Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/47720/2013
IA/47721/2013

THE IMMIGRATION ACTS

Heard at Field House
On 1 July 2014

Determination promulgated
On 4 September 2014

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

(1) Rafaela Yasmin Jovita Pereira
(2) Meyre Lucia Santana Jovita
(Anonymity directions not made)

Appellants

and

Secretary of State for the Home Department

Respondent

Representation
For the Appellants: Mr M Iqbal of Counsel instructed by Farani Javid Taylor Solicitors.
For the Respondent: Mr G Jack, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. These are linked appeals against the decisions of First-tier Tribunal Judge E M M Smith promulgated on 10 April 2014. The

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decisions of Judge Smith purport to dismiss appeals brought by each of the Appellants' against removal decisions dated 30 October 2013. (See further below in respect of the relevant immigration decisions and rights of appeal – which were considered potentially contentious in the grant of permission to appeal to the Upper Tribunal.)

Background

2. The Appellants are nationals of Brazil born on 22 August 2000 and 30 August 1970 respectively. The First Appellant is the daughter of the Second Appellant. Their relevant immigration histories are set out at paragraph 3 of a 'reasons for refusal' letter ('RFRL') dated 30 October 2013 addressed to the Second Appellant, and are also summarised at paragraphs 7–10 of the determination of the First-tier Tribunal Judge. I do not detail further here the relevant histories, but make reference as is incidental for the purposes of this determination.

3. On 11 May 2011 the Appellants - who at that time had no current leave to remain in the UK – applied jointly for leave to remain on human rights grounds, with particular reference to Article 8 of the ECHR. The joint application was refused for reasons set out in the RFRL dated 30 October 2013.

4. In consequence Notices of Immigration Decision of the same date was served on the Appellant on 5 November 2013: see further below.

5. The Appellants appealed to the IAC.

6. The Appellants' appeals were dismissed by the First-tier Tribunal for reasons set out in the determination promulgated on 10 April 2014.

7. The Appellants applied for permission to appeal to the Upper Tribunal, which was granted on 19 May 2014 by First-tier Tribunal Judge Levin.

8. Judge Levin rejected the grounds in support of the application for permission to appeal as being without merit and not raising an arguable error of law (see paragraphs 3 and 5 of the Reasons for Decision). However, on the basis of the papers available to him, and notwithstanding that no previous issue had been raised in this regard, Judge Levin was concerned that there appeared not to have

been a relevant appealable immigration decision in respect of the First Appellant, and granted permission to appeal on this basis (paragraphs 4 and 5).

9. The Respondent has filed a Rule 24 response dated 6 June 2014 – but was not in a position to make comment on the grant of permission to appeal because the relevant file was not available.

Consideration

10. There are on file Notices of Immigration Decision in respect of each of the Appellants, both dated 30 October 2013. Although the Notice in respect of the First Appellant is not readily apparent in the Respondent's bundle, there is a copy of it attached to the Notice of Appeal at page 12 of the Appellants' bundle.

11. Both Notices of Immigration Decision refer to an 'out of country' right of appeal. However, this was the subject of consideration as a 'Validity Issue' raised on an 'Appeals Processing Referral Sheet' which resulted in a decision on 17 December 2013 by Judge Birrell expressed in these terms: "*Proceed. App has made HR claim – application made on the basis of family life.*"

12. In the circumstances it was common ground between the representatives before me that there were relevant appealable immigration decisions in respect of both Appellants; further that pursuant to the decision of Judge Birrell the right of appeal was exercisable 'in country'; and in consequence Judge Smith had had jurisdiction to consider and determine appeals in respect of each of the Appellants. Indeed Mr Iqbal was understandably anxious not to concede that there was no in-country right of appeal in respect of either Appellant. It followed that the concerns raised by Judge Levin in the grant of permission to appeal were answered upon closer perusal of all of the relevant materials on file. (I note that even if there had not been a valid immigration decision in respect of the First Appellant this would have made no material difference to the fact that there was a valid decision in respect of the Second Appellant and there was in turn a valid appeal in respect of the Second Appellant; moreover all issues relevant to the Second Appellant – including those matters that more directly affected the First Appellant - were the subject of consideration by the First-tier Tribunal; indeed, as observed by Judge Smith the emphasis in the case for the Second Appellant was upon her remaining in the UK as the parent of the First Appellant.)

13. This left Mr Iqbal, as he was quick to observe, in an unusual position. The pleaded grounds in support of the application for permission to appeal had been rejected; however, the Appellants had not reviewed and renewed the application for permission to appeal because permission had been granted on Judge Levin's own motion for different reasons – reasons now shown to be unfounded. In the circumstances, and without any objection from Mr Jack, I simply invited Mr Iqbal to pursue any challenge to the decision of the First-tier Tribunal Judge that he wished.

14. Mr Iqbal developed a submission based on the fact that by the date of the hearing before the First-tier Tribunal the First Appellant had been in the UK for more than 7 years, and accordingly should have had a favourable assessment pursuant to the guidance in **Azimi-Moayed [2013] UKUT 197 (IAC)**. Mr Iqbal also made reference to paragraph 276ADE of the Immigration Rules.

