



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08858/2017
HU/08862/2017

THE IMMIGRATION ACTS

Heard at Field House
On: 24 August 2018

Decision and reasons Promulgated
On: 13 September 2018

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

MR YURIY MALYARENKO
MRS LYUBOV MALYARENKO
(ANONYMITY DIRECTIONS NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Singer of Counsel
For the respondent: Ms Fijiwala, Senior Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of the Ukraine born on 3 April 1975 and 11 February 1974 respectively. They are husband and wife. They appealed against the decisions of the respondent dated 15 August 2017 not to grant him further leave based on their family and private life in the United Kingdom pursuant to paragraph 276 ADE and section 55 of the 2009 Act.

2. First-tier Tribunal Judge N M Paul dismissed the appellant's appeals and said that their qualifying child can return to the Ukraine with her parents. The Judge stated that the appellants came to this country because they were desperate to have a child and to receive fertility treatments. The judge stated "on one view, clearly this is a case where they are seeking to piggybank on the back of the case advanced for their child. Following the case of **Kaur**, I accept that the immigration history of the parent should not be treated as an adverse factor in assessing the child's best interests. However, I have kept the two apart. However, in the overall balancing exercise in accordance with determining where the public interest lies in this case, I am satisfied that the appellant's previous immigration history is a relevant factor and that, combined with my view that it would not be unreasonable for the family as a unit to return to the Ukraine" and concluded that this means that the respondent's decision was proportionate.
3. Permission to appeal was granted by First-tier Tribunal Judge Grimmett on 25 June 2018 stating that it is arguable that the judge made a material error of law in failing to give sufficient weight to the appellant's child who was nine years and nine months old at the date of the hearing and who was born and brought up in the United Kingdom. The Judge did not refer to any powerful reasons when concluding that the child should leave the United Kingdom.
4. At the hearing it was agreed by both parties that there has been a material error of law as the Judge adequately failed to consider the best interests of the qualifying child and explain why a child who is nearly 10 years old should leave the country. Ms Fijiwala said that the appeal be remitted to the First-tier Tribunal because findings of fact have to be made. She added that as of, yet no application has been made by the qualifying child for British citizenship. She said that if such an application is received, their appeals can be reconsidered.
5. In the circumstances, I direct that the appeal be placed before any First-tier Tribunal Judge apart from First-tier Tribunal Judge N M Paul for hearing of the appeal de novo, if it becomes necessary.

Dated 10th day of September 2018

Signed by

A Deputy Judge of the Upper Tribunal

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Ms S Chana