



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/42908/2013
IA/42909/2013

THE IMMIGRATION ACTS

Heard at Field House
On 7 May 2014

Determination Promulgated
On 14th May 2014

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

MR JAG MOHAN CHOUDHARY
MRS SARITA CHOUDHARY

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M Khan a solicitor from Bukhari Chambers Solicitors
For the Respondent: Ms A Everett a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are citizens of India who were born on 1 February 1961 and 7 April 1971 respectively. They are husband and wife and I will refer to them in this way and together as the appellants. They have been given permission to appeal the determination of First-Tier Tribunal Judge Holder (“the FTTJ”) who dismissed their appeals against the respondent’s decisions of 9 June 2011 to refuse them leave to remain in the UK on human rights grounds. The FTTJ

heard three appeals; those of the husband and wife and the other of their son Anush Choudhary. I will refer to him as the son. The FTTJ allowed the appeal of the son on Article 8 human rights grounds. The respondent has not appealed against that decision.

2. The husband came to the UK on 23 April 2004 and was granted leave to remain as a visitor until 5 July 2004. The wife and the son came to the UK on 22 May 2004. They were granted leave to remain as visitors until 5 July 2004. All of them remained here without any leave after 5 July 2004. They applied for leave to remain outside the Immigration Rules on 10 May 2011 leading to the respondent's decisions of 9 June 2011.
3. The three of them appealed and the FTTJ heard their appeal on 18 February 2013. Both sides were legally represented, the appellants and the son by Mr Khan who appears before me. The FTTJ heard evidence from the appellants, the son and a friend of the family. The respondent's position was set out in a refusal letter dated 4 October 2014. This was that the appellants and the son did not meet the requirements of paragraph 276ADE of the Immigration Rules in relation to private life or Appendix FM of the Immigration Rules in relation to family life. To return them to India would not be a disproportionate interference with their right to respect for their private and family lives so as to breach their Article 8 rights.
4. In the determination the FTTJ made findings of fact in relation to the appellants and the son. He concluded that none of them met the relevant private life requirements under paragraph 276ADE of the Immigration Rules. None of them met the family life requirements under Appendix FM or EX1 of the Immigration Rules. Their appeals failed under the Article 8 human rights requirements in the Immigration Rules.
5. The FTTJ went on to consider the Article 8 human rights of the appellants and the son outside the Immigration Rules. The five-step tests in Razgar v SS HD (2004) UKHL 27 were followed. The questions posed in the first four of the tests were answered in the affirmative in relation to both private and family lives. The appeals turned on proportionality. The FTTJ found that there would be a disproportionate interference with the son's private life if he was returned to India. There would not be a disproportionate interference with his family life if the husband and wife were returned but he was not.
6. The FTTJ found that there would not be a disproportionate interference with the right to respect for their family and private lives if the husband and wife were returned to India.
7. The appellants applied for and were granted permission to appeal by a judge in the First-Tier Tribunal. The grounds argue that the FTTJ erred in law. It is submitted that the decision is unjustifiably harsh. The factors which it is argued should have led to this conclusion are set out. The FTTJ erred in his reasoning leading to the conclusion that the appellants still had ties to India

and that the husband had the ability to run a business there. It was an error to find that the interference with their Article 8 rights was in pursuit of a potentially legitimate and lawful aim, namely the interests of effective immigration control. The conclusion that it was the appellants' responsibility to ensure that they remained in the UK legally failed to take into account the evidence that they had been ill-advised by their previous legal adviser. The FTTJ had failed to take into account the bond between the appellants and the son and their mutual dependence on their grandchildren. Insufficient regard had been paid to their old age. There had been no proper assessment of proportionality in line with the relevant authorities or the effect which their removal would have on the private and family life which they had established in the UK.

