



IAC-BH-PMP-V1

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

Appeal Numbers: IA/28690/2014
IA/28692/2014
IA/28691/2014

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke
On 23rd February 2016

Decision & Reasons Promulgated
On 25th April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

AINUN BINTI ABDUL AZIZ First Appellant

AIN SYATIRAH SENEK BABA Second Appellant

ALEEF ABDUL SENEK BABA Third Appellant

(ANONYMITY DIRECTION NOT MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr C Sima, Legal Representative
For the Respondent: Mr J Parkinson, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are all citizens of Malaysia. The first appellant is the mother of the second and third appellants who are aged 24 and 16 years, respectively.
2. On 26th October 2015 Judge of the First-tier Tribunal R A Cox gave permission to the appellants to appeal against the decision of Judge of the First-tier Tribunal N Manuel in which she dismissed the appeals against the decisions to refuse leave to remain on human rights grounds applying Appendix FM and paragraph 276ADE of the Immigration Rules.
3. The grounds of application raise seven issues:
 - (i) That the judge erred in assessing the claims under paragraph EX.1. of Appendix FM on the basis that it would be reasonable to expect the third appellant, a child who had been in the United Kingdom for over seven years, to leave the United Kingdom when he would lose contact with his father.
 - (ii) That the judge erred in treating the children of the first appellant as adults in relation to their understanding of their illegal status in the United Kingdom.
 - (iii) That the judge erred in consideration of the reasonableness test in paragraph 276ADE(1) of the Immigration Rules by failing to take into consideration an Immigration Directorate Instruction (IDI) which required “strong reasons” in order to refuse a case where there was continuous UK residence of more than seven years and disruption to a child’s education.
 - (iv) The judge was in error in concluding that there would be no interference with family life because the appellants would be removed together when there was no evidence to show that the father was being removed at the same time and also failed to consider the appellants’ family life with Ms Baba, the first appellant’s other daughter with leave to remain.
 - (v) The judge wrongly concluding that the appellants had no respect for UK law when the third appellant is a child who could not be blamed for his parent’s actions.
 - (vi) The judge wrongly treating the considerations set out in Section 117B of the 2002 Act as “mandatory requirements”.
 - (vii) The judge failed to consider that, at the date of the hearing, the second appellant may have met the requirements in paragraph 276ADE(1)(v) relating to the length of time spent by the second appellant in the United Kingdom, even if she had not met that requirement at the date of application.
4. Judge Cox gave permission on the basis that “it may be arguable” that the judge erred in her consideration of the position of the third appellant as detailed in Grounds 1 and 3 but that the other grounds were “weaker”.
5. The respondent entered a response to the permission on 3rd November 2015. It was pointed out that any complaint that the third appellant would be separated from his father because there were no removal directions against him, was totally without merit. As the First-tier Judge had correctly concluded, the father has no legal status in the United Kingdom and the appellant was seeking to place weight on the father’s

wish to remain in the United Kingdom unlawfully. The response also comments that the judge had correctly approached the issue of the reasonableness of removal in the light of the respondent's obligations under Section 55 of the 2009 Act recognising that the parents of the third appellant and his sister were not entitled to be in the United Kingdom and it would be reasonable to expect the third appellant to follow them to a country where he spoke the language and could continue his studies and renew his contact with his grandparents. The judge also took into consideration that the third appellant could not be blamed for the actions of his parents (paragraph 36). Further, there was nothing in the IDI quoted to suggest a presumption that leave would be granted after seven years.

