



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/20308/2015  
IA/20315/2015  
IA/20321/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 7 December 2017**

**Decision & Reasons  
Promulgated**

On 24 January 2018

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**SANTA [B] (FIRST APPELLANT)  
RAJESH [T] (SECOND APPELLANT)  
[R T] (THIRD APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr S Abbas, Imperium Group Immigration Specialists  
For the Respondent: Ms Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants in this case are one family and citizens of Nepal, the first and second appellants are the parents of the third appellant who was born on [ ] 2012. The first and second appellants have a second child [ST], born on [ ] 2016. In a decision dated 14 May 2015 the respondent refused the

appellants' application for leave to remain in the UK. In a decision promulgated on 3 March 2017, Judge of the First-tier Tribunal Miles dismissed the appellants' appeals on all grounds.

2. The appellants appeal with permission from the First-tier Tribunal on the basis that it was arguable that the judge should have found compelling circumstances enabling the judge to consider a breach of Article 8 outside of the Immigration Rules. The grounds of appeal are as follows:

Ground 1 The judge erred in not finding compelling circumstances to consider outside of the Immigration Rules and paragraph 276ADE(1)(vi) only applies to the adult appellants. In addition it was argued that the judge failed to consider adequately the situation in Nepal following earthquakes and it was arguably compelling.

### **Error of Law Discussion**

3. Mr Abbas relied on the permission grounds and accepted that at the date of application neither of the first and second appellants' children had completed seven years in the UK.
4. Mr Abbas submitted that at paragraph 7 of the skeleton argument before the First-tier Tribunal it was argued that the appellants' case should be considered outside of the Immigration Rules as the Rules were too restrictive to cater for the appellants' situation. At paragraph [15] of the First-tier Tribunal the judge had noted that the second appellant stated he could not do anything for his daughter if they went back to Nepal and that they would have to pay for medical treatment as well as having to pay for school.
5. Mr Abbas referred to page 28 of the supplementary bundle before the First-tier Tribunal which was a letter dated 28 January 2017 in relation to [ST]; it was submitted that the judge had failed to adequately consider this letter including specifically that the letter noted that although there were no real concerns about the child and she was thriving "as she had neonatal encephalopathy she would continue to require ongoing neurodevelopmental surveillance through the CDC and the physiotherapists. This surveillance would continue until she is at least 2 years and indeed beyond." It was noted that the daughter of the first and second appellants was born on 25 August 2016. Mr Abbas submitted that the First-tier Tribunal, at [21] of the decision and reasons, specifically summarised the January 2017 letter from the Consultant Paediatrician including that she would require surveillance until she was at least 2 years old. It was Mr Abbas' submission that this provided compelling circumstances and the judge had materially erred in law.
6. Ms Pettersen submitted that whilst the judge may have erred in dealing with paragraph 276ADE given that neither child could fall within the Rules as at the time of application neither child was 7 years old, it was

submitted that such was not material as the judge had considered and made findings on all the relevant circumstances including the impact of earthquakes in Nepal. The judge had also noted, at [24] of the decision and reasons, the difficulties with the evidence of both adult appellants and the discrepancies, including as to whether the elder child spoke Nepali and had ever been to Nepal.

7. It was submitted by Ms Pettersen that the judge, at [25], had looked all the evidence including in relation to the children and concluded that there would be family support available on return. It was also submitted that at [20] and [21] the judge had set out the medical evidence in relation to [ST]. It was submitted that the judge was completely aware of the circumstances in relation to the appellants' family and the conclusion outside of the Immigration Rules was the same and therefore any error was not material. Mr Abbas submitted in reply that, as set out at page 6 of the skeleton argument, it was incumbent on the judge to consider the best interests of the children in line with Section 55 of the Borders, Citizenship and Immigration Act 2009.
8. For the reasons set out below I am not satisfied that any material error of law has been disclosed.

## **Discussion**

9. The judge considered the case under case under paragraph 276ADE which provides as follows:
  - 'The requirements of the Rules state that the applicant at date of application:
    - ...
    - (iii) has lived continuously in the UK for at least twenty years (discounting any period of imprisonment); or
    - (iv) is under the age of 18 years and has lived continuously in the UK for at least seven years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or
    - (v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or
    - (vi) subject to sub-paragraph (ii), is aged 18 years or above, has lived continuously in the UK for less than twenty years (discounting any period or imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.'
10. The third appellant was born in November 2012 and as already indicated his younger sister was born in 2016 and it was accepted that neither child could qualify under 276ADE(1)(iv). The judge considered the case under

paragraph 276ADE(1)(vi) and considered whether there were very significant obstacles to integration in Nepal.

