



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/06882/2015
IA/06944/2015
IA/06952/2015

THE IMMIGRATION ACTS

Heard at Field House
On 30 November 2017

Decision & Reasons Promulgated
On 28 December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

VIJAYARAGHAVAN [P]

ANURADHA [B]

[S N]

(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer

For the Respondent: Mr S Bellara, Counsel, instructed by Legend Solicitors

DECISION AND REASONS

1. For the purposes of this Decision I shall refer to the parties as they were before the First-tier Tribunal. Therefore the Secretary of State is once more the Respondent and Mr Vijayaraghavan Parthiban, his wife, and their child are the Appellants.

2. This is a challenge by the Respondent against a decision of First-tier Tribunal Judge Shiner, (the judge), promulgated on 23 March 2017, in which he dismissed the appeals on human rights grounds but allowed them on the basis that the Respondent's decisions of 17 February 2015 were not in accordance with the law.
3. These proceedings have something of a history to them and I will summarise it here. Following the Respondent's initial decision to refuse leave to enter, the Appellants appealed to the First-tier Tribunal. The appeals were heard by First-tier Tribunal Judge Lucas who, in a decision promulgated on 23 February 2016, allowed them on the basis that the Respondent should look again at the cases (in other words, he purported the "remit" them). The decision of Judge Lucas was successfully challenged by the Respondent, that decision being set aside by Deputy Upper Tribunal Judge Ramshaw. The appeals were all remitted to the First-tier Tribunal. They then came before Judge Shiner.
4. Following the promulgation of his decision both the Appellants and the Respondent made applications for permission to appeal to the Upper Tribunal. On 22 September 2017 First-tier Tribunal Judge Boyes refused the Appellants' application but granted the Respondent's. As confirmed at the hearing before me, the Appellants did not renew their application to the Upper Tribunal and therefore it is only the Respondent's challenge to the decision of the judge which is before me.

The Judge's decision

5. At paragraph 27 the judge records the Presenting Officer's express concession that the Respondent was not pursuing a case against the Appellant based on the TOEIC/ETS issue. Then, having made a number of adverse credibility findings relating to the Appellant's conduct in the United Kingdom, the judge finds that the Appellant had not in fact been effectively served with a curtailment decisions dated 21 January 2015. In light of this last conclusion the judge found that the Respondent's decisions under appeal were not in accordance with the law and he allowed the appeal on this limited basis. In respect of Article 8 he undertook a perfectly adequate assessment of all relevant matters and dismissed the appeal under that head of claim.

The grounds of appeal

6. Somewhat unfortunately the drafter of the grounds appears to have failed to take note of what is said in paragraph 27 of the judge's decision regarding the ETS issue. The grounds assert that the ETS point should have been dealt with: in the event, this issue had been conceded by the Presenting Officer. Ground 2 relates to the curtailment point, and it is said that the judge failed to provide reasons as to why he concluded that the curtailment decisions had not been served.

The hearing before me

7. Very sensibly, Mr Walker confirmed at the outset that he was not pursuing the ground of appeal relating to the ETS issue. He confirmed that having discussed the

remaining matter with Mr Bellara, he accepted that there had been no evidence before the judge as to effective service of the curtailment decisions dated 21 January 2015. In light of this, Mr Walker conceded that the judge had not fallen into error by concluding that there had been no service and that the Respondent's decisions were not in accordance with the law.

8. Unsurprisingly, Mr Bellara agreed with this position. He acknowledged that under the amended 2000 Order, service could have been affected in a number of different ways. However, there has simply been no evidence before the judge as to any of the various possibilities arising out of Article 8ZA and Article 8ZB of the 2000 Order.

My decision on error of law

9. I agree with both representatives that there are no material errors of law in the judge's decision. He was entitled to find that there was no (or at least no adequate) evidence before him to show that service of the curtailment decisions had been affected within the scope of the amended 2000 Order. It follows that he was perfectly entitled to allow the appeals on the limited basis that the decisions of the Respondent were not in accordance with the law. This is because of the date of the decisions under appeal, which had the effect that the current proceedings have operated under the old provisions of the Nationality, Immigration and Asylum Act 2002 (prior to the amendments brought in by the 2014 Act). Thus, the multiple grounds of appeal available under the 'old' section 84 were in play, and the judge had the wider jurisdiction under the 'old' section 86.
10. In light of the above the decision of the First-tier Tribunal stands.

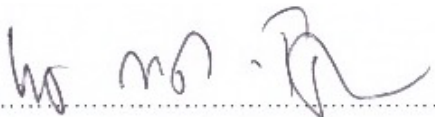
Notice of Decision

The decision of the First-tier Tribunal does not contain material errors of law.

The decision of the First-tier Tribunal stands.

The Respondent must now issue fresh decisions in respect of the Appellants.

No anonymity direction is made.


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Signed

Date: 21 December 2017

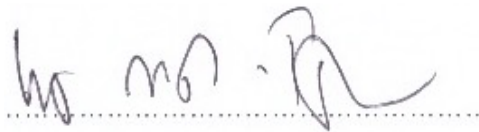
Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make fee awards of £140.00 in respect of each appeal, this being a total of £420.00. The Appellants (the original applicants) have succeeded in their appeals and this is essentially because the Respondent has failed to adduce evidence.

Signed

A handwritten signature in black ink, appearing to read 'Ms Norton-Taylor', written over a horizontal dotted line.

Date: 21 December 2017

Deputy Upper Tribunal Judge Norton-Taylor