



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

Appeal Numbers: DA/01083/2013
DA/01084/2013
DA/01086/2013
DA/01087/2013

THE IMMIGRATION ACTS

Heard at Field House

**On 9 October 2013
Extempore Judgment**

**Determination
Promulgated
On 16 October 2013**

**Before
MISS E E ARFON-JONES DL, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MARTIN**

Between

**MRS POORNIMAH RUNGOO
MR MANRAJ RUNGOO
MR KEHAR RUNGOO
MISS GREATA RUNGOO**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J Martin (instructed by Raj Law solicitors)
For the Respondent: Mr G Saunders (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. These are four appeals to the Upper Tribunal by a mother, father, adult son and daughter (also now an adult) against a determination of the First-tier Tribunal (Judge R J N B Morris and Mr Getlevog) who heard the appeals at Hatton Cross on 22 July 2013. In their determination, which was

promulgated on 5 August 2013, all of the appeals were dismissed. The appeals were against decisions by the Secretary of State made on 15 May 2013 to deport all four to Mauritius. The circumstances surrounding the making of the deportation orders was that the first Appellant, the mother, was convicted of using a false passport and sentenced to eighteen months in prison.

2. What happened then has caused confusion in that when the mother was released from prison she was notified of the Secretary of State's intention to deport her. She then made an application in August 2012 for leave to remain in the UK on Article 8 grounds. That was before any deportation decisions had been made. In October 2012 the other three members of the family, namely husband, son and daughter, also made applications for leave to remain in the UK on Article 8 grounds. At the date of those applications, the daughter (the fourth Appellant) was 17 years of age. Her brother was over the age of 18.
3. The Secretary of State made a Decision in September 2012 rejecting the mother's application on Article 8 grounds. That decision carried no right of appeal as she then had extant leave. The Secretary of State has never made decisions in relation to the applications by the other three members of the family. The Secretary of State seems to think that she might have done because the Rule 24 reply suggests decisions were made in September. However the only decision made in September 2012 related to the mother's application.
4. The Secretary of State then made a Deportation decision. That she then revoked and made fresh deportation decisions against all four Appellants on 15 May 2013. However, by May 2013 the youngest child was also over the age of 18.
5. The appeal we have before us is not in relation to the Article 8 applications; it is an appeal against the Deportation decisions.
6. The power to deport family members is to be found in the Immigration Act 1971 and in particular Section 3(5) which provides:

"A person who is not a British citizen is liable to deportation from the United Kingdom if -

 - a) the Secretary of State deems his deportation to be conducive to the public good; or
 - b) another person to whose family he belongs is or has been ordered to be deported."
7. The definition of "family" is contained in Section 5(4) of that Act which provides:

"For the purposes of deportation, the following shall be those who are regarded as belonging to another person's family-

- a) where that other person is a man, his wife or civil partner, and his or her children under the age of 18;and
 - b) where that other person is a woman, her husband or civil partner, and her or his children under the age of 18
8. There is no power for the Secretary of State to deport adult children of a person who is to be deported. That renders the decisions in relation to the third and fourth Appellants unlawful.
 9. That is such a fundamental matter that it is certainly Robinson-obvious and it is a matter that the First-tier Tribunal ought to have noticed, considered and decided. For that reason we find that the First-tier Tribunal made an error of law and we set aside its Determination in relation to all four Appellants. We set aside the Determination in relation to the first two Appellants because consideration of Article 8 will be informed by the situation with regard to their two children.
 10. Having set aside the Determination, we note that there has been no application to adduce additional evidence and so we can proceed to re-decide the appeals. We re-decide the appeals in relation to the third and fourth Appellants, and we allow their appeals on the basis that the decisions appealed against are not in accordance with the law, there being no power to deport them.
 11. We then are left with the first and second Appellants, who are the person who stands convicted and her husband. Their appeals are brought on Article 8 grounds. However, there are outstanding applications by the children for leave to remain in the UK before the Secretary of State, which predated the decisions to deport the parents. Whether they are given leave to remain is going to be an important consideration when deciding the Article 8 appeals of the parents. For that reason we cannot decide the parents' today and adjourn to a resumed hearing before us after the Secretary of State has made her decision, which we hope will be in the near future.
 12. The appeal in relation to the first and second Appellants are adjourned to be listed for a Directions Hearing before us in three months time, when we can establish what the situation then is and whether indeed it is appropriate for us to decide the appeals in the Upper Tribunal or remit to the First-tier Tribunal.
 13. The appeals of the third and fourth Appellants to the Upper Tribunal are allowed.

Signed

Date 9th October 2013

Upper Tribunal Judge Martin