



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Numbers:

IA/50258/2014

IA/50261/201

4

IA/50264/201

4

THE IMMIGRATION ACTS

Heard at Field House, London

Decision & Reasons

Promulgated

On the 13th July 2016

On the 25th July 2016

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

MR SOLIARAJ SARAVANAN

MS RADHIKA RAGAVAN

[H R]

(Anonymity direction not made)

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Akther (Counsel)

For the Respondent: Mr Norton (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellants' appeal against the decision of First-tier Tribunal Judge Veloso promulgated on the 29th October 2015, when after considering the Appellants' appeals on the papers, he dismissed their appeals against the Respondent's decision to refuse to grant them Leave to Remain in the United Kingdom on the basis of their Human Rights under Article 8, both under the Immigration Rules and outside of the Immigration Rules.
2. Within the Grounds of Appeal, the Appellants seek to argue that a letter was sent to the Tribunal on the 22nd October 2015, requesting an oral hearing, and containing evidence that the Third Appellant was now naturalised as a British Citizen, but that the Learned Judge did not have the letter of the 22nd October 2015 before him. It was further argued that the First-tier Tribunal Judge failed to consider that the Third Appellant was not being removed as a child who was only 4 or 7 years old, but as a 10-year-old child who had been integrated into the United Kingdom and that the Respondent's own IDI indicated that there would have to be strong reasons for it to be reasonable to expect the child to leave the UK in such circumstances. It was further argued that the Judge had applied too high a threshold as to what would be deemed unreasonable. It is said that the Judge failed to properly consider the best interests of the child.
3. Permission to appeal has been granted by First-tier Tribunal Judge Robertson on the 7th June 2016 on the basis that the Appellants' representatives had written to the Tribunal by means of a fax dated the 22nd October 2015, asking that the appeal be heard by means of an oral hearing rather than a written determination, and at the same time enclosing a Certificate of Registration of the Third Appellant as a British Citizen. Judge Robertson found that it was arguable that there were procedural errors in that no decision was made as to whether or not the appeal should proceed on the papers and that the additional evidence provided to the Tribunal seemingly was not forwarded to the Judge and that the Appellants were arguably prejudiced as a result of these failings.

4. At the oral hearing before me, Mr Norton on behalf of the Respondent agreed that it seemed unlikely that First-tier Tribunal Judge Veloso had the fax from the Appellants' solicitors dated the 22nd October 2015 before him. Mr Norton agreed that there was procedural unfairness for the Judge simply to have dealt with the case on the papers, where the Appellants' solicitors had sent in a fax requesting for the appeal to be considered at an oral hearing, despite having previously requested it be dealt with on the papers, and that in such circumstances, the decision of First-tier Tribunal Judge Veloso should be set aside and the case remitted back to the First-tier Tribunal for a hearing de novo before a different First-tier Tribunal Judge. In light of that concession quite properly made, I agree and do find that there was procedural unfairness, in that seemingly, the Appellants' fax dated the 22nd October 2015, indicating that they had now requested the appeal be dealt with by means of an oral hearing, rather than a paper hearing, and also which contained evidence regarding the Third Appellant now being naturalised as a British Citizen, either had not reached, First-tier Tribunal Judge Veloso, on the file, or for whatever reason, was not considered by him, before he produced his decision dated the 29th October 2015.

5. There is no reference whatsoever to that fax requesting an oral hearing, and, the Judge makes specific reference simply to the fact that the Appellants' solicitors had sent a fax to the Tribunal on the 7th September 2015 indicating that the First Appellant wished for the appeal to be dealt with on the papers, because he had been unable to arrange funding for the oral representation at the hearing at [6] and did not make any reference to the subsequent fax. Further, the Judge also simply stated that the Third Appellant did not have British Citizenship, and had clearly therefore not seen the evidence regarding the fact that the Third Appellant had, prima facie, been naturalised as a British Citizen. In such circumstances, given that First-tier Tribunal Judge Veloso did not consider the contents of the fax dated the 22nd October 2015, requesting that the case be dealt with by means of an oral hearing, and further, containing further evidence regarding the Third Appellant's naturalisation, the decision of First-tier Tribunal Judge Veloso does contain a

material error of law and is set aside. The case should be remitted back to the First-tier Tribunal for an oral hearing de novo, before any First-tier Tribunal Judge other than First-tier Tribunal Judge Veloso.

Notice of Decision

The decision of First-tier Tribunal Judge Veloso does contain a material error of law and is set aside;

The appeal is remitted back to the First-tier Tribunal for re-hearing as an oral hearing de novo, before any First-tier Tribunal Judge other than First-tier Tribunal Judge Veloso.

Signed

Handwritten signature in black ink, appearing to read "RFGinty".

Deputy Upper Tribunal Judge McGinty
2016

Dated 16th July