



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

Appeal Number: HU/17890/2018  
HU/17898/2018  
HU/17894/2018

**Heard at Field House  
on 3 January 2020**

**Decision & Reasons  
Promulgated  
on 19 February 2020**

**THE IMMIGRATION ACTS**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**SOOMADUTH NANKOO  
INDRANI NAUKOO  
NUVIN NANKOO  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Metzger instructed by Raj Law Solicitors.  
For the Respondent: Ms Bassi Senior Home Office Presenting Officer.

**ERROR OF LAW FINDING AND REASONS**

1. The appellants' appeal with permission a decision of First-tier Tribunal Judge Zahed ('the Judge') promulgated on the 20 April 2019 in which

the Judge dismissed the appeals of this family unit, all citizens of Mauritius, on human rights grounds.

## **Background**

2. The first appellant was born on 24 September 1961 and the second appellant on 17 November 1966. They are partners. The third appellant, their elder son, was born on 31 January 1991. A second child born on 17 September 1994 is not a party to the appeal having been granted leave to remain on 13 August 2018.
3. Relevant immigration history shows:
  - 30 September 2001 first appellant entered the UK lawfully as a student. His leave was extended to 30 November 2005.
  - 2 December 2005 first appellant made a further application for leave to remain as a student.
  - 3 December 2005 second and third appellant's and their son subsequently granted leave entered the UK on a visit Visa valid to 8 May 2016. At that time the third appellant was 14 years of age and his younger brother 11 years of age.
  - 6 February 2006 first appellant's application for leave to remain as a student was refused without a right of appeal.
  - 15 March 2006 the second appellant applied for leave to remain as a student with the third appellant and his younger brother as dependents. On 3 April 2006 the application was refused without a right of appeal, a decision maintained on 30 May 2006 and again on 30 June 2006.
  - 9 May 2006 the second appellant applied for leave to remain as a student with the third appellant and his younger brother as dependents. On 11 September 2007 the application was refused without a right of appeal.
  - 12 September 2007 the second appellant was served with an IS151A notice as an overstayer.
  - A pending consideration for leave to remain notice, as being considered by the respondent, was in force between 2007 and 26 March 2011.
  - On 30 September 2012 all three appellants made applications for leave to remain on the basis of article 8. The applications were refused without a right of appeal on 10 October 2013. An application for permission to bring judicial review was refused by the Upper Tribunal on 8 May 2015.
  - On 11 July 2016 all three appellants were served with RED0001 notice as overstayer's.
  - On 25 July 2016 appellants applied for leave to remain. On 19 October 2016 the three applications were refused. The decisions of the first and second appellants were certified pursuant to section 94(1) of the 2002 Act whereas the third appellant's

application was refused with a right of appeal although the same was not exercised as none of the appellants received the notice.

- On 5 September 2016 the appellants made further application for leave to remain pursuant to article 8 ECHR which were refused without a right of appeal on 1 June 2018.
- On 11 June 2018 section 120 notice was served upon the respondent. The application contained therein was refused although the youngest son of the first and second appellants was granted leave to remain.

4. The Judge's decision in relation to the first and second appellants is set out at [12-14] in the following terms:

12. The starting point is that there is no family life that would engage Article 8 between a parent and their adult child unless it can be shown that there is a greater emotional dependency between that adult child and his parent than the normal emotional bond that exists between an adult child and his parent. The Courts have repeatedly stated that there is no "bright line" as to the fact that at 18 a child turns into an adult, each case turns on its own individual fact.
13. [A] is 24 years old, so he has been an adult for over 6 years. He does not have any health issues, neither physical or emotional. He gave evidence before me and I found him to be an intelligent young man. He stated that he tutored students between 6 PM to 9:30 PM. He is in his first year at university and lives at home. I note that [A] applied for and was given a bursary to study geography in Australia but did not go due to his [sic] immigration status in the UK. I find that [A] would not have applied for such a bursary to study in Australia if he was not willing to go there without his parents. I accept that he lives at home but that is not uncommon for a vast majority of students whose university is in commuting distance from home as it allows the financial burden on the students, especially when accommodation is so expensive in London.
14. I find that although [A] is living at home with his parents and brother that in itself does not show that he and his parents have a greater emotional bond than that of other parents with their adult child. I find that [A] has a greater level of independence by working as a tutor in the evenings. I find that the fact that he applied for a bursary for a university in Australia shows his willingness to live away from his parents. I find that taking his age, lack of health issues, his job as a tutor and the fact he is at university are all factors pointing to the fact that he is a young man who has the capability of giving an independent life without his parents I find that without that greater emotional bond that Article 8 is not engaged between the first two appellants and [A].

5. The appellant's assert the Judge erred in law in stating at [6] that they did not attempt to regularise their status between 2007 and 2012 when during this time there was a pending consideration for all three appellants as to whether they would be granted leave. It is also stated that on 30 September 2012 an application for leave to remain on a discretionary basis was lodged but refused on 10 October 2013.

6. The grounds also assert the third appellant is in a relationship with Ms Wade and that although they do not cohabit their lives are closely

connected in relation to which appropriate evidence was given from various sources.

