



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

Appeal Numbers: IA/31106/2015
IA/31107/2015
IA/31112/2015
IA/31115/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 17 November 2017**

**Decision & Reasons
Promulgated
On 11 December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**NPP
BP
VD
TP**

(ANONYMITY DIRECTION MADE)

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellants: Ms N Bustani, instructed by Wilson Barca LLP
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellants. This direction applies

to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

1. The appellants are citizens of India. The first appellant, born on [] 1977, and second appellant, born on [] 1982, are a married couple who entered the UK unlawfully using false passports on 14 August 2004. Since arriving in the UK they have had two sons: the third appellant, who was born on [] 2006; and the fourth appellant was born on [] 2011. The third and fourth appellants have lived their whole lives in the UK.
2. The appellants' application for leave to remain in the UK on the basis of their private and family life was refused by the respondent. The appellants appealed to the First-tier Tribunal where their appeal was heard by Judge Boyes. In a decision promulgated on 13 February 2017 the judge dismissed the appeal. The appellants are now appealing against that decision.

Decision of the First-tier Tribunal

3. The judge firstly considered whether the appellants were able to succeed under paragraph 276 ADE (1) of the Immigration Rules.
4. The judge found that the first and second appellants did not satisfy the requirements of paragraph 276 ADE(1)(vi) on the basis that there would not be "very significant obstacles" to their integration into India.
5. The judge undertook a detailed evaluation of whether the third appellant satisfied the requirements of paragraph 276 ADE(1)(iv). It was accepted that the third appellant met the seven year duration requirement and the judge identified that the issue before him was whether it would be unreasonable to expect the third appellant to leave the UK. The judge's approach was to firstly evaluate the best interests of the third appellant. At paragraph 40 judge concluded:

Putting aside all other considerations and considering [the third appellant's] best interests in isolation, it seems to me that maintaining the status quo would be in his best interests. I therefore find that it would be in his best interests to remain in the UK with his parents rather than returning to India.

6. The judge then proceeded to consider whether it would be unreasonable to expect the third appellant to leave the UK. In evaluating whether it would be unreasonable for the third appellant to leave the UK, the judge considered the following:

- a) the educational opportunities in India (paragraph 41 - 42)

- b) the third appellant's health and medical history (paragraph 43)
- c) that he would be relocating with his parents (paragraph 45)
- d) his age, length of residence in the UK, and that he has friends outside of the immediate family (paragraph 46 and 48)
- e) the capacity of his parents to assist him in integrating in India and find accommodation and work (paragraph 47)
- f) the presence of family in India (paragraph 47)
- g) the conduct of the first and second appellants in entering the UK illegally using deception and intentionally breaching immigration control (paragraphs 50 - 52)
- h) the delay on the part of the respondent (paragraph 53)

7. At paragraph 54 the judge stated:

Taking into account all of the above factors, and even giving significant weight to the fact that the third appellant has resided in the UK for over seven years, I do not consider that it would be unreasonable to expect him to leave the UK. He therefore does not meet the requirements of 276 ADE(1)(iv).

8. The judge then considered Article 8 ECHR outside the Immigration Rules. He systematically assessed the factors set out in section 117B of the Nationality, Immigration and Asylum Act 2002. He found that sections 117B (2) and (3) did not count against the first and second appellants but that 117B(5) did because their private lives in the UK were formed whilst in the UK unlawfully. Section 117B (6) was found not to assist the appellants because it would not be unreasonable to expect the third appellant to leave the UK.
9. The judge considered the best interests of the third and fourth appellants, finding in the case of the third appellant that it would be in his best interests to remain in the UK with his parents and in the case of the fourth appellant that it would be to remain with his parents in either India or the UK. The judge concluded that it would not be disproportionate to remove the appellants from the UK.

Grounds of Appeal and Submissions

10. The grounds of appeal argue that the judge failed to mention or consider the fact that the third appellant has spent significant, formative years in the UK, has undertaken studies in the UK, and that it would not be in his best interests to uproot him from the society he has known. It is argued that the judge failed to recognise that serious reasons will be needed to show someone who spent the major part of his childhood in the UK should be required to leave. It is also maintained in the grounds that the judge failed to engage with issues relevant to the third appellant's best interests.

11. The grounds also argue that the decision is “effectively contrary to” MA (Pakistan) [2016] EWCA Civ 705 because the judge has not identified any powerful reasons why leave should not be granted.
12. Before me, Ms Bustani argued that the crux of this matter is the reasonableness of expecting the third appellant to leave the UK. She argued that there is insufficient analysis of the third appellant’s private life beyond his family unit. She argued that the judge had correctly found that the third appellant’s best interests lay in maintaining the status quo but had erred in his evaluation of reasonableness. The key error, she argued, was in treating this appellant as if he had spent the first seven years of his life in the UK, whereas in fact he had spent nine years in the UK. She argued that the judge had erred when stating that the third appellant’s life was not embedded in the UK, given his age.
13. Ms Isherwood argued that the grounds amount to no more than a disagreement with the judge’s findings. She argued that the judge correctly identified the law, and had proper regard to all of the material evidence including the third appellant’s age and time spent in the UK.

Consideration

14. The judge correctly identified that the central issue for him to resolve was whether it would be reasonable for the third appellant to leave the UK under 276ADE(1)(iv) of the Immigration Rules and Section 117B(6) of the Nationality, Immigration and Asylum Act 2002.
15. The judge’s approach was to firstly address what would be in the third appellant’s best interests. Having found that it would be in his best interests to remain in the UK with his parents, the judge then proceeded to address the question of whether, notwithstanding that it would be in his best interests to remain in the UK, it would be reasonable for the third appellant to leave the UK.
16. The judge took into account a wide range of factors when assessing the reasonableness of the third appellant leaving the UK. This included his age, length of time in the UK, life outside the family in the UK, the situation he would face in India, and the conduct of his parents (in particular the use of deception to illegally enter the UK).
17. The grounds of appeal claim that the judge failed to “mention or consider” the fact that the third appellant has spent his formative years in the UK. This is simply untrue. These factors were explicitly considered by the judge in his evaluation of “reasonableness” at paragraphs 45 - 46 of the decision.
18. The grounds also assert that the judge failed to properly evaluate the third appellant’s best interests. This is entirely misconceived as the judge at paragraphs 36 - 40 of the Decision undertook a careful evaluation of the

third appellant's best interests. This assessment of the best interest was carried out independently of all other factors.

19. The grounds also contend that the judge did not recognise the weight that needs to be given to the fact that the third appellant had spent the major part of his childhood in the UK. This, too, is without foundation as the judge at paragraph 54 made specific reference to the seven year rule and its significance.
20. The argument that the judge failed to follow MA (Pakistan) it is also without merit. In that case the Court of Appeal made clear that although the conduct of a person's parents is not relevant to the question of their best interests, it is a factor to be taken into consideration in the assessment of whether removal is reasonable. In this case, the unchallenged finding of the judge was that the first and second appellants had not only entered the UK unlawfully using deception, but that they had intentionally sought to give the impression that they had entered the UK as visitors when this was not the case. The judge found at paragraph 52 that "the first and second appellant's planned and intentional disregard of immigration control is an important consideration when assessing reasonableness".
21. It may be that other judges would have struck the balance differently, but the question is whether this judge reached a conclusion which was open to him. Given that he was required to have regard to the wider public interest in effective immigration control, I am satisfied that he did.

Decision

- A. The appeal is dismissed.
- B. The judge has not made a material error of law and the decision of the First-tier Tribunal stands.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 10 December 2017