the UK:

"that the appellant was born in the UK and has lived here for over 10 years is a significant factor for me to take into account. The focus of her life is no longer simply on her parents; the third appellant has established her own ties in the wider community. I consider there is a substantial amount of documentary evidence before me in support of the private life ties within this country, relied upon by the third appellant and which she has made outside of her family life...

...I am satisfied that the third appellant has developed such ties to this

---

<sup>1</sup> Permission granted by Designated Judge of the First-tier Tribunal McClure on the 23<sup>rd</sup> December 2014

<sup>2</sup> Nationality Immigration and Asylum Act 2002 (as amended by the Immigration Act 2014)

country that it is in her best interest to remain in the UK and it is not reasonable for her to relocate to India”

5. Nisha’s appeal was therefore allowed. In respect of her parents the matter was determined with reference to s117B(6): if it was not reasonable to remove Nisha then the public interest considerations did not weigh against her parents. They therefore succeeded in their appeals. It followed that the youngest child, dependent upon his parents and close to his sister, also succeeded.
6. The Secretary of State’s grounds of appeal are dated the 17<sup>th</sup> November 2014. They are lengthy and detailed but the central complaint is to be found in paragraph 1(a):

“It is plain from reading the determination as a whole that this appeal has essentially been allowed on the basis of the private life of the 3<sup>rd</sup> appellant in that she has been present in the UK for just over 10 years”

7. Just under a month later, on the 16<sup>th</sup> December 2014, the Secretary of State issued Nisha with a British passport. Mr Nasim points to Nisha’s naturalisation as a British citizen as further evidence, if it were needed, of the extent of her ties to this country. He submits that the First-tier Tribunal cannot be said to have erred in its emphasis of those ties.

### **No Error of Law**

8. At the date of the appeal before the First-tier Tribunal Nisha has spent so long in this country she qualified for British citizenship. That this is so is evidenced by the fact that two months after the hearing she in fact had her passport. If parliament has decided that a child with that length of residence should qualify for naturalisation it follows that there is a recognition that her ties to the UK at that point are so substantial that any interference with them would be disproportionate.
9. The author of the grounds complains that no regard was had to EV (Philippines) [2014] EWCA Civ 874. That was a completely different factual situation. The child in EV had no hope of success under the Rules. The First-tier Tribunal were here satisfied that Nisha had been here for longer than seven years, and that it was unreasonable for her to be removed. She therefore *prima facie* qualified under 276ADE(1)(iv) for indefinite leave to remain. The issues raised in the grounds may all be good points to make in respect of a child who does not qualify under the rules (or indeed nationality law) but this child did so qualify. The decision of the First-tier Tribunal was neither “overly generous” or “plainly unlawful”.
10. The grounds take no issue with the approach taken to the adult Appellants or the youngest child, but for the sake of completeness I

find that the First-tier Tribunal was quite correct to have applied s177B(6).

11. The grounds are entirely misconceived and there is no error of law in this determination.

### **Decisions**

12. The determination of the First-tier Tribunal contains no error of law and it is upheld.

Deputy Upper Tribunal Judge Bruce  
11<sup>th</sup> February 2015