



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

Appeal Numbers: HU/13328/2016
HU/13336/2016

THE IMMIGRATION ACTS

Heard at Field House

On August 31, 2017

**Decision & Reasons
Promulgated
On September 8, 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MUKESHKUMAR [P]
[M P]
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Swain, Counsel instructed by Eagles Solicitors
For the Respondent: Mr P Armstrong, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I do not make an anonymity direction in this matter.

2. The appellants are citizens of India and are father and minor daughter. He first entered the United Kingdom as a visitor with six months' leave valid until March 28, 2000. He has been an overstayer since that date. In March 2006 he married and he and his wife have a daughter who is the second named appellant in this appeal.
3. The first named appellant's wife has made a separate application for leave to remain and this was refused by the respondent on May 25, 2016.
4. On February 25, 2016 the appellant lodged the current application for leave to remain under the Immigration Rules on Article 8 ECHR. The respondent refused that application on May 12, 2016 and grounds of appeal were lodged by both appellants on May 25, 2016. The matter was then listed before Judge of the First-tier Tribunal Grimmett on May 16, 2017 in a decision promulgated on May 22, 2017 the joint appeals were dismissed.
5. The appellants appealed that decision and on June 20, 2017 Judge of the First-tier Tribunal Baker granted permission to appeal finding it was arguable there had been no consideration of paragraph 276ADE(iv) HC 395 or Section 117B(6) of the 2002 Act.
6. The respondent filed the Rule 24 response on July 25, 2017 and the matter has been listed before me.
7. During my discussion with the parties I indicated that I believed there was an error in law and I then proceeded to identify the point in hand. In essence the Judge had considered the appeal primarily based on the position of the first named appellant and had not brought into his proportionality assessment the issue of paragraph 276ADE(iv) and in an Article 8 assessment the Judge did not demonstrate any weight had been given to Section 117B(6) of the 2002 Act. In particular, Section 117B(6) makes it clear that this is an important factor to have regard to and it is clear from the Judge's decision whilst Section 117 of the 2002 Act was considered it was only from the point of whether the first named appellant spoke English and whether he had paid taxes and was financially independent. Whilst the Judge accepted the second named appellant had established a private life he concluded that she could return to India. No regard was given to the fact that she had been here for over seven years and at the date of hearing she had been here for nine years.
8. Mr Swain acknowledged that these factors may ultimately not lead to a different outcome but his submission, which I accepted, was that the Judge should have given those issues some weight.
9. Mr Armstrong accepted that the Judge's decision did not address those issues and in the circumstances I found there was an error in law.
10. Both parties agreed that I should remit this matter back to the First-tier Tribunal in light of Part 3 Section 7.1 to 7.3 of the Practice Statement. I do

not preserve any findings and the hearing should be a full de novo hearing.

NOTICE OF DECISION

11. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I remit the human rights appeal back to the First-tier Tribunal for a fresh hearing.

Signed

Date 8.9.2017

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

No fee award was requested.

Signed

Date 8.9.2017

Deputy Upper Tribunal Judge Alis