IAC-UT

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/08423/2015
IA/08445/2015
IA/08452/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 February 2016	**On 18 March 2016**

Before

Mr H J E LATTER
(DEPUTY UPPER TRIBUNAL JUDGE)

Between

[V P]
[S G]
[K G]
~~**(NO ANONYMITY DIRECTION MADE)**~~

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Allen, counsel.
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by appellants, citizens of India, against a decision of the First-tier Tribunal (Judge D A Pears) dismissing their appeals against

decisions made on 17 February 2015 refusing to grant them leave to remain and deciding to remove them from the UK.

Background

2. The background to this appeal can be briefly summarised as follows. The first and second appellants are husband and wife and the third appellant is their son. The first appellant first entered the UK as a student on 22 April 2005. She was granted further leave to remain in that capacity until 31 May 2011 and then as a Tier 1 Highly Skilled Post-study Migrant until 12 April 2013. Further applications for leave to remain as a Tier 1 Entrepreneur were refused on 3 May 2013 and 2 July 2013. The second appellant has had leave as the dependant of his wife. The third appellant was born in the UK on 10 May 2007 and has also had leave to remain as a dependant.

3. The appellant applied for further leave to remain on human rights grounds on 3 June 2014 but this was refused on 29 July 2014. Subsequently, the respondent agreed to reconsider the application but the decision was maintained for the reasons set out in the decision letter of 16 February 2015. The respondent was not satisfied that the appellant could meet the requirements of the rules for further leave to remain. She considered whether there were exceptional circumstances which justified a grant of leave outside the rules. She took into account the need to safeguard and promote the welfare of the third appellant in accordance with her duties under s.55 of the Borders, Citizenship and Immigration Act 2009. She found that the first and second appellants would be returning to India with the third appellant as a family unit and whilst this might involve a degree of disruption to their private life this was considered to be proportionate to the legitimate aim of maintaining effective immigration control and in accordance with the s.55 duties.

The Findings of the First-tier Tribunal Judge

4. The appellants' appeal against this decision was heard by the First-tier Tribunal on 23 July 2015. It was argued on behalf of the appellant at [26] that they had strong ties with the UK and that the third appellant had been born and lived all his life here and was fully integrated into the UK educational system. It was argued that in accordance with the Immigration Directorate Instructions, it would be unreasonable to remove the third appellant and that there were exceptional circumstances such that the appellants should all be permitted to remain. It was argued that the third appellant would be illiterate in India because he had no understanding of the language that was the medium of education there and it would be detrimental to his physical, intellectual, emotional, social and behavioural development for him to be returned. It was further argued that there would be a lack of family support in India and there was evidence to show that the third appellant had integrated into the UK and had experienced health issues when he visited India [29].

5. However, the judge was not persuaded by these arguments and he set out his findings at [30]-[41]. He noted that the first and second appellants were of different faiths, the first appellant Hindu and the second appellant Roman Catholic but he was not satisfied that this issue, raised late in the proceedings, would cause any real problem in urban areas and there was no expert evidence to substantiate any significant problem on return. He took into account that their immigration status had been precarious since they had arrived in the UK and that the third appellant had been at school in the UK only since September 2011. He did not accept the submission that education in English could not be found in India but in any event said that a child of the third appellant's age would soon be able to adapt himself to speaking Hindi.

6. He found that neither the first nor the second appellant had any right to remain in the UK and there was no reason why they could not all return together to India. He accepted that the appellants had integrated into the UK and had many friends here and would like to remain but he found that it was reasonable to expect the third appellant to leave the UK with his parents and go to India where there would be no very significant obstacles to their integration. He accepted that there would be an interference with private life in the circumstances but he was not satisfied that removal would be disproportionate to a legitimate aim.

The Grounds of Appeal and Submissions

7. The grounds set out a comprehensive challenge to the judge's assessment of the evidence and his conclusions. Ground one argues that the judge having found that the respondent's decision was not in accordance with the law should have remitted the application back to the Secretary of State for a lawful decision to be made; ground two that there was no adequate consideration of para 276ADE or of the fact that the third appellant had lived in the UK continuously for at least seven years and it would not be reasonable to expect him to leave and ground three that the judge failed to consider all the factors relevant to the issue of proportionality under article 8, relying again on the fact that the third appellant had been in the UK for at least seven years and had never lived in India.

