



IAC-FH-NL-V1

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

Appeal Numbers: IA/08017/2014  
IA/08024/2014  
IA/08026/2014  
IA/08027/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision &  
Promulgated**

**Reasons**

**On 16 February 2016**

**On 16 March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**KAMLESHBHAI GORDHANBHAI PATEL, KOKILABEN KAMLESHBHAI  
PATEL, SUJALKUMAR KAMLESHBHAI, JANNAKKUMAR KAMLESHBHAI  
PATEL  
(ANONYMITY ORDERS NOT MADE)**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr S Harding of Counsel instructed by Bhogal Partners  
Solicitors

For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

**DECISION AND REASONS: ERROR OF LAW**

1. These are linked appeals against the decisions of First-tier Tribunal Judge Symes promulgated on 28 July 2015 dismissing the Appellants' appeals against decisions of the Secretary of State for the Home Department dated 9 February 2015 that each of the Appellants should be removed from the United Kingdom.

2. The Appellants are citizens of India. The first two Appellants are the parents of the Third and Fourth Appellants. Their respective personal details are a matter of record on the file and I do not propose to re-state those save to identify that the two sons of the family were born on 26 October 1993 and 14 July 1995 respectively. As such they entered the United Kingdom as children but by the date of the Respondent's decisions (and necessarily also at the time of the hearing before the First-tier Tribunal), they were both adults.
3. The family members' respective immigration histories are also a matter of record on file and again I do not propose to set those out in detail. However, for present purposes, it is relevant to note that there is a factual error at paragraph 25 of the decision of the First-tier Tribunal which suggests that both sons arrived in the UK in 2009. In fact the Third Appellant arrived in the United Kingdom in 2006 accompanied by his mother. It was the Fourth Appellant who arrived on his own later in 2009.
4. In the context of the immigration histories it is also relevant to observe that, in my judgement, it was appropriate for the First-tier Tribunal Judge to emphasise in his decision the fact that each of the Appellants had overstayed following entry on visit visas, and had collectively made a succession of unsuccessful applications for leave to remain. It is not to their credit that they did not make a voluntary departure after any of those applications, and it might also give some cause to wonder why the Respondent at no point has sought to enforce removal. Be that as it may, in my judgment there can be little complaint in respect of the Judge's observations at paragraph 30 of the decision with reference to section 117B of the Nationality, Immigration and Asylum Act 2002 (as amended) to this effect:

*"The family has been present on a precarious as well as unlawful basis and so their residence has been of the most precarious kind: applications have repeatedly failed not just with the Secretary of State but also on appeal before the First-tier Tribunal and the Upper Tribunal"*.
5. Be that as it may the current applications were made on 27 August 2014 for leave to remain. Those applications were supported in part by a social work report that appears at Annex B of the Respondent's bundle before the First-tier Tribunal. The report was prepared by Angeline Seymour who gives her qualifications in the opening paragraphs of the report.

6. At section 3 of her report Ms Seymour identifies the “*Issues to be Addressed and Statement of Instruction*” in the following terms:

- “1. *The memories that Janak and Sujal have of their life in India.*
2. *The life that Janak and Sujal have now in the UK.*
3. *Reasons for the family not being able to return to India.*
4. *The ties and connections that Janak and Sujal have in the UK.*
5. *Janak and Sujal’s future education and employment plans.*
6. *Anything else I felt relevant or useful to the court and Home Office in an assessment of the potential effects on the family if removed from the UK.”*

7. It may readily be seen that the focus of the report was very much on the sons of the family albeit that the report also necessarily and inevitably makes reference to the wider circumstances of the senior members of the family, that is to say the parents.

8. The report was in part based on a two hour interview with the Third and Fourth Appellants conducted on 6 September 2014. The report speaks at length as to the histories of each of the sons and their particular feelings and presentation at the time of the report in respect of the prospects of being returned to India.

9. The Reasons for Refusal Letters (RFRLs) prepared by the Respondent in respect of each of the sons makes reference to the report of Angeline Seymour. However the Appellants’ grounds of appeal to the First-tier Tribunal make complaint in this regard in the following terms at paragraph 13:

*“The Respondent has failed to give sufficient weight to the documentary evidence supplied with the application particularly the social worker report prepared by Angeline Seymour and the psychiatric report prepared by Dr Raj Persaud.”*

10. The psychiatric report was in respect of the First Appellant, that is the mother of the family, and it is not relevant to the issues that are before me at the present time. It is plain however that the issue of the weight to be attached to the social worker report, and necessarily therefore its contents, were plainly raised in the grounds of appeal to the First-tier Tribunal.

