**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-003291**
**UI-2023-003293**
**UI-2023-003294**
**First-tier Tribunal No:**
**HU/58520/2022**
**HU/58543/2022**
**HU/58544/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On the 09 October 2024**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**A D P**
**D A P**
**N A P**
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr A. Maqsood, instructed by Chancery Solicitors
For the Respondent: Ms S. McKenzie, Senior Home Office Presenting Officer

**Heard at Field House on 07 October 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellants. Failure to comply with this order could amount to a contempt of court.**

## DECISION AND REASONS

1. The appellants are husband, wife, and dependent child. The first two appellants also have a younger child, who is not a party to this appeal.

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2. The appellants entered the UK on 24 May 2017, with entry clearance as visitors that expired on 05 November 2017. The first and second appellants knowingly overstayed their visas for nearly 4 years before making an application for leave to remain outside the immigration rules on human rights grounds on 17 August 2021.

*First-tier Tribunal appeal*

3. The appellants appealed the respondent's decisions dated 04 November 2022 to refuse their human rights claims.

4. First-tier Tribunal Judge Wolfson ('the judge') dismissed their appeals in a decision sent on 16 June 2023. The judge found that there were no 'very significant obstacles' to the family's integration in India for the purpose of paragraph 276ADE(1)(vi) [16]. She rejected the first appellant's claim that he had come to the UK with the intention of founding a business and then intended to return to apply for a business visa. She accepted that the first appellant might have borrowed money from his father to start a business in the UK. However, concluded that the appellants came to the UK with 'no serious plans to return to India at the end of the visa' [12]-[13]. The judge gave reasons for rejecting the appellant's claim that there had been a family disagreement following the death of the first appellant's father over the money that he owed. She concluded that there was no evidence to support the assertions. It was likely that they would be able to access some support from the first appellant's family although she accepted that the second appellant was no longer in contact with her family because they did not support her marriage [13]-[14].

5. The judge turned to consider the position of the children. She noted that there was no evidence to suggest that either child suffered from any serious medical conditions or had special needs. Although the first child might prefer to speak English, she found that it was not plausible that the child only understood 'a little bit of Gujarati' if it was spoken at home [15].

6. The judge found that there were no 'very significant obstacles' to integration in India. Both parents grew up there and had spent most of their lives in India. They were educated to graduate level. They continued to be familiar with the language and culture. They both had previous work experience in India. Although the first appellant said that he had mental health issues, this was said to be due to the stress of responsibility for his family. There was no evidence to suggest that he was taking medication or was undergoing any treatment. The children would return to India with their parents, who would be able to support them [15].

7. Having found that the appellants did not meet the private life requirements of the immigration rules, which are said to be a reflection of where the respondent considers a fair balance is struck for the purpose of Article 8 of the European Convention on Human Rights, the judge turned to conduct an overall assessment of Article 8. She found that the appellants' right to private life engaged the operation of Article 8(1) [17]. She considered the best interests of the children, which she found could be met by remaining in a family unit with their parents. In considering whether the decision was be proportionate with reference to Article 8(2), the judge found that weight must be given to the fact that the appellants did not meet the requirements of the immigration rules. No other compelling

circumstances had been raised. She noted that the maintenance of an effective system of immigration control was in the public interest. She went on to conduct a balance sheet exercise taking into account factors that are outlined in section 117B of the Nationality, Immigration and Asylum Act 2002 ('NIAA 2002') albeit she did not cite the provision. She said:

> '19. …
> (a) I weigh the following further public interest factors against the Appellants:
>
> i. The appellants had no intention of returning [to] India on or prior to the expiration of their visit visa in 2017 and accordingly obtained that visa by deception and have been overstaying since then;
>
> ii. Mr and Mrs P speak little English; and
>
> iii. Any private and family life in the Appellants have developed in the UK has been whilst they are here illegally.'

8. The judge went on to identify other factors that were considered neutral before concluding that the appellants' circumstances did not outweigh the public interest in maintaining an effective system of immigration control. The appeal was dismissed.

*Upper Tribunal appeal*

9. The appellants applied for permission to appeal to the Upper Tribunal on the following grounds:

(i) The First-tier Tribunal's findings relating to the availability of family support in India were irrational.

(ii) The First-tier Tribunal was 'clearly wrong' to find that the first appellant spoke little English given that the accepted background was that he entered the UK as a student in 2009. The visa would have required competency in English.

(iii) The First-tier Tribunal's findings that the appellants used deception in their application for a visit visa was irrational and/or unsupported by adequate findings.

(iv) The First-tier Tribunal erred in the findings relating to the first child's ability to speak and understand Gujarati, to be read in conjunction with the second ground. The judge made no findings as to whether the children could read or write in Gujarati.

10. At the hearing, Mr Maqsood confirmed that an earlier application made by the appellants' solicitors for the child's appeal to be withdrawn was no longer pursued. Given that this would require the consent of the Upper Tribunal, and the application had not yet been dealt with, the child remains as an appellant.

