



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/00061/2017  
IA/00062/2017  
IA/00063/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 7 August 2018

Decision & Reasons Promulgated  
On 22 August 2018

Before

UPPER TRIBUNAL JUDGE WARR

Between

NGA  
NKP  
DNP

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr D Ayodele (Goodfellows Solicitors)  
For the Respondent: Miss A Everett

**DECISION AND REASONS**

1. The first named appellant is the wife of the second named appellant. Their son (Master D), born 12 April 2012, is the third appellant. They are all citizens of India. A reference hereinafter to the appellant is a reference to the first named appellant who arrived in this country on 18 February 2010 with a Tier 4 (General) Student visa. Her leave was

extended until 10 October 2013. She applied on 19 September 2013 for further leave to remain but this application was refused on 25 November 2014. However, the appellant appealed and on 9 November 2015 her appeal was allowed to the extent that it was remitted back to the Secretary of State to allow her 60 days to find fresh sponsorship and for a new decision to be made.

2. On 7 February 2017 the application was refused in the absence of a valid confirmation of acceptance for studies (CAS). It was pointed out that on 8 November 2016 the respondent had been requested to grant a further extension of 60 days to submit a valid CAS. The respondent was not prepared to give any additional time. Accordingly the application under the Rules was refused. In relation to the respondent's duty under Section 55 of the Borders, Citizenship and Immigration Act 2009, the respondent stated that in the particular circumstances of the Appellant's case it had been concluded "that the need to maintain the integrity of the immigration laws outweighs the possible effect on you and your children that might result from you and your children having to re-establish family life outside the UK." The appellants appealed the decision and a notice of hearing was issued in July 2017 to the appellants and their representatives giving the date of hearing on 29 November 2017. The respondent was directed to file any relevant documents before 3 August 2017. The appellant was also directed to send copies of all documents to the Tribunal and the respondent and it was also directed:

"... it is important to submit all the documents as soon as they are available, as the respondent will review the evidence you submit before the hearing of your appeal. This could result in their decision being revised in your favour. If this happens your appeal may be treated as withdrawn and the hearing cancelled."

3. When the appeal came before the First-tier Judge the judge records that the hearing was listed to start at 10.00 am but did not take place until 2.10 pm and the appellants did not attend and were not represented. The judge was satisfied that notice of hearing had been sent to the appellant's representatives (Goodfellows Solicitors) and she proceeded in the absence of the appellants and released the interpreter. She noted she had not been provided with any witness statements or a bundle of documents by the appellants. She observed that the appellants' grounds of appeal, again prepared by the solicitors, were brief and amounted to little more than a stated disagreement with the decisions under appeal. The judge noted that the appellant had been studying at Vista Business College but this licence had been revoked by the Home Office and the appellant's CAS had been assigned to Kent College of Business and Computing. However this licence had in turn been revoked on 4 September 2014 and on 25 November 2014 the respondent had refused the appellant's applications for leave to remain. The determination continues:

"11. The Appellants appealed and on 9 November 2015, First-tier Tribunal Judge Cooper allowed the appeals on the limited basis that the Respondent's decision of 25 November 2014 was not in accordance with the law the Respondent having failed to allow the 1<sup>st</sup> Appellant 60 days to find fresh sponsorship (in accordance with Patel (revocation of sponsor licence - fairness) India [2011] UKUT 00211 (IAC) and for a new decision to be made.