11. Reference is also made to the social work report in the Appellants' skeleton argument that was before the First-tier Tribunal. Paragraph 9 of the skeleton argument makes general complaint that the Respondent had "*completely ignored the circumstances of the third and fourth Appellants who had no choice in their coming to the UK*", and paragraph 10 makes a specific submission as to the Respondent's failure to consider the social worker's report adequately - "*while [the Secretary of State] mentions the social worker's report she makes no further comment on it*".
12. It is unfortunate in such circumstances that there is absolutely no reference to the social worker's report in the decision of the First-tier Tribunal Judge.
13. Mr Harding realistically accepts that in all of the circumstances in these particular cases he cannot argue that the social work report would be inevitably determinative in the Appellants' favour, but he appropriately contends that it provided significant details in respect of two of the Appellants and should properly have been addressed by the First-tier Tribunal Judge.
14. Ms Fijiwala on behalf of the Secretary of State today acknowledges the Judge's omission, but contends that it was not material.
15. I am unable to accept that submission.
16. I acknowledge that there is no actual mental health diagnosis in respect of either the Third or Fourth Appellant. Moreover, as Ms Fijiwala emphasised, by the date of the hearing before the First-tier Tribunal (which post-dated the report by some nine months) there was no evidence that either of the sons of the family were receiving any assistance for mental health difficulties. Nonetheless, it seems to me that Ms Seymour's references to social isolation and the stress and tension that the sons were experiencing were relevant matters for consideration in the context of an evaluation of the quality of the private lives that the Appellants had established in the United Kingdom, and the extent of the interference with those private lives, and in turn necessarily therefore relevant to a proportionality evaluation. Regrettably no such analysis is to be found in the decision of the First-tier Tribunal Judge.
17. The focus of the decision of the First-tier Tribunal Judge appears to be primarily on the ability of the sons to turn the skills that they have learnt

or otherwise acquired in the United Kingdom to good use upon return to India. Whilst that is entirely appropriate - and particularly entirely appropriate in the context of considering obstacles to return within the parameters of paragraph 276ADE of the Rules - it is not a complete answer to any proportionality balance outside the Immigration Rules.

18. Further, in my judgment the lack of any clear analysis of the private lives of the sons and the lack of any reference to the social work report is compounded by the somewhat unusual ending to the First-tier Tribunal Judge's decision.
19. At paragraph 28 of the decision the Judge accepts that the Appellants have established private life in the United Kingdom and essentially answers the first four **Razgar** questions in their favour. The Judge then goes on to set out the provisions of Part 5A of the 2002 Act in respect of public interest considerations. At paragraph 29 he makes reference in particular to the circumstances in respect of language skills and the mental health of the mother of the family, and then at paragraph 30 (which I have already quoted above) he refers to the precarious and unlawful basis of the residence of the family in the United Kingdom. The decision effectively ends at that point and, as it were, 'leaps' to the section headed 'Notice of Decision', which simply states that the appeals are dismissed under the Rules and on human rights grounds.
20. One might have expected there to be some further paragraphs after paragraph 30 setting out an actual proportionality balance, and stating a specific conclusion in this regard. Ms Fijiwala effectively very fairly acknowledged that this appeared somewhat unusual in the phrase "*I wondered about that myself*".
21. It does seem to me that there is, as I say, a 'compounding' of the failure expressly to consider or analyse the social work report with the way in which this determination concludes. In all those circumstances I find that the decisions of the First-tier Tribunal are flawed for a lack of adequate reasons amounting to a material error of law, and accordingly the decisions in respect of each of the Appellants must be set aside.
22. I have reached the conclusion that the decisions must be set aside in respect of each of the Appellants because realistically it is not possible to separate out the disparate strands of the individual private lives from a collective evaluation of the family unit. For example, at paragraph 26, the First-tier Tribunal Judge considers the circumstances of Mrs Patel's return on the basis that she would have the support of her family members. Necessarily therefore, a consideration of the sons' cases which might

potentially result in a decision that one or other or both should not be removed would have an impact on the analysis of any question of the removal of the parents.

23. I have considered the appropriate forum for re-making the decisions in the appeals and I am persuaded that the appropriate forum is the First-tier Tribunal. It seems to me that it will be necessary to receive updated evidence and also that all issues in respect of each of the Appellants should be at large. It may also be said that in effect the Appellants have not had the benefit of a full and fair decision in respect of their cases in that a significant aspect of the supporting evidence which was the subject of specific focus both in their grounds of appeal and in the skeleton argument was not addressed.
24. It is unnecessary to issue specific Directions: standard directions will suffice.

### **Notice of Decision**

25. The decisions of the First-tier Tribunal contained material errors of law and are each set aside.
26. The decisions in the appeals are to be remade before the First-tier Tribunal in front of any judge other than First-tier Tribunal Judge Symes with all issue at large.
27. No anonymity orders are sought or made.

*The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.*

Signed:

Date: **7 March 2016**

**Deputy Upper Tribunal Judge I A Lewis**