IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/44094/2014
IA/44096/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 December 2015	**On 15 January 2016**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

MB
SG
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr B Singh, Counsel instructed by Malik Law Chambers Solicitors
For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

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

Unless and until a Tribunal or court directs otherwise, the appellants 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

appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellants are nationals of Grenada. MB was born on 31 March 1980 and SG was born on 9 November 1980. They are partners and they have a son, KB, who was born on 9 December 2010. Like his parents, KB is a citizen of Grenada.

2. MB came to the UK in 2002 and he was granted a right of residence as the spouse of an EEA national until 5 April 2008. He was granted a residence card on 15 October 2009 which expired on 15 October 2014. He applied for a residence card under Regulation 10(5) of the 2006 Regulations on 8 September 2013, but this was refused by the Secretary of State on 20 December 2013.

3. SG came to the UK in August 2002 as a visitor and then she was granted leave as a student on a number of occasions until 31 January 2010. On 8 January 2010 she applied to vary her leave as a Tier 4 Student. The application was refused and her appeal was dismissed on 4 August 2010. She made subsequent applications, one as a student and the second on human rights grounds both of which were refused without a right of appeal. She made an application to the respondent to reconsider and this resulted in a decision of 6 November 2013 which gave her a right of appeal. Her appeal came before a First-tier Tribunal Judge on 20 February 2014 who adjourned it to link with MB's appeal. Their appeals were ultimately heard on 24 July 2014 by Judge Oxlade and dismissed under the EEA Regulations and Article 8.

4. The appellants made further submissions on 2 October 2014 and a further decision was generated on 22 October 2014 which gave them a further right of appeal. It is this decision against which the appellants appealed and which came before Judge of the First-tier Tribunal Coll, who dismissed the appeals under Article 8 in a decision which was promulgation on 17 June 2015 following a hearing on 13 May 2015. Permission was granted to the appellants by Judge of the First-tier Tribunal P J M Hollingworth. Thus the matter came before me.

The Decision of the First-tier Tribunal

5. Judge Coll heard evidence from the appellant SG and her mother. MB was present at the hearing, but did not give oral evidence. He had made a statement of evidence which the judge took into account.

6. The judge quoted extensively from the decision of Judge Oxlade, who had dismissed the appeals less than a year prior to the hearing and applied the guidance in Devaseelan [2002] UKIAT 00702. There is no challenge to the application of the guidance in Devaseelan.

7. Judge Oxlade ("the first judge") made extensive findings in relation to Article 8 and recorded in his decision that the appellants had not argued

that they met the requirements of paragraph 276ADE of the Immigration Rules and, in any event, had they done so it would be an uphill struggle for SG to argue that she had no ties to Grenada.

8. The first judge found that the child's world centred on his parents and he would follow them wherever they go without difficulty, and it would not be unreasonable for him to go with them to Grenada. The judge found that the appellants had a substantial private life here in the UK and that they had established a family life with the grandmother with whom they live.

9. The case before the first judge and Judge Coll was presented on the basis that SG was her grandmother's carer. The first judge found that the grandmother had overstated her dependence on SG. The first judge found that if the appellants were not living with the grandmother and should they return to Grenada there would be suitable arrangements in place to care for her here.

10. The first judge considered the child's private life but noted that he had not started school and there was no evidence that he had a private life outside his immediate family. The first judge found that there was family life here in the UK with SG's grandmother that departure of the appellants to Grenada would lead to upheaval in her care arrangements, but that the appellants had no expectation of being able to remain in the UK permanently. SG's immigration status here was precarious and although the judge accepted that there was dependence (between SG and her grandmother), it was not to the extent the witnesses put forward.

11. The first judge concluded that the best interests of the child were not a "terribly strong factor in this case, in view of the age of the child". The judge concluded that although SG may not be able to live with her family in Grenada it cannot be said that there are no ties nor that the couple have been away for so long that they would not be able to settle back there and that although there would be disturbance to their lives it would be temporary until they were settled.

12. Judge Coll had the benefit of hearing oral evidence from SG's grandmother, VG, and concluded that SG was endeavouring to paint a picture to show that it would be almost impossible for the grandmother to cope without her and impossible for the family to relocate to Grenada.

