IAC-PE-AW-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/28884/2014
IA/28889/2014
IA/28887/2014
IA/28892/2014
IA/28896/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26th February 2015	**On 22nd April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

MR PRANAVAN BALACHANDRAN (FIRST APPELLANT)
MRS SHANTHY BALACHANDRAN (SECOND APPELLANT)
MR SAGARAPILLAI BALACHANDRAN (THIRD APPELLANT)
MISS KARTHIKA BALACHANDRAN (FOURTH APPELLANT)
MISS SINTHUJA BALACHANDRAN (FIFTH APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms Jegarajan - Counsel
For the Respondent: Mr Whitwell – Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the above named Appellants, all citizens of Australia. Pranavan Balachandran and Mrs Shanthy Balachandran are the parents of the other three Appellants. They were born on 16th October 1957, 31st December 1964, 16th September 1987, 30th March 1990 and 30th July 1995 respectively. They appeal against the determination of First-tier Tribunal Judge D Ross issued on 13th November 2014 dismissing on human rights grounds their appeals against the decision of the Respondent made on 24th June 2013 to refuse leave to remain and to remove them by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The first Appellant had entered the UK on 17th September 2007 with a work permit visa valid until 21st November 2012 and subsequently obtained a Tier 1 (Highly Skilled) Migrant visa valid until 18th March 2013. The other Appellants entered as his dependants.

3. Permission to appeal against the determination of Judge Ross was granted on 15th January 2015 by First-tier Tribunal Judge Osborne. Since this deals with the grounds seeking permission I shall set it out verbatim:

> "1. The grounds seek permission to appeal a decision of First-tier Tribunal Judge D Ross who in a decision and reasons promulgated on 13th November 2014 dismissed the Appellants' appeals under Appendix FM (family life) and paragraph 276ADE (private life) of the Immigration Rules.
>
> 2. The grounds assert that the Judge fundamentally erred in fact. The Grounds of Appeal clearly identify the relevant Rules and evidence on the respective cases of each of the Appellants. Each of the Appellants claims to satisfy paragraph 276ADE of the Immigration Rules. Nonetheless the Judge at [21] states that it has not been argued that the circumstances of any of the Appellants comes within these provisions. The grounds assert that that was precisely what was argued by the Appellants. The Judge erred in failing to make any findings in respect of the applications made under the Rules despite the fact that the decision related to the Rules. The Appellants have not had a fair hearing. In any event the test to be applied is not whether the Appellants have 'no links to Australia' as the Judge put it; the test is far more nuanced and includes,
>
> > '… the length of time a person has spent in the country to which he would have to go if he were required to leave the United Kingdom;
> >
> > the age the person left that country;
> >
> > the exposure that person has had to the cultural norms of that country;
> >
> > whether that person speaks the language of the country;

the extent of the family and friends that person has in the country to which he is being deported or removed; and

the quality of the relationships that person has with those friends and families.' (See **Ogundimu [2013] UKUT 00060 (IAC).**

Additionally the Judge gave no consideration as to how the cases of the Appellants engage with the statutory considerations in Sections 117A-D Immigration Act 2014. The Judge was taken through all the previous findings of the first Judge (FT T J Widdup) and asked to adopt these findings on the basis that the respective cases of each of the Appellants had become only stronger. The Judge made no reference to the decision and findings of the first Immigration Judge.

3. In finding at [21] that it has not been argued that the circumstances of any of the Appellants come within the provisions of the Immigration Rules it is arguable that the Judge had fundamentally misunderstood the basis upon which the Appellants' appeals had been put in. It is an essential part of the appeals that the Appellants fall within the Rules. It is further arguable that such a fundamental misunderstanding infected the Judge's reasoning throughout the determination of the appeals. It is further arguable that in so finding the Judge erred in law.

4. As this arguable error of law has been identified all the issues raised in the grounds are arguable."

4. In a response to the grant of permission the Secretary of State submits that it was open to the Judge to conclude that since the Appellants had spent ten years in Australia and having become Australian citizens they had not lost all ties to their country of nationality. The Appellants when asked if there was any particular reason why they could not return to Australia simply said that they would prefer to stay in the UK.

