IAC-FH-CK-V2

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/20862/2014
IA/20863/2014
IA/20864/2014

THE IMMIGRATION ACTS

Heard at Field House
On 17 June 2015
Prepared 17 June 2015

Decision & Reasons Promulgated
On 9th July 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR O V
MRS O V
MASTER V V
(ANONYMITY DIRECTION MADE)

Respondents

Representation:
For the Appellant: Mr P Nath, Senior Presenting Officer
For the Respondents: Ms J Norman, Counsel instructed by Sterling Law Associates LLP

DECISION AND REASONS

1. In this decision the Appellant is referred to as the Secretary of State and the Respondents are referred to as the Claimants.

2. The Claimants, Ukrainian nationals born respectively on 19 March 1981, 10 March 1983 and 12 May 2003, appeal against the Secretary of State's decisions to make removal directions following the service of a form IS.151A and a decision to refuse leave to remain based upon a human rights based claim.

3. Their appeals came before First-tier Tribunal Judge Clough (the judge), who on 11 February 2015 allowed their appeals based upon Article 8 of the ECHR. In somewhat confused terms it appeared that the judge was allowing the appeal under the Immigration Rules but from reading of the decision [D] and the notice of decision itself it is clear that he rejected the appeals under paragraph 276ADE of the Immigration Rules in respect of each of the Claimants.

4. The challenge by the Secretary of State was made on four grounds. Their application was considered by First-tier Tribunal Judge P J M Hollingworth, who stated:

> "An arguable error of law has arisen in relation to the extent of the consideration of the application of the criteria set out in Section 117."

This appears to be intended to be a reference to Sections 117A and 117B of the Immigration Act 2014 amending the NIAA 2002.

5. The judge in granting permission made no reference whatsoever to grounds 1, 2 and 3 raised by the Secretary of State and much time was necessarily taken trying to sort out whether or not by implication it was intended those grounds were regarded as arguable or alternatively that notwithstanding a complete want of reference to it they were unarguable. It is extremely difficult to infer any reason why those grounds could be said to be unarguable. It was unhelpful for the judge to have omitted reference to clearly material grounds of challenge whatever their outcome might have been.

6. Having heard the parties' submissions on it and Mr Nath agreeing so far as the Secretary of State was concerned that it was open to me to do so, I considered the application for permission sitting as a First-tier Tribunal Judge and concluded that the grounds should be enlarged to include grounds 1 and 3 as originally drafted. The submissions were then made with reference to grounds 1, 3 and 4.

7. Having heard the parties' submissions which the brevity of this decision is not intended to make light of the considered views expressed I was satisfied that the judge provided adequate reasons in law and sufficient reasons on the findings of fact made to sustain the decision he ultimately reached. It certainly could be argued that more extensive reasons to justify the conclusions he reached in relation to the third Claimant would have been not only helpful but left the person settling the grounds on behalf of the Secretary of State in a better informed position as to the judge's reasoning.

8. It seemed to me that I should not interfere with the judge's findings of fact made having heard the Claimants' evidence and he also having had the benefit of an expert report from Dr Olga Volosova. Having carefully considered her report, not least

based upon her experience as a teacher for six and a half years in the Ukraine, in higher education before coming to the UK and her knowledge of school teaching systems in the Ukraine the judge was entitled to give weight to it. She had also formed a view on the third Claimant's language and writing skills and what that might have in terms of significance of enabling him to integrate into the Ukrainian education system. The judge made findings on those matters at [D] paragraphs 7, 8, 9 to 12 and ultimately on the principal issue under Article 8 of the ECHR [D] paragraphs 14 and 15. I do not suggest that the reasons given could not have been enlarged and improved upon in the way they are expressed. Be that as it may it is not for me to interfere with and rewrite decisions simply because I might have reached the same or a different decision and/or expressed it with fuller reasons. I agree with Mr Nath that the reasoning is poor. However, it does not seem to me that another Tribunal would on a reading of these evidence have been likely to have reached a different decision than the one that was reached. It may be said by comparison with other cases that these Claimants have done significantly better in the UK than other Claimants have done in other cases but the exercise is not one of a comparison between different cases; where plainly the factual context is often materially different; or with different emphasis or possibly even different merits. For these reasons I am therefore satisfied that the Original Tribunal made no material error of law.

NOTICE OF DECISION

The Original Tribunal's decision stands. The appeal by the Secretary of State is dismissed.

An anonymity order was made which is to be continued.

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

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

Signed Date 7 July 2015

Deputy Upper Tribunal Judge Davey