



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/04741/2016  
HU/04744/2016  
HU/04748/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 4 July 2018

Decision & Reasons Promulgated  
On 19 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MAK (FIRST APPELLANT)  
MRS MF (SECOND APPELLANT)  
MISS MF (THIRD APPELLANT)  
(ANONYMITY DIRECTION MADE)

Respondents

**Representation:**

For the Appellant: Mrs N Willocks-Briscoe, of Counsel, Senior Home Office  
Presenting Officer

For the Respondents: Miss K Reid, of Counsel instructed by Bhogal Partners Solicitors

**DECISION AND REASONS**

1. The Secretary of State appeals, with permission, against a decision of Judge of the First-tier Tribunal Greasley who in a determination promulgated on 13 June 2017 allowed the appeals of MK, Mrs MF and Miss MF against a decision of the Secretary of State to refuse to grant them leave to remain on Article 8 grounds.

2. Although the Secretary of State is the appellant before me I will for ease of reference refer to her as the respondent as she was the respondent in the First-tier. Similarly, I will refer to MK, Mrs MF and Miss MF as the first, second and third appellants as they were the appellants in the First-tier.
3. The appellants are citizens of India. MK, the father, was born on 5 May 1972. His wife Mrs MF was born on 17 January 1977, and the third appellant, their daughter, was born on 21 November 2001. It appears from the papers that they have a second, younger, daughter who was not an appellant in the appeal. The appellants entered Britain as visitors in August 2015. In May 2012 they were served with papers as overstayers. In August 2015 they made applications for leave to remain on human rights grounds.
4. The basis of the applications made were that they did not wish to return to India. The first appellant claimed that he had been harassed in India by creditors of a financial scheme run by his father who had been in charge of collecting money for a committee in the local community in India. After his father's death he had been harassed and threatened by the investors who wished their money to be returned to them.
5. A psychological report on the third appellant dated 2 September 2015 was also submitted. That referred to the third appellant's anxieties about returning to India and the importance to her of continuing her education here. The writer of the report, Dr Ashok Rehal, stated that he believed that the third appellant would suffer significantly if the family were made to return to India as they would be returning to deprivation and poverty. He also stated his belief that she had the ability and willpower to be a successful professional if she remained here and that that would not happen if she returned to India. When refusing the application the Secretary of State pointed out that the appellants could not meet the requirements of the Rules and furthermore, that there was nothing of such a compelling nature which would mean that this family should be granted permission to remain outside the Rules.
6. Judge Greasley heard the appeal on 9 June 2017. In addition to the psychological report he had before him a report from the Skylakes team at Hillingdon Council which reported on a referral after a complaint had been made to the police in November 2015 in which the third appellant and her mother, the second appellant, had reported a sexual assault on the third appellant which involved her uncle. In effect, the report set out details not only of sexual assault but also of grooming which had taken place. The report recorded that the third appellant believed that she was at fault for the incidents and a strategy discussion took place. The enquiry was completed on 13 November 2015 when it was concluded that the third appellant was not considered to be at immediate risk. It appeared that when interviewed the third appellant appeared withdrawn and it also appeared to be the case that she sought refuge in her schoolwork.
7. The judge having noted the terms of the refusal, which included a consideration of the impact of Section 55 of the Borders, Citizenship and Immigration Act 2009, noted the

evidence of the first appellant regarding the harassment he said he had received in India. The judge noted that he had not claimed asylum. He, however, considered that the harassment the first appellant had received had impacted on the family and was a cause for concern should they be returned to India and in particular would have an effect on the third appellant, who only spoke basic Urdu and mainly spoke in English, although her parents only spoke limited English. He referred to a psychiatric report from a Dr Courtney of 3 June 2017 which gave some details of the abuse suffered by the third appellant and concluded that she suffered from post-traumatic stress disorder but had made a reasonable albeit incomplete recovery from that condition.