11. I have considered the First-tier Tribunal decision, the documentation that was before the First-tier Tribunal, the grounds of appeal, and the submissions made at

the hearing before coming to a decision in this appeal. It is not necessary to summarise the oral submissions because they are a matter of record, but I will refer to any relevant arguments in my decision.

12. The Supreme Court in *HA (Iraq) v SSHD* [2022] UKSC 22 reiterated that judicial caution and restraint is required when considering whether to set aside a decision of a specialist tribunal. In particular, judges of the specialist tribunal are best placed to make factual findings. Appellate courts should not rush to find misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently: see *AH (Sudan) v SSHD* [2007] UKHL 49 and *KM v SSHD* [2021] EWCA Civ 693. Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account: see *MA (Somalia) v SSHD* [2020] UKSC 49. When it comes to the reasons given by the tribunal, the court should exercise judicial restraint and should not assume that the tribunal misdirected itself just because not every step in its reasoning is fully set out: see *R (Jones) v FTT (SEC)* [2013] UKSC 19. I have kept these considerations in mind when coming to my decision.

**Decision and reasons**

13. Having considered the submissions made by both parties, I conclude that none of the grounds disclose an error of law in the First-tier Tribunal decision that would have made any material difference to the outcome of the appeal.

14. Mr Maqsood made a series of submissions about the evidence relating to the appellant's account of the family dispute following his father's death, which amounted to disagreements with the judge's conclusions. In the end, even if that account had been accepted at its highest by the First-tier Tribunal, it would not have made any material difference to the outcome of the judge's assessment of whether there were 'very significant obstacles' to integration. Her findings at [15] were not challenged in the grounds. They were open to her to make on the evidence.

15. The appellants are Indian citizens who had only lived in the UK for a period of around 6 years at the date of the hearing. Although it might be easier to re-establish themselves with the assistance of family support, there was no evidence to suggest that they were unable to support themselves without it. They are educated adults with a history of previous work in India and who would still be familiar with the language and culture there. There was no evidence to suggest that they would be unable to work to support their children. For these reasons, I find that the first ground does not disclose any material error in the First-tier Tribunal's decision.

16. I will take the second and fourth grounds together because they relate to similar issues and were expressly linked in the grounds. Ms McKenzie acknowledged that the judge failed to give sufficient reasons to explain why she had concluded that the appellants spoke 'little English'. I agree that when one considers the wording of paragraph 19(ii) it is nothing more than a bare statement.

17. However, the decision must be read as a whole. It is clear from the face of the decision that both appellants gave evidence with the assistance of an interpreter. I accept that even a person who speaks quite good English might ask for the

assistance of an interpreter in their first language for the purpose of a court hearing to ensure that they have understood the proceedings fully. But the judge who hears the evidence given at a hearing is in the best position to assess the witnesses. It is usually possible to discern whether a person understands quite a lot of English or is wholly reliant on an interpreter while giving their evidence. The former might acknowledge the question before it has been translated or respond to some questions in English. The latter might have to wait for the whole question to be translated before giving their answers solely in their first language.

18. I accept that the judge did not give specific reason for her finding that the appellants spoke little English. However, it is reasonable to infer from the fact that the appellants used an interpreter that this was likely to be a factor underpinning her finding. The second ground does not point to any positive evidence to show that the first and second appellants spoke a good level of English. It only submitted that it should be inferred from the fact that the first appellant was granted a student visa in 2009 that he must speak a minimum level of English. The second ground is silent in relation to what evidence there might have been to suggest that the second appellant might speak sufficient English. Even if there could be some criticism of the judge for a lack of reasoning relating to this finding, when considered in the light of the statutory framework and relevant case law, for the reasons given below, it would have made no material difference to the outcome of the appeal.

19. Section 117B(2) NIAA 2002 states that it is in the public interest that people who seek to remain in the United Kingdom are able to speak English because those who speak English are less of a burden on taxpayers and are better able to integrate into society. For this reason, if a person cannot speak English it is likely to be a factor that will weigh in favour of the public interest in the balancing exercise conducted under Article 8(2). However, if a person speaks English and is better able to integrate, this is usually considered only to be a neutral factor in the balancing exercise and does not necessarily add anything to a claim: see *Rhuppiah v SSHD* [2016] EWCA Civ 803; [2016] WLR 4203 [60] and *Rhuppiah v SSHD* [2018] UKSC 58; [2019] Imm AR 452 [57].

20. While recognising that the point made on behalf of the appellants is that the judge placed ‘additional weight’ on the public interest because this finding, at highest, even if there was meaningful evidence to show that they speak a competent level of English, it would only have been a neutral factor in the balancing exercise and would not have added anything significant to the assessment. I will return to the materiality of this point after having dealing with the remaining grounds.