12. On 13 September 2016, the 1<sup>st</sup> Appellant was given 60 days (until 12 November 2016) to find a new sponsor and advised that her ETS Test score had been cancelled due to test irregularities and was given the opportunity to take another test [R1 H].
  13. The Respondent duly reconsidered the applications and on 7 February 2017 again refused the applications under the Immigration Rules and made decisions to remove the Appellants from the UK by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006. The Appellants lodged these appeals on 14 February 2017.”
4. In paragraph 21 of her decision, the judge found there was “no evidence before me that the 1<sup>st</sup> Appellant has found a new sponsor, submitted a new CAS or taken a fresh ETS test and in the absence of such evidence or any explanation, I conclude that she has not done so.”
  5. The judge was satisfied that the appellants failed to meet the Immigration Rules having failed to provide a valid CAS within the 60 days allotted. None of the appellants were British citizens or settled in the UK and the child had not been in the UK for seven years. They did not meet the requirements of paragraph 276ADE (private life) and had not demonstrated that there were very significant obstacles to their integration into India. In relation to Article 8 the judge found as follows:
    - “23. I have considered whether the Appellants’ applications raise or contain circumstances which, consistent with the right to respect for private and family life contained in Article 8 ECHR, warrant consideration outside the requirements of the Immigration Rules.
    24. There is no suggestion that the Decisions under appeal interfere with the Appellants’ family life; they will be leaving together as a family unit. Although there is no evidence before me regarding their private life, I accept that inevitably the 1<sup>st</sup> and 2<sup>nd</sup> Appellants will have established a private life during the years they have been in the UK. I will assume that that interference in their private life is more than merely technical or academic and Article 8 is engaged.
    25. The Decision is in accordance with the law being made under the terms of Statute and Immigration Rules and is in pursuit of a legitimate aim: fair and consistent immigration control, maintenance of the economic well-being of the country and protection of the rights and freedoms of others.
    26. Based on an overall consideration of the facts of the case, the Decisions are not only lawful but proportionate to the legitimate aims pursued; any interference in the Appellants’ private life is necessary for effective immigration control and is proportionate to the legitimate aims pursued paying specific regard to S117B(3) of the Nationality, Immigration and Asylum Act 2002 which makes public interest considerations applicable to all cases. I have made this assessment taking into account the following factors:
      - 26.1 I have considered the best interests of Master D (now aged 5 years) first. I have concluded that relocation to India with his parents would not involve separation of family life and his best interest are to be with his parents and,

at such a young age, it is evenly balanced as to whether that is in India or in the UK. I have reached this decision taking into account the following:

- (i) There is no evidence before me that he is other than in good health.
- (ii) He would be leaving with his parents as a family unit.
- (iii) His parents would be able to help him understand the cultural norms and adapt to life in India. Any linguistic challenges will be minimal at such a young age.
- (iv) He would be able to enjoy the full rights of being a citizen of India.
- (v) At only 5 years old, D has yet to establish a private life of his own and is completely reliant on his parents as the adults in his life. **Azimi-Moyaed and others**: *'Very young children are focussed on their parents rather than their peers and are adaptable.'*
- (vi) He is not at a critical stage in his education and there is no suggestion that his education would be compromised in India.

26.2 Through the lens of the Immigration Rules:

- (i) Appendix FM: Family Life

The Appellants still do not meet the requirements as none of them are British citizens or 'settled' in the UK.

- (ii) Private Life: paragraph 276ADE

D does not meet the requirements of paragraph 276ADE(1)(iv) as he has not lived continuously in the UK for at least seven years. Given the 1st and 2nd Appellants' age and length of time in the UK, the only part in issue is 276ADE(vi). I am not satisfied on the evidence that there are very significant obstacles to the Appellant's integration into India if required to leave the UK for the same reasons set out above (26.1).

26.3 Other factors:

- (i) If allowed to remain, D will be educated at public expense.
- (ii) There are no issues with regard to the character of the 1<sup>st</sup> and 2<sup>nd</sup> Appellants.
- (iii) There is no evidence before me that they speak English.
- (iv) There is no supporting evidence before me of the Appellants' private life but in any event, little weight should be given to private life established at a time when the person's immigration status is precarious and their status has always been temporary. They can continue any friendships by modern communication means.
- (v) The opportunity to continue/resume studies in the UK is not in itself a right protected under Article 8 which is concerned with private or family life, not education as such; in any event, there is no evidence before me that the 1<sup>st</sup> Appellant has found a new College to sponsor her studies."

