



IAC-FH-LW-V1

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

Appeal Numbers: HU/12528/2019
HU/12520/2019
HU/12531/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 3 February 2020**

**Decision sent to parties on
On 11 March 2020**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**R F M
N M
I B M (A MINOR)
(INDIA)
(ANONYMITY ORDER MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Farhan Asghar, Counsel with by Asghar & Co solicitors
For the Respondent: Mr Chris Avery, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of RFM, NM, or the child IBM the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of them or of any member of their family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

1. The appellants are a family of Indian origin, a husband and wife who are both Indian citizens, and their son, born in the United Kingdom on 17 February 2017. His birth has not been registered at the Indian Embassy in London or elsewhere.
2. This appeal concerns whether his parents' failure to register the third appellant's birth means that he is a stateless person and whether, in that case, they are all entitled to leave to remain on private and family life grounds with reference to paragraph 276ADE of the Immigration Rules HC 395 (as amended) and Article 8 ECHR.

Background

3. The first two appellants came to the United Kingdom, the second appellant with a Tier 4 student visa in March 2007. The parties married in India on 14 August 2009. The first appellant entered the United Kingdom in July 2010 as the second appellant's Tier 4 dependant spouse.
4. The first and second appellants last had extant leave on 27 July 2015 and since then have made a number of further submissions and applications, seeking to regularise their status, without success.
5. The third appellant was born to the first appellant on 1 February 2017 and is three years old. On 9 July 2019, following a compromise of a judicial review, the respondent made a decision refusing them leave to remain on human rights grounds. The statelessness issue in relation to the third appellant is not raised in the refusal letter, nor in the grounds of appeal to the First-tier Tribunal.

First-tier Tribunal hearing

6. First-tier Tribunal Judge Woolley, in a very full and carefully reasoned decision signed on 18 September 2019, concluded that the respondent's decision to refuse leave to remain was lawful and did not breach the appellants' rights under Article 8 ECHR.
7. The appellants were represented before the First-tier Tribunal, as was the respondent, but neither party argued the statelessness question, nor drew to the Tribunal's attention the judgment of Mr C M G Ockelton, Vice-President of the Upper Tribunal, sitting as a Deputy High Court Judge in *MK*

(A Child By Her Litigation Friend CAE), R (On the Application Of) v The Secretary of State for the Home Department [2017] EWHC 1365 (Admin).

8. On receipt of the First-tier Tribunal decision, the appellants appealed to the Upper Tribunal, raising statelessness for the first time.

Permission to appeal

9. The grounds of appeal asserted that the First-tier Tribunal had erred in finding that the third appellant was an Indian citizen, and referred to *MK (India)*. They asserted that the third appellant remained stateless and that since the third appellant had not been shown to have any legal right to enter India, the First-tier Tribunal Judge had he directed himself correctly might have reached a different decision on the proportionality and/or the reasonableness of removing the appellants to India as a family, with reference to paragraph 276ADE(1)(vi) of the Rules, Article 8 ECHR outside the Rules, and or the third appellant's section 55 best interests.
10. Permission to appeal was granted by First-tier Tribunal Judge Keane in the following terms:

"The Judge is deserving of considerable sympathy because the authority of *MK (India) Statelessness [2017] EWHC 1365 (Admin)* may not have been drawn to his attention at the hearing. However, in the light of that authority, the third-named appellant was arguably stateless, and in failing to accord weight to his statelessness, the Judge arguably failed to take into account a relevant consideration when considering the proportionality of the decision under appeal.

The grounds accordingly disclosed an arguable error of law but for which the outcome of the appeal might have been different. The application for permission is granted."

11. That is the basis on which this appeal comes before the Upper Tribunal.

Discussion

12. The nationality of the third appellant is relevant to the outcome of this appeal and is a question of both fact and law. Although the decision in *MK (India)* was not drawn to the attention of the First-tier Tribunal Judge, he is taken to know the law.

13. Paragraphs 36 and 37 of *MK (India)* say this:-

"36. The conclusions from what is set out above are as follows. For the purposes of the statutory provisions in issue, a person is stateless if he has no nationality. Ability to acquire a nationality is irrelevant for these purposes. A child born on or after 3 December 2004, outside India, of parents at least one of whom is an Indian national, and who has not been to India, is not an Indian national unless registration of the birth has taken place in accordance with the provisions of the Citizenship Act 1955 (India) as amended. If the child has no other nationality, the child is stateless for the purposes of paragraph 3 of Schedule 2 to the British Nationality

Act 1981 and, if the other requirements of that paragraph are met, is entitled to be registered as a British citizen. If, therefore, C's birth had on the date of the decision under challenge not been registered, she is entitled to British Citizenship.

37. I recognise of course that this conclusion opens an obvious route to abuse. Indeed, the facts of the present case might be said to be an example of abuse. M and F are both overstayers. Both have sought, and been refused, further leave. They have preferred to allow C to be stateless all her life to date rather than to register her birth and obtain Indian nationality for her. Yet C's right to British nationality (and the consequence that she will not be or become a national of India) will now immeasurably improve M and F's prospects of being allowed to stay in the United Kingdom. But the Secretary of State's position in this case on the one hand, and the authorities on the other, necessarily lead to this result."
14. The facts of this case are on all fours with those in *MK (India)*. The third appellant is a stateless person and there was no evidence before the First-tier Tribunal or the Upper Tribunal to show that as a stateless person he can enter India with his Indian citizen parents.
15. The third appellant is entitled to be registered as a British citizen. On that basis, the proposed removal to India, even if it could be achieved, is disproportionate.
16. There is no alternative but to set aside the decision of the First-tier Tribunal and allow the appeals of all three appellants, as the child appellant cannot be expected to remain in the United Kingdom without his parents.
17. The First-tier Tribunal decision was not anonymised, but given that it turns on the circumstances of the third appellant, who is still only 3 years old, the Upper Tribunal has made an anonymity order.

DECISION

18. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing these appeals.

Signed **Judith AJC Gleeson**
2020

Date: 10 March

Upper Tribunal Judge Gleeson