15. In response, Mr Jack essentially argued that there was no 'bright line' rule in respect of 7 years for a minor; that the Judge had fully taken into account the decision in **Azimi-Moayed**; and that the Judge had come to a sustainable conclusion on the particular facts of the Appellants' cases.

16. I make the following observations:

(i) The Judge made clear and sustainable findings in respect of family life, taking into account the best interests of the minor Appellant: see paragraph 32. I do not understand the Appellants' challenge to the determination of Judge Smith to focus on the evaluation of family life so much as the evaluation of private life with particular reference to the private life of the First Appellant.

(ii) The Judge plainly had in mind the respective immigration histories of the Appellants, which he summarised at paragraphs 7–10. In doing so he identified that the First Appellant had been brought to the UK on 18 June 2006 by the Second Appellant as a visitor even though it had been the Second Appellant's intention that her daughter would remain with her in the UK thereafter (determination at paragraph 9). The Judge characterised the circumstances of the First Appellant's entry as "*deceitful*", but expressly indicated that the First Appellant did not bear any responsibility in this regard (paragraph 34).

(iii) I note that notwithstanding the lack of responsibility of the First Appellant, the deceit employed in securing her entry to the UK renders her an illegal entrant. In any event, the

deceitful circumstances surrounding her entry are capable of being a relevant adverse consideration in a proportionality exercise notwithstanding the lack of culpability of the First Appellant herself because they are matters relevant to the overall integrity of immigration control. In the event, however, the Judge did not accord these matters any adverse weight: in one sense his decision can therefore be seen to have possibly involved a consideration more generous to the Appellants than was strictly warranted.

(iv) The Judge clearly had in mind the length of time the First Appellant had been in the UK, and her age upon entry: see paragraph 35. The Judge analysed and made findings in respect of her private life in this context: again, see paragraph 35. The Judge also plainly had in mind the age of the First Appellant at the date of the appeal hearing, and her current circumstances: paragraph 37.

(v) The Judge directed himself to **Azimi-Moayed**: see paragraph 36. I can identify nothing in paragraphs 36-38, or indeed elsewhere in the determination, that suggests that the Judge misunderstood the guidance therein, or misapplied it.

(vi) The Judge gave detailed consideration to the extent of interference with the First Appellant's private life, setting out clear findings and reasons in the analysis at paragraph 38. In reality, Mr Iqbal's challenge is essentially a contention that a different conclusion should have been reached, but does not identify any specific perversity in the analysis therein.

17. Further to the above, in as much as any emphasis might be placed upon the First Appellant's continuing school education in the UK, Mr Jack directed my attention to paragraphs 60 and 61 of **EV (Philippines) [2014] EWCA Civ 874**. Whilst the Judge had observed that the standard of education in Brazil was not so poor as to breach Article 2 of the 1st Protocol to the ECHR, he had not had any regard to the cost to the public purse in providing education to the First Appellant in the UK – and as such, in Mr Jack's submission, had if anything adopted an approach too favourable to the Appellants. Whilst there may be some substance to this submission in isolation, in the context of this particular case it seems to me that it does not progress matters significantly when considering 'error of law'. I do observe, however, in this context that the Judge clearly had in mind the importance of continuing education to the First Appellant, and indeed addressed this also by reference to her ability to adapt to the educational system in her country of origin taking full account of her oral language ability, and taking full account of her limitations in reading and writing Portuguese.

18. As regards paragraph 276ADE(iv) of the Immigration Rules I note that this was addressed by Judge Smith at paragraph 25. The Rule specifies the requirements by reference to "*the date of application*", and accordingly the Judge was correct to find that the First Appellant did not meet the qualifying period. In any event, it would still have been necessary for the First Appellant to meet the 'reasonableness' test thereunder, which whilst not congruent with a proportionality test under Article 8 encompasses similar considerations.

19. In all the circumstances I could identify no error of law in the approach taken by the First-tier Tribunal Judge to the Appellants' appeals, whether by reference to Mr Iqbal's submissions, or otherwise.

20. For the avoidance of any doubt, I observe that in my judgement Judge Levin was entirely correct in ruling that the grounds submitted in support of the application for permission to appeal raised no arguable error of law, and were otherwise without merit. I adopt Judge Levin's observation to the effect that contrary to the submission in the grounds, the First-tier Tribunal Judge made it clear that the First Appellant did not bear any responsibility for the conduct of the Second Appellant in failing to regularise their immigration circumstances; and further that Judge Smith considered in detail the best interests of the First Appellant. In my judgement the grounds effectively sought to re-submit the arguments that were considered and rejected by Judge Smith.

21. There being no error of law, the decisions of the First-tier Tribunal stand.

Decisions

22. The appeals are dismissed. The decisions of the First-tier Tribunal Judge stand.

Deputy Judge of the Upper Tribunal I. A. Lewis 3 September 2014