



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

Appeal Numbers: HU/18350/2018
HU/18349/2018
HU/18354/2018
HU/18357/2018

THE IMMIGRATION ACTS

**Heard at Manchester
On 16 October 2019**

**Decision & Reasons Promulgated
On 08 November 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MRS L C K (FIRST APPELLANT)
MISS M B (SECOND APPELLANT)
MISS C B (THIRD APPELLANT)
MASTER C B (FOURTH APPELLANT)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Lee, counsel instructed by Eldons Berkeley solicitors
For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The appeals came before me for a hearing on whether or not there was an error of law on 21 August 2019. In a decision and reasons promulgated on 11 September 2019, I found material errors of law in the decision of the First-tier Tribunal and adjourned the appeal for a resumed hearing before the Upper Tribunal. The decision and reasons is appended.
2. The appeals next came before me for hearing in the Upper Tribunal in Manchester on 16 October 2019. At the outset the issues were clarified, which were that the appeal

was being brought on the basis of human rights *viz* Article 8 and paragraph 276ADE(1)(vi) of the Immigration Rules. Despite directing that the first Appellant should be provided with a Malayalam interpreter none had been provided. However upon Mr McVeety indicating that he did not have extensive cross-examination for the first Appellant, the hearing proceeded in English on the basis that if difficulties arose the appeal would be adjourned in order to obtain the assistance of an interpreter.

3. Mr Lee sought to rely on a bundle that had been prepared for the hearing and which included supplementary witness statements by the first Appellant, her son, C. her daughter C. and her daughter M. and a report by an independent social worker, Ms Francisca Serrette which runs to 32 pages and is dated 9 October 2019.
4. I heard evidence from the first Appellant, who confirmed the contents of her statement and that prior to coming to the UK she had lived in Kerala with her family. She had never lived anywhere else in India and she spoke only Malayalam which is a language local to Kerala and English. When asked what she thought would happen to her if she was returned to India, she said she did not have her parents, they had passed away. She only had her children and her husband's family and words to the effect that if she went back the violence she had experienced from her husband before would happen again.
5. The first Appellant was cross-examined by Mr McVeety. He asked the first Appellant to clarify where in Kerala she was from, to which she responded she was from a village about ten kilometres away from Kottayam. The village consisted of some small houses and farm areas and was a rural area. She said her parents were from that village as well. Her husband's parents were from about five kilometres away and she had no siblings. She said when her father passed away that he had left her a small house, however due to the serious floods that had taken place in Kerala, the house had been flooded and was broken and that she had found this out both from Facebook and from somebody that she met in Liverpool who is from the same local area. She said her father had a sister, her aunt, but she had now also passed away and she had no other relatives.
6. The Appellant confirmed that she had not formally divorced her husband. She did not know where he was but thought he was probably with his family because he had nowhere else to go. Mr McVeety asked the first Appellant if she had had contact with her husband since he returned and she said that she had had no direct contact. Sometimes he makes bad comments using a different identity on Facebook or social media but she knows it is him and that he has also asked one of her good friends questions about her and the children. When asked if her ex-husband had tried to contact the children, the first Appellant said he had made bad comments about her daughter C. on social media in the past.
7. I then asked the first Appellant questions in order to clarify her history. She confirmed that she came to the UK on 17 February 2011 and that her husband had at

that time stayed to look after their children and her father, but he then joined her three months later and thereafter her father had looked after the children.

8. The first Appellant confirmed that after her marriage she lived with her husband and his family for a year and then she sought permission and was permitted to return to her own family after that first year due to the domestic violence she had been subjected to. Her husband then came to visit her and they were reconciled and he moved in to her family home.
9. The first Appellant clarified in respect of [6] of her supplementary statement that after he arrived she was attending university in Liverpool, whereas her husband went to stay with a friend near Lincoln in order to work and she would visit him there. In relation to [7] and the fact they moved to Keighley together, the first Appellant stated she moved there in order to work and at that time her husband had money and said he would come with her. She said for two months he was okay. The children then joined them from India because of the death of her father. In respect of [9] and the reference to threats and accusations from her mother-in-law, she said that these had been made on the phone after the first Appellant had informed her that her husband was in prison due to domestic violence. In relation to [12] and the assertion that her husband is politically connected, the first Appellant confirms that he is connected to the Congress Party of India, that he knows the MP for Kottayam, a Mr Oommen Chandy who had previously been the chief minister and her husband's family know his family.
10. The Appellant's oldest daughter M was then called as a witness. She confirmed her statement and that she was born on 1 March 1998. There were no questions for her by Mr McVeety.
11. The Appellant's daughter C was then also called to give evidence. Her date of birth is 12 April 2003. She confirmed she was 10 when she came to the UK. For the purposes of clarification, the Upper Tribunal asked her about a claim in the statement that she was unable to speak, read or write Malayalam despite only having come to the UK at the age of 10. The witness said that she could speak Malayalam but having been in the UK for six and a half years she is speaking less and less of her regional language. She was not taught to read or write in that language before she left India. She was educated in English at primary school prior to coming to the UK at the age of 10. The witness confirmed that she can still speak some Malayalam but she tends to use English when talking to her mother. Her younger brother also uses English and her older sister M uses a mix of English and Malayalam. The witness confirmed that she had just recently finished her GCSEs and was now studying chemistry, biology and maths for A level, having passed the grade boundaries in order to do this. She said that she had missed some school because of having to move from one area to another.
12. I then heard submissions from Mr McVeety on behalf of the Secretary of State. He submitted that the factual nature of the appeals is not controversial and elicits only

