



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

Appeal Numbers: HU/08621/2018
HU/08623/2018
HU/08628/2018
HU/08630/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 25 April 2019**

**Decision & Reasons
Promulgated**
On 07 June 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**ABRAHAM [R] (FIRST APPELLANT)
JINCY [G] (SECOND APPELLANT)
[T R] (THIRD APPELLANT)
[H R] (FOURTH APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Badar, counsel, instructed by Connaught Law
For the Respondent: Mr D Clarke, Senior Presenting Officer

DECISION AND REASONS

1. The Appellants, nationals of India, dates of birth respectively 28 May 1978, 17 February 1981, 15 March 2007 and 4 October 2008 appealed against the decision of the Respondent to refuse the application of the First

Appellant on whom his family are effectively his dependants who similarly appealed against decisions made refusing rights to remain in the United Kingdom.

2. Their appeals came before First-tier Tribunal Judge A K Hussain who, on 21 December 2018, dismissed their appeals. Permission to appeal was given by First-tier Tribunal Judge Saffer on 15 January 2019. The Respondent made a Rule 24 response on or about 27 March 2019.
3. The representations made at the First-tier Tribunal were by counsel Mr Plowright, instructed by other solicitors but before me Mr Badar, Counsel, instructed by Connaught Law made his submissions in support of Mr Plowright's grounds of appeal to which Mr D Clarke replied.
4. The substance of the refusal of the original application was based on the Secretary of State's assessment that the First Appellant had used a proxy test taker to take the ETS TOEIC test. The Appellant had disputed the point.
5. At the hearing of the appeal Mr Plowright had accepted that the Secretary of State had discharged the evidential burden to show that there was at least a case made out to support the allegation of fraud in the use of the proxy test taker.
6. It therefore fell upon the First Appellant to provide an innocent explanation as to the circumstances of his having taken the test. Essentially the Appellant gave a bare denial and some particulars of his recollection six years on or so since the date he had taken the test.
7. The Judge for reasons given concluded that the Appellant's evidence was unreliable and that an innocent explanation had not been provided. The Judge went on in detailed grounds to look at the broader considerations that arise bearing in mind it was a human rights based appeal which had

been argued, rather than simply one under the Immigration Rules. The Judge considered the bases raised by the Appellants of difficulties on return to India, problems the First Appellant claimed to face and in effect the preference for the First and Second Appellants to remain in the United Kingdom. The Judge also considered any very significant obstacles to return and the wider issues, including best interests of the children and the issues arising under Section 117B of the NIAA 2002.

8. The Respondent's position in these appeals, put by Mr Clarke, started from the premise that even if, taken at its highest, the first three grounds of appeal were to succeed it would still make no material difference to the outcome of the appeals because the Judge's adverse findings and conclusions referring to the claimed difficulties on return were simply unchallenged and substantively had addressed the human rights position in terms of proportionality and the assessment of the difficulties of return in all material respects. Having heard the parties submissions I agree with Mr Clarke.

9. If, however Mr Clarke's submissions were wrong, it was essentially argued that the complaints about the Judge's approach to the assessment of the evidence were misconceived and that, on the evidence as presented to the Judge, he entitled to have reached some view on the sufficiency of the innocent explanation proffered of the events. There may well be a factual error, which I simply cannot resolve, as to whether or not there were some documents provided which showed that the tests were taken, as appeared to be the case, on two successive days rather than all been heard on one day. To this extent I agree that the error was an error in all likelihood, in the Judge's understanding that all components of the two tests were taken on the same day, but it seemed to me that that was not ultimately material to the outcome of the decision.

10. I therefore concluded that the potential importance of the point rested, if at all, were the issue would be held against the First Appellant were he to seek to return to the UK.
11. To this extent therefore whilst I agree there is an aspect of the decision which does appear to have the potential for error overall I concluded that the generic evidence was sufficient, as was conceded, and that the evidence of innocent explanation even if it had been accepted would still, looking at all the evidence in the round, have enabled the Respondent to argue that the first Appellant' case of innocent explanation had not been made out in relation to the TOEIC test.
12. Therefore I cannot resolve some of the factual issues which relate to the evidence that was before me: To that extent there remains a potential of uncertainty which I cannot sort out, the fact was that the evidence in relation to the human rights based issues did not show that either the Judge had failed to properly take into account the interests of the Appellants as a whole, bearing in mind the children had only been in the United Kingdom a short period of time. There was no argument, as I understood it, that it would be unreasonable for them to leave the United Kingdom.
13. The evidence as filed, recited by the Judge, again did not take the matter forward in relation to the children to show either through education, health or personal circumstances, there were aspects which would fall for consideration under paragraph 276ADE under the Immigration Rules leading to the conclusion that they could not return or that there would be obstacles to return which rendered the Respondent's decisions unreasonable and disproportionate.
14. The Judge in granting permission to appeal in the time available for such consideration was led to grant permission it was clear that a wider view provided a somewhat different picture.

15. I concluded that there was no substance in the appeal in substance.

DECISION

The appeals are dismissed.

ANONYMITY ORDER

No anonymity order was sought nor is one required.

FEE AWARD

The appeals have been lost, no fee award was appropriate.

Signed

Date 14 May 2019

Deputy Upper Tribunal Judge Davey