6. At the hearing before me Mr Sima confirmed that he relied upon the grounds emphasising that, in his view, the judge had failed to apply the reasonableness test properly. The third appellant had been in the United Kingdom from the age of 3 and was now 16 having attended school here and established friendships. In support of his arguments Mr Sima endeavoured to produce an unreported Tribunal decision which was opposed by Mr Parkinson. I refused permission.
7. Mr Sima also emphasised that the judge's consideration of human rights in respect of the second appellant failed to take into consideration that her sister had been granted leave to remain.
8. Mr Parkinson contended that the grounds were just a disagreement with the cogently reasoned findings of the judge. The appellants' knowledge of the illegality of their status on the basis concluded by the judge did not mean that the judge was blaming the second and third appellants for that status.
9. Mr Parkinson argued that the father of the second and third appellants should leave the country as he had no status and it was wrong for the appellants to rely upon any refusal to move by him as giving rise to separation. As to the child with leave to remain, who is not the subject of these proceedings, her status did not mean that she was obliged to remain or could not be reunited with her family in Malaysia. The second and third appellants did not have a right to education in the United Kingdom even if that had led to the establishment of private life.
10. Mr Parkinson concluded his submissions by reminding me that the factors in Section 117B of the 2002 Act could not benefit the appellants and, further, the judge was entitled to conclude that the parties could not maintain themselves. He ventured to suggest that the seventh ground of application was incomprehensible.
11. In conclusion, Mr Sima added that the third appellant could have succeeded in his own right under the Rules and should have been considered on that basis. He also thought that the judge's consideration of the best interests of the children was inadequate and, as far as the child with leave was concerned, should not be required to abandon her private life here.

Conclusions

12. At the end of the hearing and after I considered the matter for a few moments, I announced that I was not satisfied that the decision of the First-tier Judge showed an error on a point of law. I now give my reasons for reaching that conclusion.

13. The grounds of application focus upon the position of the third appellant who is now 16 years of age and who has been in the United Kingdom for over seven years. The comprehensive and cogently argued decision of the judge deals extensively with the position of that appellant having regard to his best interests as a primary consideration and the section 55 obligations of the respondent. Additionally, the judge's examination of the position for all appellants is carefully and separately considered where relevant.
14. As to the application of the reasonableness test set out in paragraph EX.1. of Appendix FM and paragraph 276ADE of the Immigration Rules, the judge's examination of the relevant issues is to be found from paragraph 16 onwards of the decision taking into account the establishment of a private life in the United Kingdom by both the third appellant and his mother and their family life together. The judge fully considers the implications of the third appellant ceasing his education and sporting activities to which he is committed before reaching the decision, open to her, that these activities can be continued in Malaysia. The judge was also entitled to conclude that the second and third appellants were aware of their illegal status in the United Kingdom because the evidence of the first appellant made it clear that her children had been aware of their status from "a long time ago". The judge's comment and conclusion does not, however, mean that she attributed blame to the children, particularly the third appellant, as the judge's findings are prefaced by the statement (paragraph 36) that the third appellant cannot be blamed for the actions of his mother.
15. The allegation that the judge failed to consider that there was no evidence that the father of the second and third appellants would be removed at the same time is without foundation. The father has no immigration status in the United Kingdom and so the issue of enforced separation does not arise. The judge carefully and properly examines the position of the father in paragraphs 32 to 35, inclusive, quoting *EV (Philippines) and Others* [2014] EWCA Civ 874 on the basis that the background against which the assessment is conducted is that neither parent has the right to remain. The judge gives comprehensive reasons for concluding that the first appellant's former partner and father of the children has no legal status in the United Kingdom.
16. It is wrong for the grounds to suggest that the judge considered family life without taking into account the right of the first appellant's other daughter, Baba, to remain. The judge reaches the decision, available to her, that it is a choice of the family whether Baba remains at university to complete her studies or joins her family in Malaysia. The evidence of the first appellant clearly showed that a family decision had been made for Baba to remain.
17. The seventh ground suggests that the judge should have taken into consideration the extent to which the second appellant might have met the requirements of the Rules at the hearing even if she did not at the date of application. Paragraph 49 of the decision shows that the judge was clearly aware of the inability of the appellant to meet the requirements at the date of application but nevertheless deals with the position of the second appellant comprehensively, also taking into consideration the fact that the second appellant's younger sister had been able to meet the requirements of the Rules.

18. I should also mention that the judge deals with the proportionality of the respondent's decision correctly applying the provisions of Section 117B of the 2002 Act in the case of each appellant. It is not evident that the judge treated the factors in the Section as "mandatory requirements" because she considered those factors against the background of her other findings rather than in isolation. This is evident from the judge's statement in paragraph 78 of the decision which is made in conjunction with the consideration of those factors.

Decision

The decision of the First-tier Tribunal does not show an error on a point of law and shall stand.

Anonymity

The First-tier Tribunal did not make an anonymity order nor do I consider one appropriate in this appeal.

Signed

Date

Deputy Upper Tribunal Judge Garratt