Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HU/01546/2019
HU/02773/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10th December 2019	**On 13th February 2020**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MS K K
MR K S B
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr D Ball (instructed by Optima law Solicitors))
For the Respondent: Mr N Bramble (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an application to the Upper Tribunal by the Appellants who are wife and her husband. They have a son who is dependent on their claims. The wife and husband are Indian nationals. They had made an application for leave to remain in the United Kingdom on human rights grounds.

2. The application was refused in relation to the wife on suitability grounds, on two separate suitability grounds, (1) that there was an outstanding litigation debt and (2) that she had cheated in a TOEIC test.

3. The judge heard evidence from both the Appellants at some length in the First-tier and they were claiming before the judge that they were at risk from their families if returned to India because they were of different faiths. The judge rejected that argument. He noted first of all that they had made no protection claim, notwithstanding the fact that they had had for some considerable time been in receipt of legal advice, and they claim that the risk had arisen some years before. Furthermore, the protection claim amounted to a new matter which the Secretary of State did not consent to being considered.

4. The judge noted that they had made an application on the basis that they were separated and indeed that the wife was claiming abuse at the hands of her husband. That, however, had all been dropped by the time it came before the First-tier Tribunal and they were then back together and presented as a united family. They were also the parents of a child born on 10th July 2015 in the UK and they were putting forward the case that that child was stateless because he has not been registered with the Indian High Commission.

5. The judge in relation to the litigation debt, found that the Secretary of State's view on suitability was merited despite the wife's claim at the hearing that she had not known anything about this. The judge noted that in fact it was detailed in the refusal letter, which the wife claimed to have read and understood months before the hearing. While the judge made an error apparently in who she was represented by, in connection with the proceedings that gave rise to the litigation debt, that really is immaterial to the finding that she was aware of it and therefore it was a valid reason for the Secretary of State to make an adverse suitability finding.

6. The second suitability finding was on the basis that she cheated on a TOEIC test. The judge went to considerable lengths considering that between paragraphs 44 and 48 of the Decision and reasons and found that she had not proffered an innocent explanation that she was guilty of fraud in that respect.

7. It is true to say that the entirety of their evidence found no favour whatsoever with the judge. He found that they had both prevaricated and had given differing evidence about various matters such as who was financially supporting them and overall the judge found them to be entirely without any credibility.

8. With regard to the statelessness or otherwise of their child, the judge correctly referred herself to paragraph 403 and 404 of the Immigration Rules as they now are. It is clear in paragraph 403 that for a child to be recognised as stateless, the parents have to provide evidence that they have attempted to register the child's birth and that the relevant

authorities have refused. As the judge pointed out, there was no such evidence before her. They had provided a letter from the Indian High Commission but all that does is confirm the child has not been registered. It is argued that they could not have done so because to do so they would have had to produce their passports to the Indian High Commission and those passports are with the Secretary of State. However, there is no indication or suggestion that they have ever asked for them for that purpose and it seems to me that when the Secretary of State is putting forward a case that the child can be registered as an Indian citizen, that arrangements could not be made for those passports to be produced to the relevant authorities. The simple fact is these Appellants cannot meet the requirements of paragraph 403(f) and the judge was therefore right to so find.

9. That deals I think with both of the grounds upon which permission to appeal was granted and so I find that whilst there are a couple of factual errors made by the judge they in no way infect the overall findings. There is no material error of law in the First-tier Tribunal Decision and Reasons and the appeal to the Upper Tribunal is dismissed

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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.

Signed Date 10 February 2020

Upper Tribunal Judge Martin

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 10 February 2020

Upper Tribunal Judge Martin