



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/21764/2016
HU/21769/2016
HU/21770/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 23 July 2018

Decision & Reasons Promulgated
On 27th July 2018

Before

Deputy Upper Tribunal Judge Pickup

Between

MK

KM

KK

[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellants:

In person, not represented

For the respondent:

Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellants' appeal against the decision of First-tier Tribunal Judge Casewell promulgated 25.7.17, dismissing their linked appeals against the decisions of the Secretary of State, dated 31.8.16, to refuse their applications for LTR on human rights compassionate grounds outside the Rules.

2. First-tier Tribunal Judge Keane granted permission to appeal on 16.2.18.
3. The appellants were not legally represented and there was no appellants' bundle. The adult appellants appeared at the hearing, assisted by the husband's brother. They told me that their legal representatives had ceased to act, having been closed down by the solicitors' regulatory authority. I was satisfied that they had had ample time to instruct alternative representation. In any event, no application for an adjournment was made.
4. At the outset of the hearing the appellants sought to introduce new evidence, which I declined to consider as the task before the tribunal was to determine whether on the evidence before the First-tier Tribunal there was any material error of law such that the decision should be set aside and remade.
5. However, it was explained to me that the new evidence related to the minor appellant having recently been granted British citizenship following a stateless person application. I advised the appellants that whilst I cannot consider that evidence at this stage, it may be that they would be best advised to make a new application. It will be a matter for the Secretary of State to determine whether the new evidence justifies a different decision that made in 2016 refusing Leave to Remain.

Error of Law

6. For the reasons summarised below I found no material error of law in the making of the decision of the First-tier Tribunal such as to require the decision to be set aside.
7. Permission to appeal to the Upper Tribunal was granted by Judge Keane on the basis that at the time of the hearing the minor appellant was 8 years and 9 months old and that it was arguable that the judge "did not accord adequate weight to the lengthy continuous residence and to the development of societal, cultural and educational ties which in fact the judge found to be established. Had the judge accorded adequate weight to such considerations the judge arguably might have found that it would not be reasonable to expect (the minor appellant) to leave the UK and such a finding might potentially have borne most materially on the judge's assessment of Article 8 outside the Immigration Rules."
8. It is clear from the decision that the judge considered the relevant Rules and did not find there to be very significant obstacles to integration in India, despite the absence of some 16 years. Cogent reasoning was provided for that and for the findings in consideration of the circumstances outside the Rules pursuant to article 8 ECHR, both in relation to the claim of family life with the husband's brother and generally.
9. The crucial issue was the consideration of the minor appellant, given the length of his residence in the UK, then approaching 9 years. Whilst the judge might have provided a more formulaic approach, spelling out in more detail the consideration of 276ADE and section 117B of the Nationality, Immigration and Asylum Act 2002, as well as Section 55 of the Borders, Citizenship and Immigration Act 2009, a reading of the decision reveals that all relevant considerations were taken into account in a

reasonableness assessment and ultimately the proportionality assessment. The conclusion that it would be reasonable to expect the minor appellant to accompany his India parents with no right of residence in the UK back to India, and that this would be in his best interests, is one open to the judge on the evidence and fully justified by the reasoning provided.

10. The First-tier Tribunal Judge also rejected the stateless argument at [21], giving cogent reasoning that even if the minor appellant is not at the moment an Indian national, he could easily obtain that nationality.
11. In the circumstances, no material error of law is disclosed in the grounds which in essence amount to a disagreement with the decision. Whilst a different judge may have reached a different conclusion, it cannot be said that this decision was irrational or perverse.

Decision

12. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I continue the anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed.



Signed

Deputy Upper Tribunal Judge Pickup

Dated