7. The first and second appellants youngest child lives in the family home in London with them. He is studying for a BSc in Economics. The grounds assert this son not only lives under the same roof as his parents but relies upon them significantly for advice and emotional support and that he will be unable to relocate owing to the fact he is presently undertaking a degree in the UK and his parents removal will amount to a significant interference in his family life.
8. The grounds assert the first appellant has lived continuously in the United Kingdom for 17 years and the second appellant for over 13 years and that they have developed close relationships and a strong private life.
9. The grounds acknowledge the relationship between the third appellant and Ms Wade was established at a time he did not have leave to remain but argues the “little weight” guidance pursuant to section 117B(4) may be overridden in this case in light of the fact the third appellant entered the United Kingdom as a child and his last period of leave expired whilst he was underage, meaning his unlawful presence was a matter for which he is not responsible.
10. The grounds assert contradiction in the Judge’s findings about the third appellant’s appeal who should have had a proper consideration of his article 8 outside the Rules on the basis removal will amount to an ‘unjustifiably harsh’ interference with his protected rights on the basis of his relationship with Ms Wade and with his brother who has leave to remain in the UK.
11. Permission to appeal was granted by another judge of the First-Tier Tribunal for the following reason:

‘It is arguable that the Judge attached insufficient weight to the factors appertaining to the matrix facets of the relationships described in the permission application. It is further arguable that the Judge has attached insufficient weight to the level of integration of the Appellant. It is arguable that the strength of the factors advanced on behalf of the Appellant’s has not been the subject of sufficient analysis weighing them against the strength the public interest. It is arguable that insufficient analysis has been set out of the totality of the available evidence as identified in the permission application in respect of the applicants. It is arguable that the factors advanced in the permission application constitute unjustifiable harshness and taking account of those factors in the United Kingdom and those factors which relate to Mauritius. It is arguable that insufficient weight has been attached to the issue of financial sustainability and the evidence appertaining to that set out in the overall context of the level of integration described.

### **Error of law**

12. It is settled law that whether family life recognised by article 8 ECHR exists is a question of fact. It is also settled that such a status comes into force between parents and their natural children from birth. When family life recognised by article 8 ends depends upon the situation of the family unit.

13. The fact a child attains the age of 18 does not mean he or she crosses a 'bright line' after which family life recognised by article 8 is extinguished even if replaced by de facto family life.
14. In this appeal the Judge's finding that family life recognised by article 8 had not been established is clearly wrong in law. It was not disputed that the first and second appellants have two children, the third appellant and his brother A. It was not disputed that A has leave in his own right to remain in the United Kingdom and that he continues to live with his parents. It was not disputed that A is undertaking a course of study at a local university.
15. The relevant factual matrix is therefore of a young man who, whilst he may have attained the age of 18 some time ago, remains dependent upon his parents in the United Kingdom. Whilst A may undertake some tutoring is was not made out this generates a sufficient level of income to enable him to be financially independent. It is also the case that A remains dependent upon his parents for accommodation, emotional support, and financial support to enable him to meet his basic needs.
16. I find it not made out that family life recognised by article 8 does not exist between the first and second appellants and their son A.
17. That aspect of the Judge's decision in relation to the first and second appellant's shall be set aside. Ms Bassi was invited to make submissions in relation to whether, in light of the finding family life recognised by article 8 exists, the respondent's decision to remove the first and second appellants from the United Kingdom is proportionate.
18. Full consideration has been given to those submissions. I do not find, however, that the respondent has established that the decision to remove the first and second appellants during the period their son A, who has lawful leave to remain in the United Kingdom, is a student and dependent upon them is proportionate to the legitimate aim of immigration control. Any period of leave is likely to only be for the duration of A's course which as an undergraduate may be only for a further two years. The impact of removing the first and second appellants at this stage, leaving A to effectively fend for himself without employment income or accommodation, will result in a disproportionate impact upon A.
19. I therefore substitute a decision allowing the appeals of the first and second appellants.
20. In relation to the third appellant the situation is different. The Judge finds at [27] that he was bound to give only little weight to the relationship between the third appellant and Ms Wade where it was established the third appellant lacked lawful status in the United Kingdom. Whilst the statutory provisions refer to little weight being given to a private life relied upon when a person's status is precarious, the Judge was not bound to find that what was, arguably, the central plank of the third appellant's case should only warrant little weight being given to it in the balancing exercise. The requirement in section

117B cannot stymie judicial independence or the ability of a Judge to attach whatever weight he or she rationally feels appropriate to give to the evidence.

21. Whilst it is asserted on the third appellant's behalf that his relationship with Ms Wade satisfied the definition of family life pursuant to article 8 and that the Judge's finding to the contrary was flawed, no arguable legal error is made out on this basis. At that time the third appellant and Ms Wade did not live together and were in a relationship of boyfriend and girlfriend. It was not made out that their relationship had the degree of strength or sustainability required to satisfy article 8 ECHR family life.
22. The relationship was, however, part of the third appellant's private life and his removal from the United Kingdom would cause interference with his private life which also included his ties to his brother A. The failure of the Judge to consider whether more than "little weight" should have been given to the third appellant's private life, and what such weight should have been in all the circumstances, means there is merit in the third appellant's submission that the Judge has erred in law.
23. I set aside the decision of the Judge in relation to the third appellant for this reason. In light of the fact the third appellant's circumstances have changed, in that it is said he is now cohabiting with Ms Wade, the following directions (given orally at the hearing) shall apply to the future management of this appeal:
  - i. The third appellant shall, no later than 4 PM 31 January 2020, file with the Upper Tribunal and send to the respondent's representative a consolidated, indexed and paginated bundle containing all the evidence he seeks to rely upon in support of his appeal. Witness statements must be signed, dated, and contain a declaration of truth, and shall stand as the evidence in chief of the maker who shall be made available for the purposes of cross-examination and re-examination only.
  - ii. No interpreter is required.
  - iii. List for a Resumed Hearing before Upper Tribunal Judge Hanson on the first available date after 1 February 2020 time estimate 3 hours subject to the availability of Mr Metzger.

## **Decision**

24. **The First-Tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision in relation to the first and second appellants as follows. These appeals are allowed pursuant to article 8 ECHR. The appeal of the third appellant shall be managed in accordance with the directions set out above.**

Anonymity.

25. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated 24 January 2020