21. The associated argument relating to the judge’s findings relating to likely ability of the first child to speak or understand Gujarati amounts to nothing more than a disagreement with the judge’s findings, which were open to her to make on the evidence. It is understandable that a child who has spent time in the UK at nursery or in school will learn English and may get used to speaking in English. The appellants’ first child was 2 years old when he came to the UK and the second child was born in the UK. It was open to the judge to conclude that Gujarati was likely to be the first language used at home given that the appellants did not speak sufficient English to give evidence and were unlikely to speak in English to each other at home. The judge accepted that the child might

prefer to speak in English, but it was not outside a range of reasonable responses to the evidence to conclude that the child was likely to be able to understand a good deal more Gujarati than the appellants claimed. In any event, both children were still young and could learn and adapt on return to India, as the first child had done when he came to the UK. For these reasons, nothing in the fourth ground discloses an error of law in the judge's findings relating to the child's ability to speak or understand Gujarati.

22. The last ground relates to the negative findings made at [12] and [19(i)] about the appellants' immigration history. It was argued that it was not open to the judge to find that the appellants had used deception in the application for entry clearance as a visitor when no express allegation of deception had been raised in the respondent's decision letter and nor was the application formally refused on 'Suitability' grounds.

23. However, it is clear from the refusal letter that the substance of the allegation was given as a reason for refusing the application when the respondent considered whether there were exceptional circumstances that might outweigh the public interest in maintaining an effective system of immigration control. In other words, the appellants' immigration history was still a matter that was given weight in the balancing exercise. In assessing whether removal would breach Article 8 of the European Convention, the decision letter stated:

> 'We have reached this decision because you entered the UK as a visitor. Since your arrival you have not made prior efforts to regularise your residence here. Given that in your entry clearance you did not state that it was your intention to permanently reside in the UK (sic). An application for Entry Clearance is granted on the mutual understanding between yourself an the Immigration Officer that you will return to your home country at the expiry of your leave to enter. In light of the above it is thought that you purposefully misinformed the Immigration Officer of your intentions whilst in the UK, in order to gain Entry Clearance.'

24. It is not arguable that the judge erred in finding that the appellants did not intend to return to India when they made their applications for entry clearance as visitors. On the first appellant's own evidence he intended to set up a business in the UK while he was here as a visitor, which in itself would be a breach of the conditions of the visa. On the first appellant's own evidence, he clearly wished to remain in the UK on a long term basis. As a matter of fact, he did not return to apply for a business visa as stated. The allegation made in the decision letter was still a matter that weighed heavily in favour of the public interest in maintaining an effective system of immigration control even if the respondent chose not to refuse the application on grounds of 'Suitability'. The appellants were on notice of the allegation. Nothing in the appellants' witness statements explained why they overstayed or even acknowledged the fact that they had remained in the UK illegally for many years.

25. In the circumstances, I find that it was open to the judge to make the findings that she did in relation to the earlier application for entry clearance. She did not purport to find that the appellants should have been refused on 'Suitability' grounds or under the general grounds for refusal. She was assessing what weight to place on the appellants' immigration history as part of the overall balancing exercise. It was within a range of reasonable responses to the evidence before her to conclude that the appellants did not intend to enter the UK as visitors

because, on their own evidence, they wanted to set up a business in the UK. In the circumstances, it was open to the judge to place additional weight on the appellants' immigration history in the balancing exercise.

26. When one steps back from the points made in the grounds, even if there is a lack of reasoning relating to the appellants' ability to speak English, nothing in the claim was capable of making any material difference to the overall outcome. The appellants fell far short of the requirements for leave to remain on grounds of long residence. The judge's findings relating to the private life requirements were sustainable on the evidence regardless of whether support would be available from family members in India. The best interests of the children were to remain in the family unit and they were of an age where they could adapt to life in India.

27. The immigration rules are a reflection of where the respondent considers a fair balance is struck for the purpose of Article 8. The appellants did not meet the requirements of the immigration rules and nothing in the evidence disclosed any other compelling or compassionate circumstances that might outweigh the public interest in maintaining an effective system of immigration control. In those circumstances, it was open to the judge to note that there were factors relating to the appellants' immigration history that gave additional weight to the public interest in refusing the application. Based on the appellants' own evidence, it was open to her to find that they did not intend to enter the UK for a visit. In any event, the fact that they overstayed in breach of immigration laws was an additional factor that weighed in favour of the public interest and reduced the weight to be given to any private life that they might have developed in that time. When considered in this overall context, any error relating to lack of reasoning about their ability to speak English was not material because the judge, if properly directed, was bound to have come to the same conclusion in relation to Article 8.

28. For the reasons given above, I conclude that the First-tier Tribunal decision did not involve the making of an error of law. The decision shall stand.

**Notice of Decision**

The First-tier Tribunal decision did not involve the making of a material error on a point of law

The decision shall stand

**M.Canavan**
Judge of the Upper Tribunal
Immigration and Asylum Chamber

08 October 2024