



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-003016
UI-2023-003017

First-tier Tribunal Nos:
HU/58428/2022
HU/58429/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE B KEITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AARIE JOHN SAMUEL
ANAM GEORGE YUHANNA
(NO ANONYMITY ORDER MADE)

Respondents

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondents: Ms Sam, the Sponsor

Heard at Field House on 5 October 2023

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Buckwell (“the Judge”). The appellants, Aarie John Samuel and Anam George Yuhanna are the sons of the sponsor, Ms Sam who has appeared to represent her sons today. I am grateful for both her submissions in relation to her difficult family situation and to Mr Melvin for his clear and concise submissions.
2. The two Appellants are citizens of India who have appealed on human rights grounds against the Respondent’s decision dated 30 September 2022 in which the Home Office refused their applications for entry clearance in order to join their mother, the sponsor, who is a British citizen born on 25 May 1974.
3. Judge Buckwell allowed the appellants’ appeal finding under paragraph 297(i)(e) that the sponsor had sole responsibility for her children’s upbringing and

therefore granted entry clearance. The Secretary of State appeals against that decision with permission granted by Judge Hollings-Tennant on 26 July 2023.

4. There is one ground of appeal which is that the judge misdirected themselves in relation to the law and failed to give proper reasons. During the hearing Mr Melvin helpfully expanded upon the grounds of appeal. The judge has found that 297(i)(e) was found in that the sponsor had sole responsibility for the children's upbringing. Unfortunately, the case was in fact argued under 297(i)(f), that is from the skeleton argument by the appellants and also referred to in the judgment. However, the judge makes no findings in relation to paragraph 297(i)(f). 297(i)(f) reads as follows:

“(f) one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care”.

5. This is also confirmed by the sponsor who candidly and helpfully has explained that she stated “We both have responsibility for the children.”, referring to herself and husband. She submitted to me that they were not planning to be separated when her husband came to the United Kingdom in 2012 where he stayed for a month and left. I accept the evidence found by the judge that the sponsor came here in 2012 and has been separated from her children since then, returning to India roughly two times a year, sometimes for extended periods to see her family. Unfortunately the judge having failed to consider a key aspect of the case is in my judgment an error of law because in fact the section that was to be determined was 297(i)(e).
6. Given that material error law I must find that there is an error of law in the approach the judge took to the sole responsibility issue.
7. In any event, in my judgment there is no evidence that the sponsor in fact has sole responsibility for the children. They live with their father in India, she sees them as often as possible which is roughly twice a year, and they are cared for as she explained lovingly by her husband and her extended family. Some of her extended family have health problems relating to old age and her extended family also have some health problems in relation to heart problems and the like. So even if I were to examine the case under subparagraph (e) I would find that the sponsor does not have sole responsibility for the child's upbringing.
8. Given that there is an error of law I invited submissions on whether or not the case should be re-made today or whether it should be adjourned. The sponsor has urged me to make a decision today and to deal with the matter. Mr Melvin has also submitted the same. In my judgment it is appropriate for me to go on to re-make the case, the sponsor is unrepresented, this litigation has been going on for some considerable time and requires finality. In addition, the evidence before me is accepted by the Home Office. The question for me is whether or not that evidence meets the relevant legal tests.
9. The sponsor has told me her family situation that she has sacrificed hugely for her children. She came here fifteen years ago to work to earn money to send back to India to provide for them. She does this because her husband sometimes

is unable to earn money from one month to the next. She had previously tried to bring her husband to the United Kingdom and her children to the United Kingdom but they had been refused by the Home Office on the basis that the Home Office consider that they would not leave the United Kingdom. She has explained that now everything is settled in the UK that she wants to bring them to live with her. It is her kids' dream to visit the United Kingdom. She has told me in detail that she has found it very difficult, she has been on her own for fifteen years and that during the Covid pandemic it was particularly difficult because she was on her own, she had Covid four times and there were no family members or her children to look after her. Her children are now aged 19 and 12 about to turn 13 as I understand.

10. I have to examine the case firstly 297(i)(f) of the Immigration Rules. Paragraph (f), the question I have to ask is - are there serious and compelling family or other considerations which make the exclusion of the child undesirable and suitable arrangements have been made for the child's care, and then secondly I have to go to check the child is under the age of 18, so unfortunately one of the children is now no longer under the age of 18 but for the purposes of (i)(f) it is in my judgment that there are no serious and compelling family or other considerations.
11. This is a difficult choice that the sponsor and her husband have had to make in order to make ends meet. The sponsor has lived in the United Kingdom, has worked and provided for them financially. She has for some eleven years travelled to and from India as often as she could to see her children, to spend time with her children and her family but that is a choice she has made in terms of her migration. There is nothing over and above that choice and that family arrangement that makes the facts of this case serious and compelling. There are no other considerations that I have been pointed to or that I find could have tipped the balance. It is difficult for the sponsor to be separated from her family and I understand that fully. However, the Immigration Rules are in place to allow a full and informed decision within the meaning of the law and the sponsor done so. That does not give her children the right to reside in the United Kingdom. As a result I do not find that there is any serious or compelling family or other considerations that would lead me to conclude that paragraph 297(i)(f) is made out.
12. That is not quite the end of the matter. The First-tier Tribunal Judge also examined in very brief format Article 8. Dealing with Article 8 briefly at paragraph 38 where the judge set out Article 8(1), Article 8(2) and the factors around Section 117B of the 2002 Act where the Tribunal is required to balance the factors set out there and the public interest considerations against the factors relied on by the appellants.
13. Section 117B of the Nationality, Immigration and Asylum Act 2002 states as follows:

“Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English–
 - (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons–
 - (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (4) Little weight should be given to–
 - (a) a private life, or
 - (b) a relationship formed with a qualifying partner,
that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person’s immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person’s removal where–
 - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
 - (b) it would not be reasonable to expect the child to leave the United Kingdom”.

In my judgment 117B does not really apply to this case because the children are outside of the United Kingdom and therefore I simply have to make the Article 8 balancing exercise.

14. I am grateful to the sponsor Ms Sam for explaining her upset and concern about the position that she faces. However, in my judgment there is no merit in the Article 8 exercise. This is a choice made by the sponsor and her family, it has left her not being able to see her children on as regular basis as she would like, however it has allowed her to provide them with finance over a significant period of time. The fact that the children have been without her for a significant period of time, the fact that they have a loving family in India and have from what I can see secure accommodation with the extended family, does not lead me to decide that the Article 8 balancing exercise is exercised in their favour. Accordingly I do not find that the Article 8 argument is made out.

15. For the reasons that I have explained I find that there is an error of law in relation to the First-tier Tribunal Judge's decision. On examining the agreed evidence in this case I allow the Secretary of State's appeal, re-make the decision and my decision is that the application for entry clearance should be refused.

Disposal

16. I find an error of law in the First Tier tribunal's decision and set the judgment aside,
17. I remake the decision and find that the applicants do not satisfy 297(i)(f) of the Immigration Rules. I find that the Article 8 balancing exercise is not in their favour.

Ben Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 October 2023