



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/13386/2015
HU/13391/2015
HU/13396/2015
HU/13398/2015

THE IMMIGRATION ACTS

Heard at Field House
On 26 July 2018
Prepared 26 July 2018

Decision & Reasons Promulgated
On 13 December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MIRSIDIK [M] (FIRST APPELLANT)
NARGIZA [M] (SECOND APPELLANT)
[M M] (THIRD APPELLANT)
[D M] (FOURTH APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss Sher for the counsel, instructed by Blakewells
For the Respondent: Mr D Clarke, Senior Presenting Officer

DECISION AND REASONS

1. The Appellants, nationals of Uzbekistan appealed against the Respondent's decision dated 27 November 2015 to refuse applications for leave to remain made under the Immigration Rules and Article 8, ECHR.
2. The First Appellant a national of Uzbekistan, date of birth 24 March 1974 and the Second Appellant, the wife of the First Appellant, a national of Uzbekistan, date of birth 8 October 1979 entered the United Kingdom respectively as a student and as his dependant. When the Second Appellant entered the UK she did so with her son, [MM] on 14 January 2008. The Second Appellant once she was in the United Kingdom gave birth to the Fourth Appellant on 11 November 2008. An application was made for leave to remain as a Tier 4 Student but that leave was curtailed until 12 October 2012. On 13 September 2012 the First Appellant applied to the Secretary of State for leave to remain on family and private life basis which was refused on 1 October 2013. The First Appellant made a further application for leave to remain in August 2015 and the relevant decision was the subject of this appeal.
3. At an earlier stage, the appeals of all the Appellants came before First-tier Tribunal Judge Malone (the Judge) who was addressing the appeals against the decisions of October 2013 to refuse applications for leave to remain and to make removal directions under Section 47 of the 2006 Act. The Judge in looking at the matter was essentially being addressed by reference to the life that the whole family had garnered together in the United Kingdom.
4. At that stage neither the third and Fourth Appellants was a qualifying child for the purposes of the NIAA 2002 and as a fact neither had at that stage acquired any period of time in excess of seven years in the United Kingdom. The Judge rejected the claims that the family had lost its cultural and social ties with Uzbekistan and took the view that they would be able to pick up where they had left off their lives,

that is the first, second and Third Appellants, on a return to Uzbekistan with “relative ease”.

5. The Judge did not have evidence before him that suggested the treatment they would receive in Uzbekistan was in any way inadequate. It was argued that for the Third Appellant it would take him some time to readjust and for the Fourth Appellant to familiarise himself with life in Uzbekistan. As the Judge noted “[DM] (the Fourth Appellant) is very young. He has always spoken Uzbek at home in this country. I find he would be able to adjust to life in Uzbekistan quickly and easily.” The Judge concluded that the Respondent’s decision was not disproportionate having regard to the then case law which is still applicable in many respects and to that end dismissed the appeal.
6. On 4 June 2018 I found that First-tier Tribunal Judge N M K Lawrence had made a material error of law and his decision could not stand. Accordingly I decided the appeals should be remade in the Upper Tribunal. To a degree the legal position has moved on in the light of KO (Nigeria) [2018] UKSC 53.
7. Essentially before me it is really said that there is nothing particular about the first and Second Appellants which warrants their presence in the United Kingdom. There was no doubt that their immigration history was poor and deliberate. Following the refusal of their appeal in 2014 they chose to remain in the UK and essentially even today do no more than argue that their two children are doing well in the United Kingdom enjoying the benefits of education and health provision here and are successful or making their way. So far as the Third Appellant is concerned he has got to the stage of going into higher education and undertaking a BTEC in sciences. The Fourth Appellant was doing reasonably well at school and was making a considerable success of his skills as a karate man; He would wish to compete in more international competitions were he able to leave and return to the UK.

8. In respect of the Third Appellant and to a degree the Fourth Appellant the position is that an appeal under the Immigration Rules might succeed under paragraph 276ADE(1)(iv) in that they are under the age of 18, have lived continuously in the UK for at least seven years and it would not be reasonable to expect the applicant to leave the UK.
9. In short the arguments advanced have not proceeded, under the Immigration Rules, but on the similar basis that with reference to Section 117A and 117B that considerations lie in their favour, particularly with reference to Section 11B(6). There was no suggestion that the First and Second Appellants' presence in the UK was anything less than precariousness for many years. They have earning skills and English language skills to avoid being a burden on the taxpayer.
10. My starting point is children's best interests having regard to Section 55 of the BCIA 2009.
11. Mr Clarke sensibly conceded that their best interests lie in remaining in the United Kingdom. For my own part having considered the evidence that I agree with that concession. I conclude that that is a factor which is of importance, not paramount, in the assessment of the overall issue of the return and the reasonableness of return of the children. However the issue of the reasonableness of the return is a wider issue and to that extent I apply the case law of MA Pakistan [2016] EWCA Civ 705 as now understood by the case of KO (Nigeria) 2018 UKSC 53.
12. I am entitled and indeed should take into account in assessing the public interest question and the assessment of the reasonableness of requiring children to return to Uzbekistan set in the context of that the parents' poor immigration history the reason for their removal. The First and Second Appellants have been in the United Kingdom for at least ten years. I understand why they wish it but their

determination to remain has shut their eyes to making any inquiries as to how they might have to cope with return to Uzbekistan.

13. Whilst the immigration history of the first and Second Appellants is poor it does not seem to me that it is so poor that it would be an affront to the public interest for them to remain in the UK. If the children should not be removed because it is not reasonable to do so then some form of leave will be given to the parents who are going to remain as a family unit.

14. I concluded that it was not reasonable particularly for the Third Appellant and to a slightly lesser degree the Fourth Appellant to be required to leave to accompany their parents to Uzbekistan. I agree with Mr Clarke that there was some measure of equivocation and a lack of true clarity about the extent to which in the past the children were more fluent in Uzbek. It seemed to me that their life in the UK encouraged by their parents has essentially led them to shed Uzbek in the sense that they may understand and use one or two words of Uzbek. They would not be at a level where they could undertake education or training in Uzbek. Rather it seemed to me they do not read or write in Uzbek, they have no mathematical skills in Uzbek and they have been out of the Uzbek education system for a very substantial period of time. That is not to say they could not over time integrate into Uzbek schooling, but the impacts on particularly the Third and Fourth Appellants are I find simply unreasonable. How the First and Second Appellants came to remain in the United Kingdom and no steps being taken to remove them notwithstanding their appeals against removal directions had failed was not explained. To some extent the sad fact is that the public interest which might have lain in removal has been diminished by the passage of time albeit not helped by the determination of the first and Second Appellants to remain.

15. I conclude that it is not reasonable for the Third and Fourth Appellants to leave the UK and it follows from that it is not for them to remain without their parents. The

unity of the family is in the public interest. Accordingly, I conclude on the evidence that removal is disproportionate.

DECISION

16. The appeals on Article 8 ECHR grounds are allowed.

ANONYMITY ORDER

15. No anonymity order was sought nor did it seem one was necessary.

16. No anonymity direction is made

Signed

Date 13 December 2018

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

The appeal has succeeded on the strength of after arising material and in the circumstances it did not seem to me that a fee award is appropriate.

Signed

Date 13 December 2018

Deputy Upper Tribunal Judge Davey

P.S. It is a matter of regret that the case file and typing was miss-located causing delay in promulgation.