11. However, in making findings the judge considered the position of the entire family in some considerable detail. The judge summarised the appellants' claim: that they claim to have no accommodation or employment on return to Nepal and the return would be detrimental to their children. The judge considered the evidence in relation to the earthquake in Nepal in 2015 but found that the parents of both the first and second appellant had managed to continue to survive in Nepal after the earthquake and there was no objective evidence before the judge that may indicate that the population generally experienced massive and significant disruption to everyday life.
12. The judge took into consideration all the evidence, including that the first and second appellant had resided in Nepal all of their lives prior to coming to the UK in 2010 and had parents and other close family members there. The judge took into consideration that neither would have any communication difficulties. The judge also considered their claim that their son only understood a little Nepalese, but the judge did not accept this evidence which was at odds with the child's school report which describes Nepali as his first language and that he speaks very little English. The judge rejected this claim and noted that the comment in the school report would have come from the child's parents. The judge made specific findings that the appellants had not been truthful about this matter and similarly had not been truthful about the first appellant's claim that her son had never visited Nepal which she contradicted in oral evidence. The judge found these untruths to undermine their claim in relation to the potential living conditions in Nepal on return.
13. The judge went on at paragraph [25] and [26] to consider specifically the situation of the children. Although Mr Abbas referred to the duty on the Tribunal to consider the best interests of the children as a primary consideration, that is what the judge did, at [26], finding that their best interests were to maintain their relationship with their parents and each other.
14. The judge took into consideration that the third appellant had started an early year's class in the UK but was satisfied that this did not indicate that he must remain in the UK and also took into account that his sister would be able to at the appropriate time access education in Nepal. There was no challenge to those findings.
15. As already noted the judge considered the medical situation of the family's youngest child, in some considerable detail (at [20] and [21]). The judge then went on at [25] to consider that neither child had entered full-time education with the youngest child being too young to appreciate her own individual circumstances. The judge considered that although the third appellant was in good health the youngest child was born prematurely and that the medical evidence indicated that she had made very good

progress and that she required regular surveillance at the present time. The judge reached a finding, which has not been challenged and which I am satisfied was open to the First-tier Tribunal, that the evidence did not indicate a serious medical condition which was incapable of being dealt with outside the UK; the judge noted that both the first and second appellants had accepted that medical facilities were available in Nepal although they were difficult to afford. However, the judge also took into consideration that the second appellant was a fit healthy man and who had worked in the UK and had produced no evidence to support his claim about unemployment in Nepal to justify his assertion that he would be unable to work on return. The first appellant had also accepted that her husband may well be able to obtain work but submitted that his earnings would not be very high although the judge noted that there was no evidence to support that contention but seemed to ignore the fact that the second appellant would be returning with skills from the UK which may be of value to him by assessing employment in Nepal.

16. The judge went on to take the assessment of the best interests of the children into consideration in terms of his wider consideration of the case including that this family could not have any legitimate expectation of being granted settlement in the UK and that the first and second appellants had entered as student and dependant and they and their son had only ever had time limited leave in the UK
17. Although the judge indicated that there were insufficient circumstances to merit a consideration outside of the Immigration Rules and applied **SS Congo [2015] EWCA Civ 387**, given the findings made, as summarised above, it is difficult to see how consideration outside of the Immigration Rules could have reached any other conclusion. Such an assessment would have been predicated on private life and would have necessitated an assessment of Section 117B of the 2002 Act.
18. This would have included the consideration that maintenance of immigration control is in the public interest, that the appellants do not meet the Rules, that there was no evidence that the appellants spoke English and that there was no adequate evidence that the family were financially independent. Even if they were, this was, at best, a neutral factor. I take into account that it has been established that little weight is a spectrum (see **Kaur [2017] UKUT 00014 (IAC)**) Although little weight should be given to private life established in the circumstances specified, that approach may be overridden where the private life in question has a "special and compelling character" (see **Rhuppiah v Secretary of State for the Home Department [2016] EWCA Civ 803**). However, it was not established that the private life in this case was of a 'special and compelling character'.
19. The judge in essence followed the recommended 'balance sheet' approach (see **Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60**) SS It was not identified before me what if anything the

judge failed to consider in what was a careful and well reasoned decision and reasons, albeit that it might have been structured differently.

20. In the circumstances it cannot be said that any error made by the judge would have made a material difference to the outcome of the appellants' case. The decision of the First-tier Tribunal does not disclose an error of law and shall stand.

No anonymity direction was sought or is made.

Signed

Date: 12 January 2018

Deputy Upper Tribunal Judge Hutchinson

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

As the appeal is dismissed no fee award is made.

Signed

Date: 12 January 2018

Deputy Upper Tribunal Judge Hutchinson