Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/28590/2015
IA/28593/2015
IA/28597/2015
IA/28601/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25th October 2017	**On 07th November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

MR B.K.P.

AND THREE DEPENDENTS
MRS A.G.P.
MISS M.N.C.
MISS D.B.P.

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Khalid, Counsel
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
I make an anonymity direction in this appeal, given that reference is made throughout this decision to the Appellant's two minor children.

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Majid promulgated on 22nd September 2016, following a hearing at Taylor House on 14th September 2016. In his decision, Judge Majid dismissed the appeal of Mr B.K.P. (dob 10/01/1977) against the Respondent's decision dated 31st July 2015 refusing him leave to remain in the United Kingdom on account of his Article 8 ECHR private/family life rights.

2. The other named parties are his dependents, namely his partner Mrs A.G.P. (dob 01/04/1987) and their two minor children, Miss M.N.C (dob 22/04/2008) and Miss D.B.P (dob 21/07/2013).

Background

3. The Appellant B.K.P. arrived in the UK in 2003 in possession of entry clearance as a visitor. He is a national of India. Following the expiry of his visit visa, B.K.P. remained in the UK unlawfully.

4. In 2007 A.G.P., who is also a national of India, entered the UK. She and the Appellant started a relationship and entered into a cultural marriage ceremony in August 2007. Two children have been born to the couple. Both children were born in the United Kingdom although both are citizens of India.

5. The Appellant made application for leave to remain in the UK on the basis of his family/private life with his wife and children. In support of the application it was said that the children had been born in the UK and that the eldest child had lived here for over seven years and was currently in education.

6. The application was refused by the Respondent. It is of note that the Appellant's partner had also remained without valid leave, and indeed the Respondent claimed that she had employed deception in order to remain. The Respondent considered the application taking into account the family unit as a whole including consideration of the best interests of the children.

7. When the Appellant's appeal came before Judge Majid he heard evidence from the Appellant and A.G.P. After setting out the oral evidence the judge said the following at [14]:

> "The evidence at my disposal cogently persuades me to be aware of the fact that this Appellant was not telling the truth in many places and was keen to remain in this country. Therefore I cannot give him

> the discretionary relief even though the "best interest" of Appellants number 3 and 4 is involved." (sic)

He followed this in [18]:

> "According to a statutory provision (Nationality, Immigration and Asylum Act 2002) a child who has spent seven years in the UK should not be uprooted unless the Home Office proves it to be "unreasonable". The Appellants' Barrister Mr Solomon drew my attention to parts of his thirteen-page skeleton argument and indicated that it was "unreasonable" to send [M.N.C.] who was born in this country on 22 April 2008 and has spent more than seven years in this country - in this context he drew my attention to the two letters sent by the head teacher and the teacher of [M.N.C.] to show that she was a gifted student. ..... I admire the Barrister Mr Solomon's valiant effort to inspire me to give these Appellants protection of the Human Rights Convention but as it is clear from paragraphs 11, 12 and 13 of the Appellant's statement of 8 June 2016 these Appellants have been "unreasonable" and cannot be given the protection of the Human Rights Act." (sic)

8. He then set out in a paragraph at [19] an obscure reference to the Prime Minister of India in relation to asylum. (This is not an asylum claim). Finally after two more paragraphs of comment he dismissed the appeal.

9. The Appellant sought permission to appeal the decision. Permission was granted on the grounds that it was arguable that the judge had failed to consider the best interests of the children in assessing whether it was reasonable to expect them to leave the UK. In summary the following was claimed:

   - The judge in assessing the Article 8 claim took into account irrelevant matters; and

   - The judge failed to give reasons for finding that the Appellants cannot come within the Immigration Rules.

   Thus the matter comes before me to decide whether the decision of FtT Judge Majid contains such error that it requires to be set aside and the decision remade.

Error of Law Hearing

10. Mr Khalid appeared on behalf of the Appellant and Mr Nath on behalf of the Respondent. At the outset of the hearing Mr Nath referred to a Rule 24 response which had been served by the Respondent in which it was accepted that the Respondent did not oppose the Appellant's application to have the decision of Judge Majid set aside for legal error. In view of that concession, I did not need to hear from Mr Khalid.

Consideration

11. I am satisfied that the decision of Judge Majid contains such error that it must be set aside and remade. I find as the grounds clearly set out, the judge has failed to give any proper consideration and analysis of the evidence concerning the best interests of Appellant's two children. That should have been the starting point of the judge's consideration and nowhere do I see that any findings of fact have been made which shows that the judge turned his mind to Section 117B(6) of the 2002 Nationality, Immigration and Asylum Act. It is correct that the judge refers to it in [18], but that is simply in the context of reciting the submissions made by the Appellant's representative. Nowhere do I see that the judge has undertaken a thorough examination of the circumstances of the Appellant's minor children. Equally nowhere do I see any findings of fact such as to show that he has properly assessed the Article 8 claim by looking at matters in the round. This is especially pertinent in that the Appellant and his partner have both remained in the United Kingdom for several years without lawful leave. In addition it is part of the Respondent's case that the Appellant's partner employed deception during the course of her time in the UK and that is something which would factor into an Article 8 assessment. I find therefore the decision is unsustainable and must be set aside for error.

12. Both representatives were of the view that the proper course in this appeal would be to remit this matter to the First-tier Tribunal. This is on the basis that the errors contained in Judge Majid's decision are so fundamental that nothing can be saved from the decision. I agree with that course.

Notice of Decision

The decision of Judge Majid promulgated on 22nd September 2016 is set aside for legal error. The decision is remitted to the First-tier Tribunal (not Judge Majid) for that Tribunal to rehear the matter afresh.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed C E Roberts Date 06 November 2017

Deputy Upper Tribunal Judge Roberts