sympathy and pity for the Appellants because of having experienced violence at the hands of a violent individual. Mr McVeety further accepted that there would be a subjective fear of return to the Appellant's home area, but Kerala is a reasonably small part of India. It is a third of the size of the UK and has a population of tens of millions, but he accepted she may not wish to go back to that area from a subjective fear point of view.

13. In relation to the Appellant's husband's political connections, Mr McVeety submitted that someone who had previously been a chief minister and was high profile would not assist the Appellant's husband in tracking her and the children down in order to harm them and that he would have no motivation to do this, that India has a functioning court system. Mr McVeety suggested that internal relocation would be viable for the Appellants, that India was a vast country and it is reasonably clear that the children are moving away from speaking their local language towards speaking English, which is the official language of the government in India and thus this would not be a problem in terms of living elsewhere in the country.
14. Mr McVeety submitted that the Appellant's husband is from a small family which consists only of his parents and his brother and he does not appear to be serious in tracking them down. Whilst the first Appellant assumes that he is making adverse comments on Facebook and social media using a different identity, there is no evidence of this. She could of course stay away from social media or make sure that the settings only permit access by close family and friends.
15. In relation to the best interests of the two younger Appellants who remain minors, Mr McVeety noted the report by the independent social worker. He was not seeking to go behind her findings but sought to comment on various aspects of them, in particular, at [7.4] that whilst it may be desirable for children to have stability, if that was the primary consideration there will be no such thing as international migration. At [3.33] he submitted that the social worker was perhaps overstating the concerns as to the Appellant's son returning in relation to the culture permitting domestic violence and in relation to [3.38]
16. Mr McVeety noted that the scene of the crime, i.e. the domestic violence, was both India and the UK. Mr McVeety submitted that the fact is that the family have had to move to avoid the Appellant's husband and they have managed to do so. He submitted that none of the Appellants are qualifying children. They would be returned as a family unit. Their important years in terms of their initial development took place in India where they had education in English so they could continue with this on return, given there is a clearly functioning education system in India.
17. Mr McVeety submitted that the first Appellant is the only surviving family member of a person who had property and land. Even if the Appellant did not wish to return to her home village she could arrange for the house to be sold. He submitted the children had lived in India for significant periods of their lives. There was no huge extended family on their father's side who could track them down and they would

be able to access sufficiency of protection. He submitted that the Appellant's husband would not be able to find out if they returned if they went, for example, to Mumbai or another big city. He submitted clearly the Article 3 threshold had not been reached.

18. In relation to the public interest considerations set out at Section 117A to D of the NIAA 2002, Mr McVeety submitted that at best these were neutral factors. There was no adverse immigration history or criminality, however, the children were not qualifying children. Mr McVeety submitted whilst it may be in their best interests to remain in the UK, it does not mean it is reasonable for them to do so given that the family can relocate to India.
19. In his submissions, Mr Lee sought to rely on the report of the independent social worker and the educational attainment, particularly of the Appellant's daughter C. Bearing in mind that the best interests assessment, this is a primary consideration and it must be considered first. He submitted that C. is a paradigm example. She is 16 and has been in the UK for well over six years. It is clear that her best interests lie in her being able to continue her education in the UK, having started her A level course.
20. Mr Lee submitted that there was an impact on the child Appellants of having witnessed violence against their mother and trauma and that they needed a degree of certainty and stability which would be represented by being able to remain in the UK. He submitted it would be a significant setback for C. to have to leave the UK and restart her life and education in India. Mr Lee sought to rely on the Respondent's policy guidance, "*Every child matters*" and the duty encompassed by Section 55 was not just to promote and safeguard children's best interests but to prevent their physical, emotional, intellectual impairment. Mr Lee also sought to rely on the considerations set out in the House of Lords judgment in Zoumbas [2013] UKSC 74. In particular it is necessary to attain a clear idea of a child's particular circumstances to evaluate on a case by case basis and that there is no substitute for a careful examination of all the relevant factors.
21. Mr Lee further sought to rely on the judgment of Lord Justice Clarke in EV Philippines [2014] EWCA Civ 874 at [35](a)-(g), in particular age, length of residence, length of education, the stage education has been reached, the extent the child is distanced from the country it is proposed to return them, the extent to which the child would encounter linguistic, medical or other difficulties and the extent that removal would interfere with proposed family life. Mr Lee submitted that other difficulties referred to therein would also include for example the experience of domestic violence from their father. He submitted that the impact of domestic violence is twofold: firstly, the Appellants attained some stability in the UK and secondly, that the easiest place logistically for the family to base themselves in India would be where they lived before but clearly that would be traumatic for them in light of the fact that the children as well as their mother experienced violence from

