Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/20677/2018
HU/20675/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6 November 2019	**On 15 January 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

BP AND PP
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Sharma, instructed by London Imperial Immigration
For the Respondent: Ms Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are husband and wife and are citizens of India, born respectively in 1984 and 1979. They appealed to the First-tier Tribunal against the decision of the Secretary of State dated 27 September 2018 to refuse their human rights claim. The First-tier Tribunal (Judge Pedro), in a decision promulgated on 22 July 2019, dismissed the appeal. The appellants now appeal, with permission, to the Upper Tribunal.

2. Mr Sharma, who appeared for the appellants, told me that there was only one issue before the Upper Tribunal. The appellants do not seek to obtain

leave to remain in United Kingdom on account of long residence but do continue to argue that the statelessness (or otherwise) of their child, SP, who was born in October 2017 in the United Kingdom, renders their return to India disproportionate. The appellants argue that, as the child has not been registered as an Indian citizen born overseas, she will not be admitted to India or, if admitted, not allowed to reside there. Judge Pedro at [10] recorded:

> "10. I note that in [the appellants'] application to the respondent the appellants indicated that the primary reason that they would be unable to return to India is the claimed statelessness of their child. Indeed, this remains at the core of their claim and appeal before me. However, the respondent has made it clear that there is no intention to return the appellants to India without their child and that all three would be returned as a family unit. The ability of the respondent to return the appellants' child to India with the appellants obviously depends upon the consent of the Indian authorities. Pertinent to this is the issue of registration of the child as an Indian citizen with the Indian High Commission in the United Kingdom (an issue I shall return to shortly in this decision) or some other form of permission from the Indian authorities for the child to travel with the appellants and remain in India. For the purposes of paragraph 276ADE I cannot see that the issue of the child's claimed statelessness can have any bearing on the appellants' integration into India upon return there, given that they would only be returned as a family unit with their child with the consent of the Indian authorities as regards their child which the respondent has made it clear would be expected to be after the registration of their child as an Indian citizen."

3. Judge Pedro was referred to the judgement in *MK* [2017] EWHC 1365 (Admin). The judge's analysis and reasons for his decision appear at [19-22] which I set out below in full:

> "19. Bearing in mind that the appellants' child is now past her first birthday, it is pertinent also to note the content of [11] of *MK*:-
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> > "Much more to the point in question what is meant by needing the permission of the Central Government for registration. The evidence of the defendant's witnesses…indicates that in practice there is no difference between registration before the child's first birthday and registration after that date. The Indian officials said that there is "no restriction" on later registration. This is important: it means that the statutory provision requiring the permission of the Central Government does not in practice imply the exercise of a discretion: permission is given routinely."
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> 20. I interject at this point to note that notwithstanding the delay in proceeding with the registration of the appellants' child at the Indian High Commission, which I consider to be entirely due to the actions of the appellants and for which they are culpable, it is to be noted that the child's prospects of registering for citizenship with the Indian authorities do not appear to have been extinguished or endangered. I find that the lack of registration to date is the culpability of the appellants and not the respondent because the appellants have claimed that the only reason that they could not register their child at

the Indian High Commission was the absence of their original passports which were being held by the respondent. Yet, in the respondent's decision dated 27 September 2018 under appeal before me, the respondent has clearly stated "The documents that you have provided are enquiries to obtain a passport for your child, not to register your child as Indian. You could have wrote (sic) to the Home Office to request that your passports were sent to the High Commission in order to process your child's application for a passport to enable you to return to India, once you had registered your child as Indian. You have had the opportunity to register your child and have failed to do so. This does not warrant granting leave to remain in the UK." Therefore, if the appellants had made any approach to the respondent for assistance in providing their original passports to the Indian High Commission for the purpose of registration of their child the respondent clearly says their request could have been accommodated and Ms Gledhill submitted that the respondent's removal team would ensure that such cooperation from the respondent would be forthcoming when removal is on the agenda for the purpose of removing the appellants and their child as a family unit to India.

