



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/05656/2016
HU/05663/2016
HU/05665/2016

THE IMMIGRATION ACTS

Heard at Field House
On 12th October 2018

Decision & Reasons Promulgated
On 6th November 2018

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

N S

S K

P S

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J Collins, instructed by G Singh Solicitors

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. This is a resumed hearing. In my decision dated 4 September 2018, I found that First-tier Tribunal Judge Housego had erred in law in dismissing the Appellants' appeals on human rights grounds.

2. The decision of 31 July 2017 was set aside and the appeal adjourned, to be reheard on the single issue of whether it would be reasonable to expect the third Appellant to leave the UK. The judge's remaining findings were preserved, in particular, the first Appellant submitted a false English language certificate in a previous application and the first and second Appellants could not satisfy the Immigration Rules. Their Article 8 claims were totally dependent on the third Appellant establishing that it would be unreasonable for him to leave the UK. In response to directions the Appellants submitted a bundle of 93 pages and a skeleton argument. There was no oral evidence and the appeal proceeded on submissions only.
3. The Appellants are nationals of India born on 15 September 1974, 8 July 1974 and 18 February 2005. The first Appellant entered the UK on 5 November 2006 with leave to enter as a religious worker. The second and third Appellants, his wife and son, subsequently joined him on 28 September 2008. On 29 October 2015 the Appellants applied for leave to remain. This was refused in a decision dated 11 February 2016 and the appeal was dismissed by Judge Housego. The third Appellant was now 13 years old and had been living in the UK for ten years. His parents' application was refused on suitability grounds because his father had used deception in an application for leave to remain. He had used a proxy test taker and submitted a false English language certificate.

Appellant's submissions

4. Mr Collins referred me to page 10 of the Appellants' bundle, the letter from the third Appellant's school which stated "P is clearly well settled in our school, enjoys his studies and achieves good grades. Were he to be relocated now, this would be detrimental to his education and would certainly disrupt his progress". Mr Collins also relied on the report of an independent social worker dated 6 September 2017 in which she concluded:

"P's parents are meeting his needs, he has accommodation, his parents present as financially independent, he has access to education, he has positive relationships with wider family members in the UK, he is able to practise his faith and he has developed positive friendships with his peers in and out of school. P is achieving academically, and this is evidenced in his school reports and documents, along with the information provided by AP, P's form tutor of three years at H Grammar School. P is now at an important stage academically. AP expressed concern that if P were to relocate now, it would be detrimental to his education and would certainly disrupt his progress. P has expressed the importance of his friendships and the academic support he gains from his cousins in the United Kingdom which contributes to his education, learning and development. P presented as a pleasant, polite and quietly confident young person who has developed positive morals and values that he would have learnt not only from his parents but his experience of growing up in the UK and wider society, as reflected in the policy documents of H Grammar School. P lacks independence skills, this raises questions about how he would cope with a

complete change of culture and environment in the event that he was to relocate to India at this time. P is currently having treatment in relation to hearing loss in his right ear and is also being monitored for his dental health. Overall, I have formed the view that P's life chances and opportunities will be reduced if he were forced to relocate to India at this time. It is my view that P's current circumstances should be maintained at this time, in order that he has the opportunity to achieve the Five Outcomes for children and young people identified in The Children Act 2004, Every Child Matters, that is, 'to Be Healthy, Stay Safe, Enjoy and Achieve, Make a Positive Contribution and Achieve Economic Wellbeing'".

5. Mr Collins submitted that the third Appellant had spent little time in India. It was noted in the social worker's report that there had been three visits to India, but he could only remember one of them. He left India when he was three years old and has lived in the UK ever since. Considering the concerns of his form teacher and the social worker, it was necessary to balance the conduct of the first Appellant with the best interests of the third Appellant, applying MA (Pakistan) [2016] EWCA Civ 705. The first Appellant had been found to have submitted a false English language certificate, but other than that there was nothing adverse in his immigration history and no criminal offences. He and his wife, the second Appellant, had been productive members of society during their time in the UK. The conduct of the first Appellant was not a powerful enough reason to outweigh the best interests of the third Appellant. The family were productive and financially independent. The third Appellant was almost 14 and had lived in the UK for ten years. He was settled in education and integrated in the UK. He had close family ties with his cousins, aunts and uncles. It was in the third Appellant's best interests to remain in the UK and it would be unreasonable for him to return to India with his parents.
6. It was submitted that the Appellants' submissions were supported by the decision of a presidential panel of the Upper Tribunal in MT and ET (child's best interests; ex tempore pilot) Nigeria [2018] UKUT 0088 (IAC).

"30. The fact that ET's best interests do so lie is, we find, manifest. In this regard, we entirely agree with and endorse Judge Martin's findings on this issue in her decision. ET has been in the UK for over ten years. She arrived here when she was only 4. She is well advanced in her education in this country. As a 14 year old, she can plainly be expected to have established significant social contacts involving friends in school and outside (such as the church). She has embarked on a course of studies leading to the taking of GCSEs.

31. Conversely, ET has no direct experience of Nigeria. Whether or not there is a functioning education system in that country, her best interests, in terms of Section 55 of the 2009 Act, manifestly lie in remaining in the United Kingdom with her mother rather than, as the Respondent contended, returning to Nigeria with her mother. A much younger child, who has not started school or who has only recently done so will have difficulty in establishing that her Article 8 private and family life has a material element, which lies outside her need to live with her parent or parents,

wherever that may be. This position, however, changes over time, with the result that an assessment of best interests must adopt a correspondingly wider focus, examining the child's position in the wider world, of which school will usually be an important part.