the first Appellant's husband there (and he may still be there). This is reflected in the independent social work report.

22. Mr Lee submitted even though none of the children are yet qualifying children, there are other factors in the case which nevertheless move it over the line in respect of a consideration of exceptionality and Article 8 outside the Rules and proportionality. Mr Lee accepted that the Rules are the starting point but noted that there was a lacuna for children who had not been in the UK for seven years because they do not fall within the remit of paragraph 276ADE(1)(vi) as they are under 18 years of age. He submitted it was necessary to consider the appeal on the basis of the family as a whole, as well as individual members.
23. Mr Lee submitted that there was an objective risk to the Appellants based on the fact they come from a relatively small part of India with a particularly distinct linguistic and cultural background. The circumstances were that the first Appellant's former husband was still expressing hostility, including hostile comments on social media. He submitted it was not practicable to suggest that three young people would or would have to stay away from social media for any great period of time in order to avoid their father.
24. In relation to their father's links with an MP, Mr Lee accepted there was no objective evidence of this but that it was another factor to put into the overall cumulative consideration of proportionality. In relation to the sale of the first Appellant's father's property and land, Mr Lee submitted that this would be an identifiable factor as her ex-partner would be able to use this to identify and locate the family.
25. In relation to internal relocation, Mr Lee submitted that relevant factors are that the household is female headed, that the first Appellant will be relocating with two daughters and a young son, that she would encounter linguistic difficulties relocating away from her home area and that her younger daughter is unlikely to continue her education. Mr Lee submitted that all the factors taken together lead to a finding that there are very significant obstacles and that it is unreasonable to expect the family to internally relocate. He submitted that a hostile animus and social media would not negate the risk.
26. Mr Lee submitted that it is necessary to take a holistic view of the case outside the Rules pursuant to Article 8. The first and second Appellants have experienced significant violence and that this is an unusual circumstance when one is looking in an Article 8 case. Therefore even if the Tribunal considered that the individual Immigration Rule was not met on the facts of that individual, the proportionality exercise means when looked at altogether in relation to all four Appellants that removal would be disproportionate.
27. I reserved my decision, which I now give with my reasons.

Findings and reasons

28. This is a human rights appeal against a decision by the Respondent dated 17 August 2018 where, whilst acknowledging that the first Appellant had been subjected to domestic violence by her husband, who had been convicted, sentenced to 6 months imprisonment and subsequently removed to India, found that there were no very significant obstacles to integration in India and no exceptional circumstances meriting the grant of leave to remain outside the Rules pursuant to Article 8 of ECHR.
29. There are four Appellants, a mother and three children born respectively on 19 May 1979, 1 September 1998, 12 April 2003 and 25 February 2005. The First Appellant has been lawfully present in the UK since February 2011. The Second and Third Appellants arrived as her dependants on 5 June 2013 and the Fourth Appellant arrived, also as her dependant, on 16 August 2013. Thus the first Appellant has resided in the United Kingdom for more than 8 years and her children, who have been treated as her dependents, for more than 6 years. The application for leave on the basis of human rights was made, in time, on 29 June 2017 and I find that all the Appellants have been lawfully present in the UK since February 2011.
30. I first consider the appeals with regard to paragraph 276ADE of the Immigration Rules. It was not contended by Mr Lee that any of the sub-paragraphs other than paragraph 276ADE(vi) are applicable, thus the two minor Appellants are excluded from consideration on the basis that they are under 18 years of age.
31. Having heard evidence from three of the four Appellants, I find their evidence to be credible and I accept it. Indeed, Mr McVeety did not seek to cast doubt on it. That being the case, I find that it is established through his conviction and sentence that the first Appellant was subjected to domestic violence by her husband and, as Mr McVeety accepts, she continues to fear him and further domestic violence if she returned to India. I find that it would not be reasonable to expect the Appellants to return to Kerala, given their past experiences of domestic and familial violence, in circumstances where I accept the local authorities failed to provide sufficient protection. The issue I have to determine is whether there would be very significant obstacles to the Appellant's integration in another part of India.
32. I have taken into consideration the Home Office guidance in respect of Family and Private Life, version 3 dated 23 September 2019 at 59-61 in respect of "*Assessing whether there are 'very significant obstacles to integration into' the country of return*" which provides *inter alia*:

