



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

Appeal Numbers: HU/13852/2016  
HU/13867/2016  
HU/13857/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3<sup>rd</sup> April 2018**

**Decision & Reasons Promulgated  
On 5<sup>th</sup> April 2018**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**CHERYL [M] (1)  
CLIFFORD [M] (2)  
[CM] (3)  
(ANONYMITY ORDER NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms L Turnbull, of Counsel, instructed by Aston Bond Law Ltd

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

**DECISION AND REASONS**

### *Introduction*

1. The appellants are citizen of India. They are a family consisting of a mother, father and child who was born in the UK on the [ ] 2012. The first appellant came to the UK on 17<sup>th</sup> September 2007 as a Tier 4 student migrant, and her leave was extended until 30<sup>th</sup> July 2016 on this basis, but then curtailed to expire on 8<sup>th</sup> January 2016. Her husband, the second appellant, entered the UK on 31<sup>st</sup> March 2009 and had leave in line as her dependent. The third appellant was born in the UK on [ ] 2012, and also had leave in line with the first appellant as a dependent.
2. On 2<sup>nd</sup> December 2015 the family applied to extend their leave on the same basis (as a Tier 4 student and dependents) but this was refused and an application for administrative review failed. On 11<sup>th</sup> February 2016 they applied to remain in the UK on the basis of their private life ties with the UK. This application was refused on dated 20<sup>th</sup> May 2016. The appeal against this human rights decision was dismissed on human rights grounds by First-tier Tribunal Judge R Sullivan in a determination promulgated on the 30<sup>th</sup> May 2017.
3. Permission to appeal was granted on the basis that it was arguable that the First-tier judge had erred in law in failing to adjourn the hearing on 22<sup>nd</sup> May 2017 in light of the first appellant's health problems, which rendered the hearing procedurally unfair.
4. The matter came before me to determine whether the First-tier Tribunal had erred in law.

### *Submissions - Error of Law*

5. It is contended for the appellants that the hearing before the First-tier Tribunal should have been adjourned because of evidence of the first appellant being hospitalised with severe diarrhoea and vomiting. She was taken into hospital on 17<sup>th</sup> May 2017 with this condition and an application to adjourn on the papers was refused on the basis that she should have recovered by 22<sup>nd</sup> May 2017, and also because it was said that the facts were not in dispute, so the case could be dealt with by submissions only.
6. At the hearing before me the position was described as follows: that the first appellant had been released from hospital over the weekend but her condition had continued and she had returned to hospital by ambulance early on the day of the hearing. The first appellant was seen by a triage nurse who found that she should continue with the treatment previously prescribed and sent her home. The first appellant had not been able to provide instructions to her representatives due to being unwell over this period of time, and the second appellant had had to

care for both the first appellant and the third appellant who has a tentative diagnosis of autism so had also not been able to assist. As a result, there were no agreed statements or bundle before the First-tier Tribunal as neither adult appellant had been able to assist their solicitors. The first appellant was the primary carer for the third appellant, and her health was the central issue in the appeal and the facts were not agreed.

7. It was argued that the hearing should therefore have been adjourned, and to refuse to do so was procedurally unfair as the appellants could not present their case that it was not lawful to force the third appellant to return to India given her medical/ neurological condition. This failure was made all the more unfair due to the fact that the First-tier Tribunal admitted new evidence about the availability of treatment for autism in India which was ordered to be served on the appellants' solicitors two days later but was never received by them, and which they had not been able to consider.
8. Ms Everett submitted that there was no procedural error of law in refusing to adjourn as this was not unfair in all the circumstances. The notice of hearing had been sent to the appellants' solicitors in November 2017 and the bundle ought to have been prepared prior to the first appellant becoming unwell in December 2016. The appellants were all clearly happy with the third appellant's treatment in the UK but had produced no evidence that she would be without adequate treatment in India which was vital to any prospect of success before the First-tier Tribunal.

#### *Conclusions - Error of Law*

9. I accept that the first appellant has shown that she was unwell with diarrhoea and vomiting on 16<sup>th</sup> and 17<sup>th</sup> May 2017 and was admitted to hospital: this is supported by documentary evidence. I accept that this condition continued and the first appellant went back for a short consultation at A&E on the early day of the hearing, the 22<sup>nd</sup> May 2017, and was advised to remain at home, and that the second appellant could not attend the hearing in her place as he was caring for the third appellant who clearly suffers from autism as set out in the medical papers. I find that the first appellant was therefore unable to attend the hearing before the First-tier Tribunal and give evidence as to why it would be unlawful to return the third appellant to India which she had otherwise intended to do. The directions with the notice of hearing only referred to the appellants having to send documents before 28<sup>th</sup> December 2016 and not to the appellants' testimony having to be contained in a witness statement by that date.

10. The refusal letter contains no specific information about medical provision in India for autistic children. If the first appellant had been able to attend and provide oral evidence about this issue it might have been that the conclusion of the First-tier Tribunal that the interference with the third appellant's private life which her removal would constitute was disproportionate under Article 8 ECHR. Oral evidence from a lay person might not normally suffice on such an issue but in the absence of any other evidence from the respondent it cannot be said that the outcome of the appeal would have inevitably been the same. I therefore find it was procedurally unfair not to have adjourned the hearing before the First-tier Tribunal in these circumstances.
11. This procedural error was compounded by the First-tier Tribunal admitting further evidence from the respondent on this key issue at the hearing and not providing the appellants with an opportunity to comment on it before making a decision. There was a direction that the appellants' solicitors were to be served with the documents within 2 working days by the respondent but no direction was made giving the appellant an opportunity to make representations with regard to these documents prior to a decision being made by the First-tier Tribunal even though these were seen as central to deciding the appeal as they were seen as showing that appropriate services would be available to the third appellant on her return to India and thus that there would be no disproportionate interference with her right to respect for her private life..
12. In these circumstances I find that the decision of the First-tier Tribunal was unfairly reached on procedural grounds, and should be set aside with no findings preserved.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal dismissing the appeal.
3. The re-making of the decision is remitted to the First-tier Tribunal with no findings preserved.

Signed: Fiona Lindsley

Date: 3<sup>rd</sup> April 2018

Upper Tribunal Judge Lindsley

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