



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/34631/2015
IA/34638/2015
IA/34636/2015

THE IMMIGRATION ACTS

Heard at Field House
On 22nd May 2018

Decision & Reasons Promulgated
On 5th June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MR ANDRIY GUZARSKYY (FIRST APPELLANT)
MISS IRYNA GUZARSKA (SECOND APPELLANT)
MRS IRYNA GUZARSKA (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Norman of Counsel, Sterling & Law Associates LLP
For the Respondent: Mr Bartels

DECISION AND REASONS

Introduction

1. The Appellants born on 25th March 1973, 26th October 1995 and 10th March 1970 respectively are citizens of Ukraine. The Appellants are husband and wife and the parents of their daughter. There have been a number of previous applications made in this case which have been refused by the Respondent. On 18th November 2015 the

Respondent notified the Appellants that their applications had been reconsidered again but the earlier refusals had been maintained. The Appellants appealed that decision and their appeals were heard by Judge of the First-tier Tribunal Malone sitting at Taylor House on 24th July 2017. The judge had allowed their appeals on human rights grounds.

2. The Respondent had made application for permission to appeal and appeal permission was granted by First-tier Tribunal Judge Kelly on 19th April 2018. It was said that it was arguably perverse to hold that it would not have been reasonable to expect the daughter Appellant to leave the United Kingdom with her parents at the time when she had been a qualifying child given her parents' blatant disregard for UK immigration control. It was also said that it was arguable not to have acknowledged guidance cases that showed the public interest was such that powerful reasons needed to be given why it was reasonable to expect the qualifying child not to leave the United Kingdom.
3. Directions were issued for the Upper Tribunal to firstly consider the question of an error of law and the case came before me in accordance with those directions.

Preliminary Point

4. It was submitted by Ms Norman of Counsel, who had been the representative at the First-tier Tribunal, that the Presenting Officer on that occasion had urged the judge to look at whether the Home Office should have granted leave or not at an earlier stage when applications had been made in 2013. The Presenting Officer had apparently urged the judge to look at the situation in 2013 and that decision would then persuade the approach and decision to be made under Article 8 now.

Submissions on Behalf of the Respondent

5. Mr Bartels accepted that it was a perfectly reasoned decision and took the view that one way or another the judge was entitled to look at the circumstances in 2013 given the history of the case and it was further accepted that the judge had done sufficient to carry forward that thinking to the day of the hearing and had looked at the issue of proportionality. He did not seek to pursue the matter.
6. I indicated at the hearing that I found no error of law had been made but now provide my decisions with reasons.

Decision and Reasons

7. It was noted by Ms Norman who appeared at the First-tier Tribunal on behalf of the Appellant that the Presenting Officer had argued as described above that the judge should essentially look at whether leave to remain should have been granted to the Appellants in 2013 at a time when the daughter was a minor. It was said that his decision should then persuade the decision now under Article 8. The Judge of the First-tier Tribunal appears to have adopted that approach.

8. As indicated above Mr Bartels did not seek to pursue matters in this case and had some difficulty, as did I, in fully understanding the grant of permission.
9. Leaving aside the correctness or otherwise of the Presenting Officer's submissions at the First-tier Tribunal and the adoption of that approach by the judge, the history of this case inevitably meant the judge was bound to look at circumstances around 2013 as a matter of fairness if nothing else. The facts of this case were not in dispute. The judge had set out the unfortunate circumstances in this case at paragraphs 2 to 7. In brief the father and mother had arrived illegally in the UK in 2005 and 2006 respectively. The daughter had entered legally in 2006 either as a visitor or on a student visa. It would seem the Home Office were not certain as to which visa had been applicable. However once her visa expired she overstayed. Applications for leave to remain under Article 8 were commenced by the family in 2012. The following refusal of further application was made in 2013. That was refused but the Respondent was ordered to reconsider the application. Again a refusal was issued but failed to deal with the error, namely a failure to consider the daughter (minor) application under paragraph 276ADE(iv) of the Immigration Rules. A judicial review consent order was made in 2015 where the Respondent agreed to consider that particular matter fully but appeared to have failed to do so again and does not appear to have, at any stage, considered that particular point since the application was first made in June 2013 some four years prior to the appeal hearing and five years to today's date.
10. It is understandable therefore that the judge began by looking at circumstances in 2013, when the application was made and never properly and fully considered by the Respondent. At that time the daughter was a minor. He looked at all the circumstances at that time and the core of the application, namely that it would be unreasonable for the daughter to leave the UK within the terms of paragraph 276ADE(4) based on the fact that she had seven plus years' residence from the age of 10 to 17 (paragraph 23). Thereafter he looked at the evidence and found for reasons given that it would have been unreasonable for her to have to leave the UK then (25 to 42) and that her parents should have been granted leave to remain with her (42). That was a finding open to him on the evidence and supported by clear reasons given and reference to relevant case law. It was not an unreasonable decision. Having found what was the fair and proportionate position in 2013 had the Respondent properly addressed matters, particularly since they had been given multiple opportunities to so do he then, albeit briefly, looked at the situation at the date of the hearing. He had found that in 2013 the daughter met paragraph 276ADE(iv) of the Rules and therefore came within Article 8 within the Rules and her parents outside of the Rules based on family life.
11. In terms of an update he found at paragraph 50 that at the date of the hearing the parents' claim was strengthened. He found family life still existed although the daughter was now an adult but he gave reasons for such findings.
12. The somewhat unusual history of the case meant that the judge's decision focused on historical circumstances but it is clear as to why it was necessary to do that both as a

matter of fairness and to explain the present circumstances. It is a case where although he may have dealt briefly with the current situation it was adequate and the background demonstrates why that should be the case. Importantly his reasoning and findings disclose no material error of law and the findings were both reasonable and open to him on the evidence available.

Notice of Decision

13. I find no material error of law was made by the judge in this case and I uphold the decision of the First-tier Tribunal.

No anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Lever

Date