8. There is a Rule 24 response from the respondent which submits that there is no error of law and that the FTTJ gave appropriate self-directions.
9. Mr Khan relied on the grounds of appeal. The appellants had two children, the son and another son (Kartik) both of whom live with them. Kartik had two sons. His leave to remain in this country is due to expire in July 2014. He is separated from his partner and his sons do not live with him. The appeal decision, if implemented, would split the family. The son wished to complete his education in mechanical engineering. The wife was born two days after her father died. The family considered this highly unlucky and as a result she was not brought up by her own mother and her family regarded her "differently". The husband and the son had only worked in this country because they needed to do so in order to survive.
10. In reply to my question, Mr Khan said that the FTTJ had not been provided with a valuation of the family home in this country. He argued that if the husband and wife were removed the sons would not have the means to visit them in India. I was asked to find that the FTTJ erred in law, set aside the decision and re-determine it. He asked for the opportunity to present further evidence although he was not able to tell me what this would be or why it had not been done before, as required by standard Directions.
11. Ms Everett asked me to find that there was no error of law. The FTTJ properly considered the relevant principles of law. The FTTJ gave clear reasons for the conclusion why the son did not have ties to India that the husband and wife did. They lived in India both as children and as adults. The FTTJ reached conclusions open to him on the evidence as to the husband and wife having ties in India. The fact that the family would be split up if the son decided to remain in this country was properly addressed. It was open to the FTTJ to say that there was no dependency creating a family life going beyond normal emotional ties between adults. I was asked to uphold the determination.
12. In his reply Mr Khan submitted that the family were closely dependent on each other. These were more than normal emotional ties. The husband and

wife had no contact with their families in India and it would be very harsh to split the family. Their grandchildren would be taken out of their lives.

13. I reserved my determination.
14. Much of what is said in the grounds of appeal relies on submissions that might have some force if the FTTJ had or should have reached findings of fact entirely or substantially in line with the evidence given mainly by the appellants but also by the son. The submissions pay little or no heed to the findings actually made by the FTTJ. I find that in a clear and carefully reasoned determination the FTTJ made findings of fact which were open to him on all the evidence. It was open to him to come to the conclusion that the appellants still had ties in India for the reasons he gave in paragraph 38 (iv). The FTTJ did not say that the husband could restart his old business in India but that he had shown the ability to run a business in India. It would be surprising if the husband's property in Maidenhead Berkshire was still worth something in the region of the £160,000 which he paid for it in 2006, the more so in the absence of any reason why this should be the case or any independent evidence as to value. The FTTJ recognised that the appellants had established ties and connections in the UK since they had been here but they had spent the greater part of their childhood and adult lives in India. The submissions pay little regard to the fact that apart from a short period when they first arrived the appellants have never had any leave to remain here. It was open to the FTTJ to find that the husband kept abreast of the situation in India on the basis of his evidence that he sometimes watched Indian news on television.
15. I can find no fault with the conclusion that the respondent's decisions and the interference with the appellants' private and family lives are in accordance with the law, in pursuit of a potentially legitimate and lawful aim namely the interests of effective immigration control (paragraph 32 and 33). The grounds did not disclose why this might be so.
16. The FTTJ accepted the evidence that the appellants had taken some steps to regularise their stay in the UK by instructing a legal adviser who failed properly to deal with their cases but, having done so, it was still open to him to come to the conclusion that "it is their responsibility to ensure that they and their family remained in the United Kingdom legally" and "the fact is that they knowingly remained in the United Kingdom illegally".
17. I find that FTTJ gave proper consideration to the bond between the appellants and both their sons and their grandchildren as appears from paragraph 38 (v) and (vi). I do not consider that it would have been appropriate for the FTTJ to find the appellants to be in "their old age" as is suggested in the grounds.
18. I find that the FTTJ gave detailed in proper consideration to the appellants' private and family lives on Article 8 human rights grounds outside the Immigration Rules.

19. The FTTJ did not make an anonymity direction. I have not been asked to make one and I can see no good reason to do so.

20. The grounds of appeal are, in essence, no more than disagreement with conclusions properly reached by the FTTJ. I find that there is no error of law and I uphold the determination.

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Signed
Upper Tribunal Judge Moulden

Date 8 May 2014