Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/37927/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 16 December 2015	**On 7 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HARVINDER SINGH
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:
For the Appellant: Mr S Kandola (Home Office Presenting Officer)
For the Respondent: Mr Taj Shah (Taj Solicitors)

DECISION AND REASONS

1. This is the appeal of Harvinder Singh, a citizen of India born 26 August 1978 against the Respondent's decision of 10 September 2014 to refuse his application for leave to enter. His wife IV and daughter TB (born 25 December 2006) are not Appellants but inevitably their private and family life are closely connected to the Appellant's own interests.

2. The immigration history supplied by the Respondent sets out that he and his wife first entered the United Kingdom as a working holidaymaker on 31 October 2006; he overstayed following that visa's expiry on 28 October 2008. He applied unsuccessfully to regularise his position on 24 March 2009 and 17 December 2013, the decisions against him being notified on 27 June 2009 and 24 January 2014.

3. The family's applications were refused because there was no settled Sponsor to support an application under the partner route under Appendix FM and as an extant family unit no application under the parent route was feasible. It was reasonable to presume that the Appellant would retain an extended network of family and friends resident in India where he had spent most of his life including his formative years; the same went for his wife. As to TB, whilst she had resided here for the eight years since her birth, she was nevertheless at an age where she could be reasonably expected to adapt to conditions in India, where there was a developed education system.

4. In his witness statement the Appellant explained that whilst his parents and siblings remained in India, his family had opposed his marriage and subsequently severed all ties with him: following their marriage in 2004 they had disowned him and he had lost all contact with them; indeed his daughter had never met them. A letter from Barley Lane Primary School of November 2013 stated TB was presently attending class and had been enrolled since 2010; she was performing well and was above average in reading and writing.

5. The First-tier Tribunal generally accepted the facts that were advanced before it, and dismissed the appeal. Directing itself that the best interests of the daughter were the central issue in the case, which it addressed first, the First-tier Tribunal noted that her lengthy residence included a period of schooling though she would not yet have started studying for any specific qualifications. Finding that she had more familiarity with the Punjabi language than had been suggested given that the parents admitted speaking to each other entirely in the language at home, had no health problems and was progressing well in school, there was no reason to think she would have any difficulty with adapting to life in general and schooling in particular in India, her country of nationality, with the support of her parents who could seek lawful employment using their skills and experience.

6. Her best interests clearly pointed towards being raised by her parents in the same country in which they would in future reside. Her own private life was relatively undeveloped and her focus was inevitably on her own family unit. Whilst all things being equal her best interests marginally pointed towards her remaining in this country, once considerations of immigration control were factored into the equation, the balance shifted such that it would be reasonable to expect her to depart with them to their country of nationality.

7. As to the private life of the parents, it could be presumed that they had some connections here given their length of residence but there was no evidence of study or lawful work since 2008, nor of any specific ties here. Given the statutory enjoinder that little weight be afforded to the private life of adults present with a precarious immigration status, the public interest inevitably outweighed their limited private life here.

8. Grounds of appeal argued that the First-tier Tribunal's finding that the Appellant's daughter's best interests pointed towards her remaining here was inconsistent with the disposition of the appeal adversely to the family, having regard to the reasonableness test under the Rules in Rule 276ADE and outside them via section 117B(6) and to section 55 of the Borders, Citizenship and Immigration Act 2009. Permission to appeal was granted on all those grounds.

Findings and reasons

9. The relevant parts of the Immigration Rules are

> "**Requirements to be met by an applicant for leave to remain on the grounds of private life**
>
> **276ADE**
>
> (1) The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application …
>
> (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or
>
> (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or …
>
> (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."

10. Within the Rules, the daughter's length of residence enlivens Rule 276ADE(iv); the Appellant's case arises wholly under Rule 276ADE(vi). Nevertheless, the considerations within and outwith the Rules are essentially aligned because consideration of the right to private and family life outside the Immigration Rules must give central attention to the statutory considerations identified in 117B of the Nationality Immigration and Asylum Act 2002 addressing the public interest considerations applicable in all such cases, which sets out:

> "(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child (has lived in the United Kingdom for a continuous period of seven years or more), and

(b) it would not be reasonable to expect the child to leave the United Kingdom."