5. The Respondent does however concede that there may be an error of law in the determination in respect of the version of 276ADE(vi) which was applied because it was changed in July 2014 from:

"has no ties (including social, cultural or family) with (the country to which he would be returned)"

to:

"there would be very significant obstacles to the Appellants' integration into"

6. This change applies to all applications decided on or after that date. Reliance is then placed on the decision of **YM Uganda [2014] EWCA Civ**

1292 as authority for the fact that the version of the Rules which came into force in July 2014 should be applied to this case.

7. At the hearing before me Ms Jegarajan submitted that the appeal was presented before Mr Ross treating each family member as an individual. One of the Appellants had not attended court because she had been given leave to remain on the basis of psychiatric evidence. The third Appellant has a place at university here which is evidence of his integration and community ties to the UK. He feels British and would have to start again in Australia. Sending him back there would be devastating.

8. Judge Ross did hear evidence from all of the family. One of the submissions that was made to me, and indeed it was conceded by Mr Whitwell, was that the family are all well-educated and high achievers. Sinthuja has some physical difficulties including deafness but despite that had take up a place at Queen Mary University to study BSc Economics and obtained a First class degree. She had been given an MSc place at the London School of Economics but could not accept it because of her immigration status. She then passed the recruitment process for the Civil Service as a fast stream economist and is waiting for her immigration status to be resolved.

9. Judge Ross took all the evidence relative to the family into account. He correctly took into account paragraph 276ADE as it relates to private life. He did say that it had not been argued that the circumstances of any of the Appellants came within paragraph 276ADE and it is clear that only paragraph 276ADE(vi) would apply given the length of time the Appellants have been in the UK. He did deal with 276ADE and although he may not actually have gone through all the factors mentioned in **Ogundimu** as they related to each individual Appellant Judge Ross was in my view justified in finding that it could not sensibly be argued that they have no links to Australia.

10. He then went on to consider Article 8 outside the Rules. He concluded that since the family could all return to Australia together there was no interference with family life caused by the decision. He went on to say that Article 8 has never protected the right of a person to choose where they want to live. He considered that the application was based on a preference expressed by the family because of family links to the UK and because of the considerable progress made by the children in their education whilst living in the UK. He said that there was no evidence that any of the children would be disadvantaged by going to Australia. He took into account that Sinthuja could apply from abroad for the same course at Queen Mary though he did accept that that would be much more expensive for her.

11. Judge Ross did question the submission that the first Appellant would be able to get a job very easily in the UK once his immigration status was

resolved, noting that there is no offer of employment and that the first Appellant is now 57 years old. (This was criticised in the grounds seeking permission.) He did take into account the provisions of Sections 117A-D of the Nationality, Immigration and Asylum Act 2002 noting that it had been argued by the Appellant that there is no public interest in removing a family which is doing so well in the UK and are potentially able to support themselves and can speak English.

12. He concluded that this is not one of those "rare cases where the decision is so harsh as to be disproportionate". He said that each of the Appellants was asked whether there was any particular reason why they would not return to Australia and each of them said that they would prefer to remain in the UK. None had a compelling reason as to why they should remain outside the Rules. He took into account the desires and ambitions of the children and their potential future in the UK but said that he had no doubt that the children would be able to thrive in Australia. He concluded:

> "The family came to the UK because the first Appellant had a job here but he has not been employed for a number of years. The children are now adults and doing well. There is now no reason why they should not go back to Australia."

13. I cannot criticise the decision of Judge Ross at all. He clearly took everything into account. I appreciate that one of the family has now been granted leave to remain but this does not in my view affect the decisions made relative to the other family members. They are all adults. It seems to me that the correct version of 276ADE was applied but even if it were not the requirements of the amended version are not in my view met in this case.

14. There is no error of law material or otherwise in the determination of Judge Ross.

Notice of Decision

I find that there is no material error in the decision of the First-tier Tribunal and that decision shall stand.

No anonymity direction is made.

Signed Date: 20th April 2015

N A Baird
Deputy Upper Tribunal Judge Baird