8. In his consideration of the evidence the judge stated that he allowed the appeals under Article 8 in relation to both family and private life in relation to all three appellants. The first reason he gave, in paragraph 26 of the determination, was in consideration of paragraph 276ADE of Appendix FM and paragraph EX.1. He stated that he accepted that the third appellant had resided in the United Kingdom for seven years immediately preceding the application and therefore it would not be reasonable to expect the third appellant to leave the United Kingdom. As Miss Reid acknowledged that statement of fact is wrong. The appellants had arrived in Britain in 2009 and the application was made in 2015.
9. The judge went on to refer to the reports relating to the third appellant which also included a social work report by an Angeline Seymore dated 21 November 2012. He stated that he accepted that the appellants had been the subject of victimisation and harassment by creditors who claimed that they were owed money and sought retribution from the appellants in India. He also accepted that the third appellant had been the subject of a sexual assault and grooming by a male relative. He took into account the fact that the appellants stated that they were being supported by relatives and friends and Britain.
10. Turning to the provisions of Section 117B of the Nationality, Immigration and Asylum Act 2002 he stated that “none of the factors listed within the above provisions seek to suggest that a decision to remove from the UK would, in effect, be proportionate and therefore lawful when considering the evidence as a whole”. He said that he had taken into account the fact that the appellants were not financially self-sufficient and that the parents spoke limited English and went on to state that he believed that the third appellant had established an important private life both in relation to her circle of friends and to her ongoing schooling in Britain. He stated that he had considered each of the appellant’s circumstances and human rights in light of the principles set out in **Beoku-Betts** but did not make clear the principles to which he was referring. In paragraph 40 he stated that ultimately he found the decision to remove the appellants would be unlawful and therefore disproportionate. In particular, he referred to the position of the third appellant and the significant adverse effect he considered there would be on her welfare and security and her education if she were removed now and he stated that that tied in with her being accompanied and supported further by her parents. He stated that he believed that the appellants would suffer further difficulties if returned to India. For these reasons he allowed the appeal.

11. The Secretary of State appealed, arguing that there was no identification of compelling circumstances in this case, and that such compelling circumstances were specifically recognised as necessary for the grant of leave under the rules.
12. The grounds also referred to the judgment of the Court of Appeal in **EV (Philippines) [2014] EWCA Civ 974** which stated:

“58. In my judgment, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?

59. On the facts of **ZH** it was not reasonable to expect the children to follow their mother to Tanzania, not least because the family is separated and the children would be deprived of the right to grow up in the country of which they were citizens.

60. That is a long way from the facts of our case. In our case 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”.

The grounds argued that none of the family in this case were British citizens and that the judge had erred in finding that the removal of the third appellant would have a significant effect upon her welfare and security.

13. It was also argued that the judge had taken into account the psychological report and the social worker’s report but there had been no assessment as to whether the breach of Article 3 which required the high threshold identified in **N v SSHD [2005] UKHL 31** was met.
14. Although permission was refused in the First-tier, permission was granted by Upper Tribunal Judge Allen in the Upper Tribunal.

15. At the hearing of the appeal before me Mrs Willocks-Briscoe pointed out the judge had accepted that no asylum claim had been made but stated that he had not engaged with the fact that the family could not meet the requirements of the Rules and had clearly not engaged with the issue of whether or not the third appellant's circumstances would meet the requirements of Article 3. She argued that the judge should have looked at the circumstances of the whole family rather than the third appellant on her own. He had not, she argued, used the correct factual matrix and had not explained why he had allowed the appeal. He had not identified any compelling circumstances.
16. Miss Reid argued that the judge had clearly found that it was not reasonable to expect the third appellant to leave because of the length of time she had lived in Britain. She stated that the judge had made reasonable findings on the evidence before him having looked at all the evidence in the round. While she acknowledged that he had erred in his application of Rule 276ADE(1)(iv) he had gone on to properly consider all other factors. It was not a requirement that he should have considered the position of the third appellant under Article 3 of the ECHR as that had not been argued.