11. Christopher Clarke LJ stated in *EV (Philippines)* [2014] EWCA Civ 874:

"34. In determining whether or not, in a case such as the present, the need for immigration control outweighs the best interests of the children, it is necessary to determine the relative strength of the factors which make it in their best interests to remain here; and also to take account of any factors that point the other way.

35. A decision as to what is in the best interests of children will depend on a number of factors such as (a) their age; (b) the length of time that they have been here; (c) how long they have been in education; (c) what stage their education has reached; (d) to what extent they have become distanced from the country to which it is proposed that they return; (e) how renewable their connection with it may be; (f) to what extent they will have linguistic, medical or other difficulties in adapting to life in that country; and (g) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens.

36. In a sense the tribunal is concerned with how emphatic an answer falls to be given to the question: is it in the best interests of the child to remain? The longer the child has been here, the more advanced (or critical) the stage of his education, the looser his ties with the country in question, and the more deleterious the consequences of his return, the greater the weight that falls into one side of the scales. If it is overwhelmingly in the child's best interests that he should not return, the need to maintain immigration control may well not tip the balance. By contrast if it is in the child's best interests to remain, but only on balance (with some factors pointing the other way), the result may be the opposite.

37. In the balance on the other side there falls to be taken into account the strong weight to be given to the need to maintain immigration control in pursuit of the economic well-being of the country and the fact that, ex hypothesi, the applicants have no entitlement to remain. The immigration history of the parents may also be relevant e.g. if they are overstayers, or have acted deceitfully."

12. Alongside him Lewison LJ stated at [60] that

"… none of the family is a British citizen. None has the right to remain in this country. If the mother is removed, the father has no independent right to remain. If the parents are removed, then it is entirely reasonable to expect the children to go with them. As the immigration judge found it is obviously in their best interests to remain with their parents. Although it is, of course a question of fact for the tribunal, I cannot see that the desirability of being educated at public expense in the UK can outweigh the benefit to the children of remaining with their parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world."

13. Overall the decision of the First-tier Tribunal is an impressively detailed one, and the thought processes that led it to its conclusions are set out

extensively. There is nothing within it that is inconsistent with the guidance just cited. It can certainly not be criticised for any inadequacy of reasons or failure to take relevant considerations into account. The aspect of its decision upon which the Appellant's advocate concentrated at the hearing before me was the identification of the child's best interests as counting in favour of her remaining in this country en route to a conclusion that this did not make relocation abroad unreasonable.

14. However, as can be seen from *EV (Philippines)*, it is only where "best interests" emphatically point in favour of remaining here that this counts strongly against other factors such as immigration control. But here the Tribunal expressly found that her best interests only marginally counted in favour of her remaining here. There was very little evidence as to the daughter's connections outside the family home.

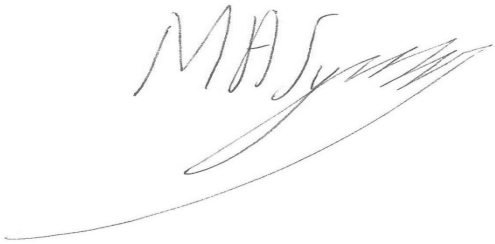
15. In those circumstances it was perfectly reasonable for the First-tier Tribunal to find that her parents, who speak Punjabi around her in the family home, would be well placed to ameliorate any temporary disadvantage she would suffer from the interruption in her studies that would inevitably result whilst she adjusted to education in a culture where the teaching might not be wholly in English. Additionally one can hardly ignore the fact that English is widely spoken in India and that there must be many schools where some if not all classes are taught in English, if her parents wished to avail themselves of such an opportunity. Once her parents' poor immigration history was factored into the equation the result of the appeal was unsurprising. Whilst it might not have been irrational for the First-tier Tribunal to have come to the contrary conclusion to the one it preferred, it was certainly in no way perverse for it to find against the case put on the family's behalf.

16. Given the foregoing, there is no material error of law in the decision of the First-tier Tribunal and the appeal is dismissed.

Decision:

The decision of the First-tier Tribunal did not contain a material error of law.

The appeal is dismissed



Signed: Date: 15 December 2015
Deputy Upper Tribunal Judge Symes