6. Accordingly the appeal was dismissed on all grounds.

7. In the grounds of appeal, settled by Goodfellows Solicitors, it was pointed out that they had requested a paper hearing in a letter that had been faxed to the Tribunal on the day prior to the hearing at 3.30 pm in the afternoon. The statement of the appellant and her husband had also been included. Permission to appeal was granted by the First-tier Tribunal on 3 May 2018.
8. At the hearing before me Mr Ayodele said he had seen the appellants the previous day. There had been no reference by the judge to the statements submitted by the appellants. Notice of the proceedings had been sent out in early July 2017. The judge had erred in finding there was no evidence that the appellants spoke English at the conclusion of her determination. I pointed out to Mr Ayodele that the application for the matter to be determined on the papers had been made very late in the day and they could not assume that it would be granted, having regard to the terms of Rule 25 which required to the consent to such a course by both parties to the appeal. Late submission of the material including the statements did not appear to be compatible with the directions that had been issued. Miss Everett submitted that quite apart from the procedural issues the case could not succeed in any event as no CAS had been issued. In paragraph 9 of her statement the appellant had said that she had not been able to find new sponsorship and could not obtain a valid CAS due to the fact that she was unable to obtain her passport from the Home Office and so she could not apply to any of her chosen colleges or universities. This was not a good reason since the appellant, as was common in such cases, had been supplied by the Home Office with an endorsed copy of her passport as appeared from the letter in the Home Office bundle dated 13 September 2016. Even if the matter had been determined on the papers as requested it would have made no difference.
9. In reply it was submitted that the appellant had attended lectures in English and was taught in English at the Anglia Ruskin University. At the conclusion of the submissions I reserved my decision. I have carefully considered the material before me. I can only interfere with the decision of the First-tier Judge if it was flawed in law.
10. The behaviour of the solicitors is deeply regrettable. As I have pointed out, ample notice was given of the date of hearing. Notices were issued in July for a hearing in late November. Yet nothing appears to have been done until the afternoon the day before the hearing. By that stage of course arrangements would have been made for the hearing. The solicitors had no basis for assuming that an application for a hearing to be disposed of on the papers made at such a late stage in the proceedings would be granted. Such an application would require the consent of the other party under Rule 25. There is also a duty on parties to cooperate with the Tribunal in pursuit of the overriding objective of the Rules to deal with cases fairly and justly under Rule 2. In this case nothing had been done until the eve of the hearing. In the fax accompanying the documents that had been sent headed "application to decide above appeal on papers", it was said "we have just been instructed for above-named clients to represent them in their immigration matters". However the appellants had ample time to instruct solicitors and had used them for a number of years. It continues "after detailed discussion with the appellants they wishes [sic] to decide their appeals on papers, so we request you to please decide above appeals on papers." Curiously there

is a different version of this letter in the original court bundle which says nothing about having just been instructed and reads: "please note that our client likes their appeals to be decided on the documents submitted hereby and his early submission; we are not instructed to attend the hearing."

11. There is no explanation in the statements lodged why everything was done at the last minute. Miss Everett submits that quite apart from the procedural issues the statements take matters no further. The appellant accepts that she could not get a new CAS and as Miss Everett points out the explanation she gives is not a good one. Accordingly, even if the judge had had the statements before her, she would still have concluded that no CAS had been provided and that no proper explanation had been given for this. The appellant refers to her supportive husband and the fact that her son is in primary school, year 1, and had established a strong network of friends and social ties which is echoed by her husband. Had the judge had the statements before her it would have made no difference to her decision. She had full regard to the best interests of the child and was entitled to conclude that he was not in a critical stage in his education and there was no suggestion that that education would be compromised in India. She properly directed herself to the circumstances of his case. Mr Ayodele submitted that the judge had erred in relation to the lack of evidence of the appellant speaking English but it is clear that even if the judge had been satisfied on that matter it would not have affected the outcome given what is said in AM (S 117B) Malawi [2015] UKUT 0260 (IAC) at paragraph 2 of the headnote: - "An appellant can obtain no positive right to a grant of leave to remain from either s117B (2) or (3), whatever the degree of his fluency in English, or the strength of his financial resources."
12. For the reasons I have given, I accept the submissions made by Miss Everett that there was no material error of law in this case and the appeals of the appellants are dismissed and the decision of the First-tier Judge shall stand.
13. Because a child is involved in this case it is appropriate to make an anonymity order.

**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 their 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.

**TO THE RESPONDENT**  
**FEE AWARD**

The First-tier Judge made no fee award, and I make none.

Signed

Date 14 August 2018

G Warr, Judge of the Upper Tribunal