### **Discussion**

17. I consider that there are material errors of law in the determination of the Immigration Judge. The first reason he gives for allowing the appeal appears to be that the third appellant benefited from the provisions of Rule 276ADE(1)(v) but as was conceded by Miss Reid, that was incorrect. The third appellant had not lived in Britain for seven years at the date of application.
18. It is also correct that the judge at no stage appears to have considered whether or not there were compelling reasons in this case which would lead to the appeal being allowed outside the Immigration Rules. Indeed, his reasons for allowing the appeal appear to rely on conclusions on the evidence before him which are not sustainable. While he acknowledges that the first appellant has not claimed asylum and therefore he arguably did not need to consider relevant asylum law, he does not appear to have considered that internal relocation would clearly be open to this family should they not wish to return to their home area. In any event, of course, not wishing to repay money which is due is not a Convention reason. Secondly, the judge considers that the family would have to return to worse financial circumstances than those in which they are living. The social worker report sets out that they are living with two other families in a shared house – there is no indication that their standard of living on return would be lower given that those that are supporting them here would also be able to support them in India and indeed the reality is that the first appellant is not working here whereas there is nothing to suggest that he could not work in India. The judge indeed appears to place no weight on the fact that the parents speak little English and more importantly, that they had lived in Britain in defiance of immigration control since 2009.
19. Turning to the position of the third appellant, the reality is that not only is she not entitled to an education here but also she has benefited from many years at school here

and although it is said that her reading and writing of Urdu is not good, she clearly speaks that language at home with her parents. The school reports contains nothing to show that she would not be able to readjust to studies in India.

20. It is clear that she suffered from sexual abuse by a family member here. It is not clear why her remaining in Britain where her parents have close relations with other members of the family here – one of whom was the abuser, would assist her rather than having a clean break on returning to India.
21. The central issue, however, is that this is a family who have no right to be in Britain and would be returning to India together. There is simply nothing to show that there are any compelling factors which would mean that they should not do so, particularly given the fact that the family came to Britain when the first appellant was aged 37 and the second appellant was aged 32. As is clear from the judgment of the Court of Appeal in EV (Philippines), set out in the grounds of application the application must be considered in the context of the facts of this case which is that the parents have no basis of stay here and there is no reason why they should be allowed to remain. In the terms of section 117 B (6) the issue is whether or not it is reasonable that the third appellant should be expected to return to India. She would be returning to India with her parents which is in no way inappropriate. The judge simply did not address that issue. It is entirely reasonable that she should do so. I consider that the judge has erred in law for these reasons and I therefore set aside his decision.
22. The facts of this case are before me and I have been able to consider the various reports, including those of Dr Rehal and Dr Courtney, before me as well as the witness statements of the appellants. The rights of the third appellant must be considered in the context, as is clear from the judgment in EV (Phillipines), that her parents have no basis of stay here and have lived in Britain in defiance of immigration control for many years: they did not leave when served with notice as overstayers in 2012. It is entirely reasonable to expect the third appellant to return to India with them. While I accept that she may well have better prospects here there is nothing to indicate that she could not reintegrate into life in India. The fact that a family member here attempted to groom her is not reason why she should not be expected to return to India away from that family member. Moreover, for the reasons which I have set out above I do not consider that there are any compelling factors in this case and, although I take into account that at this stage the third appellant has lived in Britain for more than seven years, I consider, given that she would be returning to India with her family and that she has received her secondary education here, that it would be reasonable to expect her to return.
23. For these reasons I, having set aside the decision of the First-tier Judge, re-make the decision and dismiss this appeal.

### **Notice of Decision**

The determination of the First-tier Judge is set aside.

These appeals are dismissed.

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

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: 

Date: 16 July 2018

Deputy Upper Tribunal Judge McGeachy