"... A 'very significant obstacle to integration' means something which would prevent or seriously inhibit the applicant from integrating into the country of return. You are looking for more than the usual obstacles which may arise on relocation (such as the need to learn a new language or obtain employment). They are looking to see whether there are 'very significant' obstacles, which is a high threshold. Very significant obstacles will exist where the applicant

demonstrates that they would be unable to establish a private life in the country of return, or where establishing a private life in the country of return would entail very serious hardship for the applicant.

Relevant country information should be referred to when assessing whether there are very significant obstacles to integration. You should consider the specific claim made and the relevant national laws, attitudes and country situation in the relevant country or regions.

A very significant obstacle may arise where the applicant would be at a real risk of prosecution or significant harassment or discrimination as a result of their sexual or political orientation or faith or gender, or where their rights and freedoms would otherwise be so severely restricted as to affect their fundamental rights, and therefore their ability to establish a private life in that country.

You should consider whether the applicant has the ability to form an adequate private life by the standards of the country of return – not by UK standards. You will need to consider whether the applicant will be able to establish a private life in respect of all its essential elements, even if, for example, their job, or their ability to find work, or their network of friends and relationships may be differently constituted in the country of return. The fact the applicant may find life difficult or challenging in the country of return does not mean that they have established that there would be very significant obstacles to integration there. You must consider all relevant factors in the person's background and the conditions they are likely to face in the country of return in making their decision as to whether there are very significant obstacles to integration. You will need to consider any specific obstacles raised by the applicant. They will also need to set these against other factors in order to make an assessment in the individual case.

Relevant factors to consider include:

Cultural background

Length of time spent in the country of return

Family, friends and social network

Faith, political or sexual orientation or gender identity

You must consider the relevant country information when considering whether an applicant would face very significant obstacles integrating or re-integrating into the country of return as a result of their faith, political or sexual orientation or gender identity. You must consider the degree of difficulty that would be faced as a result of the applicant's faith, political or sexual orientation or gender identity based on the situation in practice in the country of return and not necessarily solely what is provided for in law. The applicant's previous experience of life in that country and any difficulties the applicant claims to have experienced as a result of their faith, political or sexual orientation or gender identity must also be considered.

33. I have further taken into consideration the judgment in *Secretary of State for the Home Department v Kamara* [2016] EWCA Civ 813 where the Court of Appeal looked at the concept of integration to proposed country of deportation and found:

“In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.” [emphasis added].

34. The first Appellant's first language is Malayalam, a language spoken in Kerala but not elsewhere in India, however, she also speaks English to a level sufficient to have worked during her time in the UK and I find that this would enable her to communicate and to potentially find employment in one of the larger cities in India. I find that the first Appellant would have a cultural understanding of life in India, having grown up there and that she would be able to re-build a private life over time, despite the absence of family, friends or a social network outside Kerala, other than her children.
35. One matter that gives me concern, however, whilst taking account of the fact that this is not an asylum claim, is whether there is an ongoing risk to the first Appellant from her husband. The Home Office guidance makes reference to the need to consider *inter alia* gender identity and I find that this would render the first Appellant vulnerable, as a female head of household and if her husband were able to locate the family. I make no express finding as to whether or not the first Appellant's husband would receive assistance from Mr Oomen Chandy in either tracing the Appellants or receiving protection for any further attacks upon them, although I take judicial notice of the fact that Mr Chandy is the MP for the Appellants' home area and has formerly been the Chief Minister of Kerala and it is reasonably likely given he is from the same area as the Appellants that the first Appellant's husband does indeed know him. I find that the potential risk of further violence from her husband is an obstacle to the integration of the first Appellant but that, in itself, it is not sufficient to reach the threshold for showing that there are *very significant* obstacles to integration, given that if the family relocate away from Kerala it would be difficult for her husband to find them.
36. I also accept and find that the second Appellant was subjected to domestic violence from her father and when he left India for the UK, from her uncle in India. I accept that since her father was removed to India he has issued threats and abuse through social media. I find, for the same reasons as in her mother's case, that the second Appellant's gender renders her vulnerable to further violence were her father able to locate her and her mother but that whilst this is an obstacle to integration it does not reach the threshold for very significant obstacles to integration, given the second

Appellant's facility in the English language and the fact she has been educated in both India and the UK and could relocate away from Kerala.

