



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

Appeal Numbers: IA/40485/2013
IA/40489/2013
IA/40493/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 28 January 2015**

**Decision & Reasons
Promulgated
On 4 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**MR RAJIV SINGH JEEBUN
MRS PRISCILLA VANNESSA JEEBUN
MASTER ELESH KRISHNA JEEBUN
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr P Turner

For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision and reasons promulgated on 3 December 2014, I concluded that the decision of the First-tier Tribunal to dismiss the appellants'

appeals against decisions to refuse to vary their leave and to remove them should be set aside and remade. The background facts are set out in that determination.

2. At the conclusion of the hearing (on 14 November 2014), the Secretary of State's representative on that occasion indicated that consideration might be given to guidance on "long residence" under paragraph 276 of the rules, in the light of submissions made on the appellants' behalfs that it appeared that the first appellant, Mr Jeebun, could show that he met the relevant requirements, having been present in the United Kingdom lawfully since 6 June 2004.
3. After promulgation of the decision on error of law, a formal application for indefinite leave to remain, under the rules, was made on the first appellant's behalf (and on behalf of his wife and child as his dependants) and the application was accompanied by a pass notification letter in relation to the Life in the UK test. It was also accompanied by confirmation that he had passed with merit an ESOL skills for life test.
4. Ms Everett said that she had spoken to Mr Wilding, who appeared for the Secretary of State in November 2014, and it was clear that he had made assiduous efforts to elicit a response from caseworkers, in the light of the indication that consideration might be given to the relevant guidance. It appeared to the Secretary of State that Mr Jeebun did meet the requirements of paragraph 276 of the rules and he had produced a Life in the UK test result, which was not tied to the date of application. It also appeared that his wife and child met the requirements of the rules but the Secretary of State had made no formal decision on the application for indefinite leave.
5. Mr Turner said that, in essence, the appellants' stance was that the requirements of paragraph 276B-D were met. In any event, the appellants were entitled to succeed under Article 8 of the Human Rights Convention. The Secretary of State's guidance under paragraph 276 showed that an applicant with a Life in the UK test certificate might expect to receive indefinite leave, whereas a person without one might receive a grant of two years' leave. On the face of it, it would be disproportionate to seek to remove the first appellant and his family members, as they appeared to meet the requirements of the rules. The precise grant of leave was, of course, a matter for the Secretary of State.
6. Ms Everett said that no response was required.

Findings and Conclusions

7. The first appellant and his dependants have applied for indefinite leave to remain on the basis that the requirements of the rules contained in paragraph 276 have been met. In November 2014, at the earlier hearing, Mr Jeebun was without certificates showing that he had passed the Life in

the UK test and had sufficient English language abilities. Certificates confirming his success accompanied the application for indefinite leave made in December 2014.

8. The application is still with the Secretary of State. It is clear that her representatives have made proper enquiries but there is nothing to show precisely when a decision will be made. There is no need to rehearse the evidence and there is no real disagreement between the parties. Mr Jeebun has been present here since June 2004, with leave, and appears to meet all the relevant requirements of the rules, as do his wife and child as his dependants. The extent of any leave granted by the Secretary of State is, of course, entirely a matter for her.
9. In these circumstances, and taking into account the appellants' reliance on Article 8, the substantial ties Mr Jeebun and his family members have established here with leave, since 2004, show that their removal in consequence of the adverse decisions would be disproportionate. As it has not been suggested that any particular requirement of paragraph 276B has not been met, there is no reason to doubt that a grant of leave will be made by the Secretary of State in due course.

Decision

10. The decision of the First-tier Tribunal, having been set aside, is remade as follows: the appeals are allowed.

Signed

Date 2 February 2015

Deputy Upper Tribunal Judge R C Campbell

ANONYMITY

There has been no application for anonymity and I make no order or direction.

TO THE RESPONDENT FEE AWARD

As the appeals have been allowed, I make a fee award in respect of any fee which has been or is payable in these proceedings.

Signed

Date: 2 February 2015

Deputy Upper Tribunal Judge R C Campbell

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