Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/24314/2015
IA/24313/2015
IA/24311/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11th April 2018	**On 23rd May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

RAJDEEP [K]
SACHIN [K]
[N A]
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr E Nicholson, Counsel instructed by JJ Law Chambers
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellants are a family of Indian citizens. They comprise Sachin [K] born on [ ] 1982, his spouse Rajdeep [K] born on [ ] 1984, and their child [NA] born on [ ] 2011.

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Rajdeep [K] first entered the UK on 14th December 2009 with entry clearance as a Tier 4 (Student) Migrant valid until 26th March 2011. Sachin [K] entered at the same time as her dependant, and [NA] was born in the UK. The two adult Appellants were subsequently granted leave to remain in the same capacity until 6th August 2015, but on 17th September 2014 the Sponsor Licence for North West College Reading where Rajdeep [K] studied was revoked and as a consequence on 11th December 2014 the Leave to Remain for the adult Appellants was curtailed to expire on 14th February 2015. The reasons for that decision were given in letters of the Respondent dated 17th June 2015. The Appellants appealed and their appeals were heard together by Judge of the First-tier Tribunal Hussain sitting at Taylor House on 29th June 2017. He decided to dismiss the appeals for the reasons given in his Decision dated 4th August 2017. The Appellants sought leave to appeal that decision and on 6th February 2018 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.

3. At the hearing before the Judge, it was conceded on behalf of the Appellants that they could not satisfy the provisions of the relevant Immigration Rules. Therefore the only issue before the Judge was whether the decision of the Respondent amounted to a breach of the Appellants' Article 8 ECHR rights outside those Immigration Rules. The Judge followed the format given in **Razgar, R (on the application of) v SSHD [2004] UKHL 27** and found that the decision of the Respondent was proportionate.

4. At the hearing before me, Mr Nicholson argued that the Judge had erred in law in coming to this conclusion.

5. Firstly the Judge had made two errors of fact when considering the balancing exercise necessary for any assessment of proportionality. At paragraph 24(iv) of the Decision the Judge had treated the Appellants as people who had remained in the UK without leave whereas they had been in receipt of automatic leave in accordance with Section 3C Immigration Act 1971. Further, the Judge had miscalculated the age of the third Appellant. He had described her as being 5 years of age whereas at the date of the hearing she had been 6½ years of age. This was material following the decision in **Miah (Section 117B NIAA 2002 – children) [2016] UKUT 00131 (IAC)**. These errors amounted to an unfairness as described in **E and R v SSHD [2004] EWCA Civ 49** and **MM v SSHD [2014] UKUT 00105 (IAC)**.

6. Mr Nicholson went on to argue that the Judge had further erred in law by finding at paragraph 24(iii) of the Decision that the Appellants were not self-sufficient. There was evidence before the Judge that friends of the Appellants would have supplied them with third party support.

7. Finally, Mr Nicholson submitted that the Judge had again erred in law by making an inadequate consideration of the best interests of the minor Appellant and her sibling born on 27th July 2017. In this connection, the Judge had failed to attach due weight to the fact that the minor Appellant spoke only English, which was relevant following the decision in **MT and ET (child's best interests: ex tempore pilot) Nigeria [2018] UKUT 00088 (IAC)** and the fact that the minor Appellant had been ill owing to the heat on her only visit to India.

8. In response, Ms Isherwood argued that there had been no such material error of law. The Judge had assessed all the relevant information and had carried out a careful assessment of the balancing exercise in order to consider proportionality. He had come to a conclusion open to him on that evidence. The Judge had been correct to consider that the Appellants' immigration status was precarious as they had only ever had limited Leave to Remain in the UK. The issue had not been that the Appellants had had no Leave to Remain.

9. Mr Nicholson then responded to these comments by emphasising that there had been no challenge by the Respondent to the fact that the minor Appellant had been ill whilst visiting India. The Judge had described the Appellants as being present in the UK without leave and this had affected his overall judgment. His error as to the age of the minor Appellant had also been material in this respect. There had been no careful and complete consideration of all of the relevant evidence.

10. I find no material error of law in the decision of the Judge which therefore I do not set aside. In my judgment the Judge carried out a careful and thorough balancing exercise in order to assess the proportionality of the Respondent's decision in paragraphs 21 to 32 inclusive of the Decision. He dealt with all the relevant evidence and came to a conclusion open to him upon that evidence. He was entitled to attach weight to the public interest and considered the factors set out at Section 117B of the Nationality, Immigration and Asylum Act 2002. He did make a mistake when considering the immigration status of the Appellants but this is not a material error because he was right to find that the Appellants' immigration status was precarious by virtue of the fact that they never had more than limited Leave to Remain in the UK. The Judge did not make a mistake in considering that the Appellants were not financially independent. There was little convincing evidence before him that the Appellants had access to funds beyond the earnings of Sachin [K]. The Judge was entitled to find that there were "powerful reasons weighing in favour of removal".

11. The Judge weighed the public interest against the personal circumstances of the Appellants. The Judge treated as a primary consideration the best interests of the minor Appellant. His mistake as to the age of that Appellant is not material. Whether she was 5 or 6½ years of age at the relevant time is immaterial because either way she was of an age when the focus of her life was on her family. The Judge considered and referred to the relevant factors given in **EV (Philippines) and Others v SSHD [2014] EWCA Civ 874** which included the linguistic ability of the minor Appellant. The Judge did not refer to the illness of the minor Appellant but the evidence before him was that she suffered from acute gastroenteritis and a dust

allergy which although unpleasant for a young child amounts to little when considering her long term future.

12. For these reasons I find no material error of law in the decision of the Judge.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so and indeed find no reason to do so.

Signed Date 20th May 2018

Deputy Upper Tribunal Judge Renton