UPPER TRIBUNAL

(IMMIGRATION AND ASYLUM CHAMBER) **APPEAL NUMBER: HU/14914/2016**
HU/14931/2016
HU/14933/2016

THE IMMIGRATION ACTS

Heard at: Field House	**Decision and Reasons Promulgated On:**
On 21st August 2018	**On 26th September 2018**

Before

Deputy Upper Tribunal Judge Mailer

Between

P S G
I G
H S G
ANONYMITY DIRECTION MADE

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation
For the Appellants: **Mr M Rana, counsel, instructed by S S Basi & Co, Solicitors**
For the Respondent: **Mr L Tarlow, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. 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.

2. The first and second appellants are husband and wife, and are nationals of India, born on 2 April 1978 and 3 February 1980 respectively. The children are twins, born in the UK on 22 October 2009. Their third child, was born in the UK on 13 September 2011.

3. The appellants appeal with permission against the decision of the First-tier Tribunal promulgated on 6 February 2018 refusing their applications for leave to remain in the UK. In her decision the Judge noted that the third and fourth appellants had, at the date of hearing, lived continuously in the UK for eight years. This occurred whilst the first two appellants breached the conditions of their visas as overstayers.

4. She stated that the children will be returning to India with both of their parents as part of the family unit. There is nothing exceptional in their circumstances. It was asserted that the appellants would be unable to return to India as the Indian High Commission does not recognise them as being Indian due to them having arrived in the UK for over five years [20]. The appellant contended that he is unable to return to India as the High Commission does not recognise his children as Indian and therefore he and his partner are unable to return there without their children.

5. She considered the claim that the children are said to be stateless and cannot be returned to India with their parents. She had regard to the written evidence from her parents that they have chosen not to apply to register the birth of their children with the Indian High Commission and they have no intention of doing so [85].

6. She stated that had the parents approached the Indian Consulate there is no reason why the children could not have been registered as Indian citizens [88]. The "statelessness" of the minor appellants is a matter of choice made by their parents. She stated that 'given that the crux of this application is that the children will not be given Indian citizenship, I do not find that the evidence before me leads to a conclusion that this is so' [91].

7. In granting permission to appeal, First-tier Tribunal Judge Lambert noted that while the Judge's decision does give reasons for dismissing the argument that the children were stateless in India, the provisions of s.117B(6) are not directly addressed by the Judge. It might be said to constitute an arguable error of law.

8. Mr Rana, who represented the appellants at the hearing, stated that the children at the date of hearing were eight years old and therefore were "qualifying children".

9. He submitted that the Judge accepted at [75] of the determination that the best interests of the children are determined without consideration of their parents. She "must have erred in law" because it cannot be reasonable to expect the children to leave the UK if they are stateless, either with or without their parents.

10. Nor did the Judge give sufficient and clear reasons in her decision as to why the appellants were not entitled to succeed in their appeals having regard to the effect of s.117B(6) of the 2002 Act.

11. On behalf of the respondent, Mr Tarlow accepted that there were a number of issues raised in respect of the children and that an assessment of their best interests has not been properly undertaken. One of the issues raised was that the children were receiving education.

12. The Judge had no regard to the reports and letters in respect of the children produced from pages 5-59 of the bundle. Nor has there been a proper assessment of the contention that the children are stateless, which affects the proportionality of the proposed decision. In the circumstances, Mr Tarlow accepted that the decision of the First-tier Tribunal should be set aside and re-made by the First-tier Tribunal.

Assessment

13. As noted by Judge Lambert in granting permission to appeal, the provisions of s.117B(6) of the 2002 Act were not addressed by the Judge.

14. Although the First-tier Judge stated at [25] that she had considered 'well known' authorities such as MA (Pakistan) [2016] EWCA Civ 705, it is not clear why she concluded that it would be reasonable for the children to leave the UK with their parents.

15. In the circumstances, I accept the concession made by Mr Tarlow that there has not been an adequate assessment of the children's best interests for the purpose of s.117B(6) of the 2002 Act.

16. The parties agreed that in the circumstances, it would be appropriate for the appeal to be remitted to the First-tier Tribunal for a fresh hearing to take place. I am satisfied that the extent of judicial fact finding which is necessary for the decision to be re-made is extensive.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside. The appeal is remitted to the First-tier Tribunal, Hatton Cross, for a fresh decision to be made by another Judge.

Anonymity direction continued.

Signed Deputy Upper Tribunal Judge Mailer

18 September 2018