



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

Appeal Number: HU/21705/2018
HU/21708/2018
HU/21724/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 7 October 2019**

**Decision & Reasons Promulgated
On 25 November 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**DAMANDEEP
SHARMA
SHARMA
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Uddin

For the Respondent: Mrs Petteerse, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of India. The first and second appellants are the parents of the third appellant who was born in 2010. The third appellant is a 'qualifying child' for the purposes of section 117 of the 2002 Act (as amended), having lived in this country for more than seven years. The Secretary of State, by a decision dated 12 October 2018, refused the applications made by the appellants for leave to remain on human rights

grounds. The appellants appealed to the First-tier Tribunal which, in a decision promulgated on 29 May 2019, dismissed the appeal. The appellants now appeal, with permission, to the Upper Tribunal.

2. The appellants assert that the judge made an error by finding that the first and second appellants have no right to remain in the United Kingdom [100]. The appellants submit that the first and second appellants had been granted limited leave remain and now enjoy leave under the provisions of section 3C of the Immigration Act 1971 whilst their appeals are pending.
3. I find that the judge has not erred in law. At [100], the judge referred to the fact that neither the first nor second appellant 'have a *right* to remain' [my emphasis]; the fact that the appellants may have limited leave to remain whilst their appeals are pending is not, with respect, the same as having a right to remain here indefinitely. It is plain that the judge uses the expression 'right to remain' in the sense of citizenship or indefinite leave to remain and the first and second appellants do not have a 'right' in that sense. To adopt the interpretation suggested by the appellants would render the passage from *EV (Philippines)* [2014] EWCA Civ 874 which I cite below meaningless.
4. The appellants also assert that the judge erred by concluding that it would be reasonable to expect the third appellant to leave the United Kingdom. It is submitted that the judge also found that it would be in the best interests of the third appellant to remain in the United Kingdom and that the two findings are contradictory.
5. Again, I find that the judge has not fallen into error. It may well be in the best interests of a child to remain this country and at the same time also reasonable for the child to leave it. Whilst it is important for decision-makers to carry out a 'best interests' assessment, this appeal turns on the question of reasonableness. Clear guidance has been provided by the Supreme Court in *KO (Nigeria)* 2018 UKSC 53 to which the judge made reference at [95]. He referred also to *EV (Philippines)* at [58]:

"58. In my judgment, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?"
6. The judge has answered the 'ultimate question' in this appeal and supported his conclusion with cogent reasons at [100-113]. He has directed himself appropriately in respect of the law. He concluded that it would be reasonable to expect the third appellant to travel to India with his parents, neither of whom have a right in the long term to remain living in the United Kingdom. The judge's finding [100] that the third appellant's best interests are met by his remaining within the same family unit as his

parents is, notwithstanding his length of residence in this country, unimpeachable. Accordingly, this appeal is dismissed

Notice of Decision

This appeal is dismissed.

Signed

Date 21 November 2019

Upper Tribunal Judge Lane