8. At the hearing before me ground one was effectively abandoned when Mr Avery rightly pointed out that it was based on the assumption that paragraph 36 set out at the end of [24] was a finding by the judge when in fact it was part of the quotation from Ganesabalan [2014] EWHC 2712 (Admin). Ground one was therefore based on a misapprehension and was not pursued.

9. In respect of the other grounds Ms Allen crystallised her submissions by arguing that the judge had failed to approach the issue of the welfare of the third appellant in the correct way. He had failed to engage with

aspects of the evidence such as the length of residence, the fact that the third appellant had never resided in India save to visit and the nature and extent of his private life arising from his school activities and the friendships he had formed. It followed, so she submitted, that the judge had not properly engaged with the particular circumstances of the third appellant.

10. Mr Avery submitted that the judge had set out all the evidence and had properly directed himself referring to the relevant authorities. This was an appeal which could only succeed if it was not reasonable to expect the third appellant to return to India with his parents. Although the judge might arguably have set out his conclusions more fully, he had identified the key issues and reached a decision properly open to him.

Assessment of Whether there is an Error of Law

11. I must consider at this stage of the hearing whether the judge erred in law such that his decision should be set aside. At [18] the judge referred to the decision of the Supreme Court in ZH (Tanzania) [2011] UKSC 4 and to the need to take into account the best interests of a child. Lord Kerr in his judgment confirmed that this was not merely one consideration that weighed in the balance alongside other competing factors. Where the best interests of the child clearly favoured a particular course, that course should be followed unless countervailing reasons of considerable force displaced them. In [20] the judge referred to recent Immigration Directorate Instructions on Family Migration which says that strong reasons will be required in order to refuse a case where a child has continuous residence of more than seven years. He also referred at [21] to the guidance in Azimi-Moayed (decisions affecting children: onward appeals) [2013] UKUT 197 which refers to the starting point that it is in the best interests of children to be with both their parents and if both are being removed, the starting point suggests that so should dependent children who form part of their household unless there are reasons to the contrary but lengthy residence in the country other than the state of origin could lead to development of social, cultural and educational ties that it would be inappropriate to disrupt in the absence of a compelling reason to the contrary and whilst what amounted to lengthy residence was not clear, past policies had identified seven years as a relevant period. The Tribunal then commented that the seven years from age four was likely to be more significant to a child than the first seven years of life.

12. Having cited these authorities at some length, I do not think that the judge then failed to apply them. I do not accept that he failed to take into account the third appellant's length of residence in the UK. He referred in [34] to the fact that his period of time in the UK included the first years of his life. This was clearly a reference to the guidance in Azimi-Moayed and there is no reason to believe that the judge did not take the guidance as a whole into account. The judge did not accept for the reasons he gave that the fact that the first and second appellants were of different faiths would

cause any difficulties. His finding that the appellants had attempted to minimise their connections with India and maximise the difficulties on return was a finding open to him on the evidence. These were issues of fact for him to resolve.

13. The judge carefully summarised the evidence and there is no reason to believe that he did not take all relevant matters into account including the third appellant's schooling and the friendships he would inevitably have made. He did not accept that there would be any significant problems in him continuing his education in India. He had extended family in India. It is clearly in his best interests to be with his parents and when the decision is read as a whole it is clear that the judge was entitled to find that it would be reasonable to expect the third appellant to leave the UK with them. His findings are consistent with the guidance in EV (Philippines) v SSHD [2014] EWCA Civ 874 referred to by the judge at [22].

14 In summary, I am not satisfied that any relevant matters were left out of account. The judge's findings and conclusions were properly open to him for the reasons he gave.

Decision

15. The First-tier Tribunal did not err in law and accordingly its decision stands.

Signed H J E Latter

H J E Latter Date: 25 February 2016
Deputy Upper Tribunal Judge