32. That is why both the age of the child and the amount of time spent by the child in the United Kingdom will be relevant in determining, for the purposes of Section 55/Article 8, where the best interests of the child lie.
33. On the present state of the law, as set out in MA, we need to look for 'powerful reasons' why a child who has been in the United Kingdom for over ten years should be removed, notwithstanding that her best interests lie in remaining.
34. In the present case, there are no such powerful reasons. Of course, the public interest lies in removing a person, such as MT, who has abused the immigration laws of the United Kingdom. Although Mr Deller did not seek to rely on it, we take into account the fact that, as recorded in Judge Baird's decision, MT had, at some stage, received a community order for using a false document to obtain employment. But, given the strength of ET's case, MT's conduct in our view comes nowhere close to requiring the Respondent to succeed and Mr Deller did not strongly urge us to find so. Mr Nicholson submitted that, even on the findings of Judge Martin, MT was what might be described as a somewhat run of the mill immigration offender who came to the United Kingdom on a visit visa, overstayed, made a claim for asylum that was found to be false and who has pursued various legal means of remaining in the UK. None of this is to be taken in any way as excusing or downplaying MT's unlawful behaviour. The point is that her immigration history is not so bad as to constitute the kind of 'powerful' reason that would render reasonable the removal of ET to Nigeria".

7. Mr Collins submitted that, in the case of MT and ET, the child's best interests outweighed the public interest notwithstanding her mother's poor immigration history and the commission of a criminal offence. In this case the first Appellant had not been convicted of any criminal offences, although he had been found to have used a proxy test taker in an English language test. This was not a powerful reason sufficient to outweigh the best interests of the third Appellant.

Respondent's submissions

8. Mr Bramble accepted that the third Appellant's best interests were to remain in the UK but submitted that this must be balanced against his parents' behaviour. He acknowledged that a community order in the case of MT had not been considered to be a powerful reason. However, in the present case, the first Appellant had used a proxy test taker and used deception in a previous application. This was a powerful reason. The test was taken in 2012 and the last application for leave to remain was in October 2015. If the deception had been discovered sooner, then the Appellants would not have had their leave extended. Significant weight should be attached to this deception because it had lengthened the period of the Appellants' stay in the UK.

Appellant's response

9. Mr Collins submitted that, although the use of deception was a powerful reason, when considered in the round it was very detrimental to the third Appellant to leave the UK after residing here for ten years and that powerful reason was not sufficient to outweigh his best interests.

Discussion and Conclusion

10. The Appellants' application for leave to remain was refused on suitability grounds on the basis that the first Appellant had used deception in an application for leave to remain in submitting a false English language certificate. He had used a proxy test taker in his English language test. The first Appellant came to the UK as a religious worker and had also worked as a truck driver. The second Appellant was his dependant.
11. The third Appellant is now 13 years old and has been living in the UK for ten years. He is well settled in school and passed an entrance exam in order to get to grammar school. He has made three visits to India since he came to the UK aged three. He has grandparents, aunts and uncles in India. He also has aunts, uncles and cousins in the UK and they have a very close bond. It is apparent from reading the social worker's report that the third Appellant depends on his cousins in the UK to assist him with his school work. There were concerns that a relocation at this stage would be detrimental to his education and his lack of 'independence skills' raised the question about how he would cope with a complete change of culture and environment in the event that he had to relocate to India. The third Appellant speaks Punjabi, the language which is spoken at home, and he has been brought up and is familiar with Indian culture.
12. Taking all these factors into account, I find that it is in the third Appellant's best interests to remain in the UK. He has lived here for the majority of his life and has little recollection of India. He can only remember his latest visit there. He has strong ties to his family in the UK and he has also developed relationships outside his parents and family, making friendships in school and outside school. His Article 8 rights attract significant weight given his length of residence in the UK.
13. I acknowledge that, had the deception been discovered earlier, it might have resulted in leave being curtailed. Therefore, the use of deception was in some way responsible for lengthening the Appellants' stay in the UK. Save for that deception, the third Appellant's parents have made legitimate applications to remain in the UK lawfully. They are financially independent, and they have in some ways integrated, despite their lack of English language skills.

14. I am not bound by the decision of MT and ET but I find it extremely persuasive. The Appellant in that case had a very poor immigration history. She entered the UK as a visitor, overstayed, made a false asylum claim and then was convicted and sentenced to a community order for using false documents.
15. The Appellant's immigration history in this case was nowhere near as bad and, whilst the use of deception in a previous application could not be condoned, it was not a sufficiently powerful reason to outweigh the third Appellant's best interests, applying MA (Pakistan). Whilst I accept that using deception in a previous application for leave can amount to a powerful reason, on the particular facts of this case, it is not sufficient to outweigh the third Appellant's best interests or his Article 8 rights.
16. On the totality of the evidence, I find that the third Appellant is a qualifying child and it would be unreasonable for him to leave the UK. He satisfies the requirements of 276ADE(1)(iv) of the Immigration Rules and his removal from the UK would breach Article 8. Applying section 117B(6) of the 2002 Act, the public interest does not require the removal of the first and second Appellants. I allow the Appellants' appeals on human rights grounds.

Notice of decision

Appeal allowed

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.

J Frances

Signed

Date: 26 October 2018

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award of £140.

J Frances

Signed

Date: 26 October 2018

Upper Tribunal Judge Frances