37. However, I have also considered the appeals with regard to Article 8 outside the Immigration Rules, bearing in mind that this is a family in respect of whom the first two Appellants have been subjected to domestic violence and the younger two Appellants have been witness to that violence, which has resulted in social services involvement in the UK and a care plan put in place on 18.12.15 as a result of witnessing parental domestic abuse. I find that this constitutes exceptional circumstances meriting consideration of Article 8 outside the Immigration Rules.
38. Given that the third and fourth Appellant are minors aged 16 and 14, their best interests are a primary consideration and I have directed myself accordingly. I have taken full account of the report of the independent social worker, Francisca Serrette dated 9 October 2019, who found at 3.29 that it would be significantly damaging to the Third Appellant if she had to return to India, due to having been exposed to chronic domestic abuse and that the level of psychological trauma is in direct opposition to healthy development and goes against the welfare of the child. She further opines at 3.37 that: "*removing the children and placing them in an unfamiliar country goes directly against what research suggests is needed for children exposed to domestic abuse.*" At section 5 of the report, having spoken to the children's schools, Ms Serrette records that both are excellent students and potential high achievers despite having moved schools from Norfolk to Liverpool and having suffered adversity and expresses concern at the impact on their education and potential of having to go to India. She concludes at 7.8. that it would be in their best interests to remain in the UK. I have noted Mr McVeety's comments on aspects of Ms Serrette's report but find that the extracts cited above are reasoned and that her opinion is based on research, which she cites, as well as interviews with the Third and Fourth Appellants and their teachers.
39. The third and fourth Appellants are not qualifying children, having resided in the UK since 5 June 2013 and 16 August 2013 respectively, which is over 6 years. Their presence in the UK has been lawful as they are dependents of their mother who has made in time applications for leave to remain. Both Appellants speak English and they remain financially dependent on their mother. Their leave has always been precarious. Consequently, as Mr McVeety submitted with regard to the statutory public interest considerations, at best these are neutral factors. However, as was recognised by their Lordships in Rhuppiah [2018] UKSC 58, section 117B cannot put decision makers in a straitjacket and there is small degree of flexibility built in to section 117A(2)(a)
40. I have had regard to the judgment of Lord Justice Clarke in *EV (Phillipines)* [2014] EWCA Civ 874 in particular at [35] and [36]. I note that both the minor Appellants are at an important stage of their education, the Third Appellant has commenced her A level course and the Fourth Appellant his GCSE course. They were respectively aged 10 and 8 at the time they left India and came to the UK and I find,

bearing in mind the views of their school and the report of the independent social worker, that removal to India would clearly be disruptive to their education. When considered alongside the fact that they have both been subject to a Social Services care plan due to emotional abuse as a consequence of witnessing the chronic and long term domestic abuse of their mother and older sister and that the Third Appellant was also on occasion also hit or beaten by her father, I accept the opinion of the independent social worker that removal to India would be psychologically damaging and would be entirely contrary to their best interests.

41. Having weighed up all the material factors, including the strong weight that needs to be given to the need to maintain immigration control, I have concluded that on balance it would not be proportionate for the Third and Fourth Appellants to return to India. Given that they are part of a family unit with their mother and older sister, the First and Second Appellants, it follows that it would not be proportionate for the family to be separated. I have, in assessing the appeals of the first two Appellants, also taken into consideration that there are no adverse factors given that the first Appellant has resided lawfully albeit precariously in the UK since February 2011 and that she has worked to support herself. The second Appellant both works and studies and has been a dependent on her mother throughout, albeit she is now a young adult aged 21. I further find that it is clear from her evidence that she was also negatively impacted by domestic violence by her father and retains a fear of him and his family and further violence were they to find her in India, due to threats received by social media, which I find are credible.

Notice of Decision

42. For the reasons set out above, I allow all four appeals on human rights (Article 8) grounds.

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Rebecca Chapman*

Date 5 November 2019

Deputy Upper Tribunal Judge Chapman

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid.

Signed *Rebecca Chapman*

Date 5 November 2019

Deputy Upper Tribunal Judge Chapman