13. The judge took into account the recent evidence, not before the first judge, relating to the son who by then was attending nursery, and the medical evidence relating to VG. The judge that VG did not suffer from three new health conditions (as asserted by the appellants) and found that her condition had not materially changed for reasons that are recorded at paragraphs 69, 70, 71 and 72 of the decision. The first judge found, that the claimed dependence was overstated and judge Coll found that it had only marginally increased. In relation to the child the judge accepted that he attended nursery full-time but concluded that there was no material

change in circumstances since the decision of the first judge for reasons which are recorded at paragraph 66.

The Grounds of Appeal and Oral Submissions

14. The first ground of appeal is that the judge did not properly consider Article 8 in accordance with R v SSHD ex parte Razgar [2004] UKHL 27 and in the context of Kugathas v SSHD [2003] EWCA Civ 31. The second ground asserts that the judge failed to have proper regard to ZH (Tanzania) v SSHD [2011] UKSC 4 and Section 55 of the Borders, Citizenship and Immigration Act 2009.

15. I heard submissions from both representatives. Mr Singh submitted that in his view what the judge had done was to simply dismiss the appeal under Article 8 because the appellants could not meet the requirements of the Rules and this amounts to an error of law. The judge failed to consider all of the evidence in relation to the best interests of the child.

16. Mr Singh argued that the judge failed to take into account that the family could not return to Grenada because they do not have any connections there. There would be no accommodation and uncertainty, which would not be in the best interests of the child. The assessment of the children's best interests was inadequate. The judge, according to Mr Singh, did not acknowledge the difficulties for the child of integrating into Grenada and the uncertainty which he would experience having completed two and a half terms of nursery school here in the UK.

Conclusions

17. Ground 1 in my view is wholly misconceived. It was not argued that the appellants in this case could meet the requirements of the Immigration Rules and indeed they could not do so by a wide margin. The judge did not consider that this was conclusive of the outcome of the appeal as Mr Singh suggested. The judge properly directed himself extensively in relation to Article 8 (see paragraphs 32 to 40). It is clear having considered the decision as a whole, that the outcome turned on whether or not the interference to the appellants' private and family life was proportionate and there was no need for the judge to deal specifically with each and every step of the Razgar guidance.

18. Significantly the judge did not accept the relationship between SG and her grandmother to involve the level of dependency as they claimed and there is no challenge to this finding. The judge did not refer to the case of Kugathas but from the decision it is clear that the judge, like the first judge, found that there was family life, but the issue turned on proportionality. The failure to mention Kugathas does not amount to a material error of law.

19. I asked Mr Singh to identify the evidence that the judge failed to take into account in this regard to the child's best interests. He referred to school achievement awards and documentation from the school. I referred him to paragraph 66 of the decision which indicated to me that in fact the judge had taken into account the further evidence that was not before the First-tier Tribunal and to which Mr Singh referred. Mr Singh was unable to refer me to any evidence that the judge failed to take into account or matters that the judge erroneously took into account in relation to proportionality or the best interests of the child. The judge clearly found that there was no reason to depart from the decision of the first judge in relation to the best interests of the child having taken into account the evidence that was not before the first judge. It is unarguable that the evidence established anything other than that the child's best interests were to remain with his parents, whether in the UK or in Grenada, having considered his age, circumstances and nationality.

20. Mr Singh raised matters which were not in the grounds of appeal, namely that the judge did not take into account difficulties regarding integration in Grenada but there was no basis for this. The judge considered the evidence submitted in relation to Grenada's economic situation at paragraphs 64 and 65 and made findings at paragraph 60 in relation to the SG's family in Grenada.

21. The grounds do not establish that the judge made an error of law. I have taken into account paragraph 84 where the judge stated that "the second appellant's claim is dependent on the success of the first appellant" and therefore her appeal can only fail. I am not entirely sure what the judge had in mind because both partied were appellants. This is not in any event material to the outcome of the appeal.

22. The judge properly assessed proportionality. It has not been shown that there was any procedural error in relation to Article 8 and the consideration of Article 8 outside of the Immigration Rules. If this were the case, it was not material to the outcome. It is difficult to see how the judge on the evidence and having properly applied Devaseelan could have reached a different.

Notice of Decision

There is no error of law. The decision of the judge is maintained and the appellants' appeal is dismissed.

No anonymity direction is made.

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appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Joanna McWilliam Date 14 January 2016

Upper Tribunal Judge McWilliam