



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004070

First-tier Tribunal No:HU/00087/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 5 August 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

**Mrs Ramya Renadeep
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr S Bellara, Counsel, instructed by Law and Lawyers Solicitors
For the Respondent: Ms J Isherwood, Senior HOPO

Heard at Field House on 25 March 2024

DECISION AND REASONS

Introduction

1. I presided over an error of law hearing brought by the appellant on 11 August 2023. I concluded there was a material error of law in the First tier Tribunal decision dismissing the appeal which required it to be set aside and reheard in the Upper Tribunal. I do this now.
2. The appellant is a citizen of India and a widow. She wants to come to the United Kingdom to accompany and care for her children who are British citizens through their late father. Neither they nor the appellant had been to the United Kingdom before. The appellant's husband was working as a waiter in the United Kingdom and sending money home. At that stage he could not afford to bring his family over. He died from a spontaneous brain haemorrhage on the 27th of March 2013 at the age of 42.

3. The appellant applied on 25 September 2020 for entry clearance. Her application was refused on 11 December 2020. Her application was considered initially under appendix FM of the immigration rules which covers entry clearance under the parent route. The difficulty she met was that the children were not living in the United Kingdom. A second basis for refusal was that she had not demonstrated adequate maintenance as evidenced under appendix FM SE ,notwithstanding her claim of third-party support.
4. The respondent considered article 8 in relation to family life with her sponsor in the United Kingdom, namely, her uncle Mr Anil Kumar, and his wife. The respondent concluded the decision was proportionate.
5. It was accepted by the respondent that the appellant is their mother and that she was widowed in 2013 and has sole responsibility for her two children .The refusal decision makes passing reference to the section 55 obligation in the Borders, Citizenship and Immigration Act 2009. There is family life between the appellant and her children, and the issue arising is whether respect for that family life requires her admission to the United Kingdom so they can exercise their rights. Their best interests are a primary consideration.
6. Her children are Master Deepak, born on 21 October 2010 and Miss Gauri, born on 6 March 2007. Whilst they are British citizens they cannot avail of their rights of citizenship because although circumstances without support from an adult, in this instance, their mother, the appellant. The benefits of British citizenship were referred to in the decision of ZH Tanzania which considered the status of citizenship and the associated host of benefits and advantages.
7. It was also argued in the First tier that a relevant consideration was their status in India as a British nationals.
8. The appellant's representative said the refusal was depriving children of the benefit of their British nationality. He did accept that the children might be able to claim Indian nationality through their parents.
9. Ms Isherwood submitted the children could obtain Indian nationality through being born in India and by descent from their parents. There was no evidence to suggest they were not able to get a public education in India or that their circumstances were particularly difficult. Neither have been to the United Kingdom and there was a lack of evidence of contact with their mother's uncle. No bank statements had been provided as to his income, just the mortgage statement. There was no evidence as to his circumstances.
10. In response, Mr Bellara submitted this that the sponsor could maintain the family though he acknowledged it would have been helpful to have had further evidence about his circumstances. He repeated that the children are British nationals who cannot exercise that right now.

Consideration

11. The basic facts are not in dispute. The appellant is a widow and mother of two young children who have British nationality. I have not been

referred to Indian nationality law, but it is clear they have been able to reside in India and obtain an education there.

12. There is also limited evidence to confirm their sponsor's finances. I do note he was able to obtain a substantial mortgage which gives some indication of his likely income.
13. The primary issue in the appeal relates to the position of the children and their British nationality. I am obliged to consider their best interests as a primary consideration. This is set out in the statutory guidance 'Every child matters - Change for Children' which states that a child's best interests would be a primary but not the only consideration when decisions affecting them are made. The spirit of section 55 applies to decisions made in relation to children abroad.
14. The decision in relation to the appellant obviously will affect the children as the intention is that they would accompany her. British nationality is a particularly important factor in assessing those best interests. It is a right of abode without qualification and to come and go as they choose. However, the respondent's decision to refuse their mother admission prevented them from living in the United Kingdom. Their nationality was an important aspect of their social identity and private life. Whilst not deprived of their British citizenship the decision robbed them in practical terms of the exercise of those rights.
15. It is appropriate to conduct a freestanding article 8 assessment in the circumstance. I find that article 8(1) is engaged. Going through the Razgar sequence the determinative issue will be the proportionality of the decision. I am also required to consider the public interest considerations in section 117B.
16. The appellant meets the English language requirements. She has her uncle here whom I would accept is able to offer assistance in terms of accommodation and assisting them to settle. She is in receipt of a pension from the United Kingdom.
17. SD (British citizen - children entry clearance) Sri Lanka [2020] UKUT 00043, dealing with a similar scenario, made the point that by virtue of their minority children are not able to exercise some of the rights and benefits ordinarily associated with nationality. The children's passports evidence they are British.
18. I find the decision in the circumstance has unjustifiably harsh consequences, bearing in mind the sudden death of their father and their mother's dependence upon a pension. Both private and family life are affected.
19. There is a public interest in the maintenance of immigration control, but the respondent's policy does not cover the weight to be attached in an entry clearance application affecting children with British citizenship. There is no entry clearance comparator within EX1 and Section 117b(6). The children's mother feels the United Kingdom is where their best interests lie, and is in a good position to judge this. I have sought to balance their interests on the relatively limited information available. On balance I find it is in their interest that their mother is granted clearance,

and they can accompany her to the United Kingdom. I conclude that the decision is correct under the rules but is a disproportionate interference with the article 8 rights involved.

Notice of Decision

The appeal is allowed.

Farrelly **Deputy Upper Tribunal Judge**

Francis J Farrelly
Judge of the Upper Tribunal
Immigration and Asylum Chamber.