21. The first appellant confirmed in her evidence before me that despite knowing that they required the production of their passports to the Indian High Commission to register their child they made no contact with the respondent to request assistance with this. The second appellant confirmed that they discovered the need for their passports when they contacted the Indian High Commission some 3 or 4 weeks after their child's birth. The first appellant claimed in evidence that she had been under the impression that if they contacted the respondent with such a request their application would have been treated as withdrawn but she confirmed that they did not contact the respondent and that this misconception on her part did not arise from any information given to them by the respondent as they made no contact with the respondent. Despite having legal representation since 2014 and approaching their legal representatives for advice regarding registration at the Indian High Commission it appears that no contact was made by the appellants or their representative with the respondent concerning the passports. Instead, the appellants did not complete any formal application at the Indian High Commission in any attempt to register their child but instead some time later, in September 2018, they paid a fee to the Indian High Commission with the second appellant attending there to obtain a letter dated 29 September 2018 appearing at page 25 of the appellant's bundle. That letter is from the Indian High Commission. It gives full details of the two appellants and their Indian passports and citizenship, as well as full details of their child. It does not say that the child cannot be registered but simply confirms that the child has not yet been registered. Indeed, the letter implies that there would be no difficulty in achieving registration consistent with the position under Indian law as referred to in MK. I find the letter to be self-serving and obtained by the appellants as part of their refusal even to contemplate proceeding with any attempt to register their child in order to pursue their aim of remaining in the United Kingdom by this spurious means. I do not consider that they have been acting in the best interests of their child in effectively withholding from the child her entitlement to be registered as an Indian citizen with all the rights that that entails and placing her in a position

of statelessness which it is apparent could have been and still can be easily avoided and remedied. As was concluded at [12] of MK, “There is no evidence before me of any actual difficulty in registering a child whom the parents wanted to register.” I find that the appellants did not want to register their child as was essentially confirmed by the first appellant towards the conclusion of her evidence before me when she said that she was not sure that she and her spouse did want to register their child at the Indian High Commission because in their view they and their child would have a better future in the United Kingdom. I consider that the appellants’ motivation for ostensibly relying on their child’s position of statelessness created by their own actions must be taken into account in the proportionality balancing exercise as, in my view, it gives added weight to the public interest in maintaining effective immigration control.

22. I would make one final observation concerning the appellants’ reliance on the decision in MK. The issue in MK was set out at [4] thereof. It was whether or not for the purpose of paragraph 3 of Schedule 2 to the British Nationality Act 1981 the child in that case, who was aged 6 at the time, was and had always been stateless. It was concluded that because the child had never been registered with the Indian High Commission that child was and had always been stateless. I am aware that this would currently apply to the appellants’ child in the case before me as she has not yet been registered notwithstanding that I consider the fault for this lies entirely with the appellants. However, the appellants’ child is under 2 years of age and is not eligible for registration as a British citizen as she is not yet 5 years of age for the purpose of paragraph 3 of Schedule 2 to the 1981 Act. This was not the case in MK where it was decided that that child was eligible for registration as a British citizen. That is not the case in the appeal before me. Whilst I accept that pursuant to the guidance in MK the appellants’ child is currently stateless she is not currently eligible for British citizenship but only Indian citizenship. The latter is being withheld from her only as a result of a planned course of action by the appellants in pursuance of their desire to remain in the United Kingdom and the evidence before me strongly indicates that this situation could easily be remedied with the cooperation of the appellants in proceeding with the registration with which the respondent has always indicated he would cooperate and facilitate any such registration by making the appellants’ passports available to the Indian High Commission. I consider that this distinguishes the facts of this case from those in MK and that these are material considerations to be taken into account in the proportionality balancing exercise under Article 8 which is the issue before me and was not the issue in MK. Indeed, it was recognised in MK that the conclusions reached on statelessness in that case arising from a lack of registration and that appellant’s consequential right to British citizenship could open an obvious route to abuse. I find that in the present appeal before me there has been demonstrated the type of abuse envisaged in MK but in circumstances where the appellants’ child does not currently have a consequential right to British citizenship and this calls for appropriate weight to be given by me to the public interest in the proportionality balancing exercise I have to conduct.”

4. Mr Sharma challenged that analysis. He submitted that the First-tier Tribunal had perpetrated ‘errors of approach’. He submitted that MK had shown that connivance by parents in manufacturing a situation whereby a child was, in effect, stateless should not be held against the child him or herself; the only relevant consideration was whether or not registration as a citizen had taken place. Without registration, the child could not return to India and, as a consequence, his carers (parents) would not be able to return to the country of their nationality.

5. *MK* makes it clear that registration of a child born in this country can take place in the United Kingdom prior to a family returning to India [12-13]:

> “There are other provisions of the law, to which I was referred, but on which I do not need to make any specific finding. There are possibilities for applying for registration as a citizen where a person born outside India comes to live in India while still a minor, and there are provisions for the backdating (if necessary) of the Central government permission. There is no evidence before me of any actual difficulty in registering a child whom the parents wanted to register.
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> The Indian law and practice as revealed from the evidence is that a child born to an Indian parent outside India has a right to Indian citizenship, which, if the child was born on or after 3 December 2004 is obtained by registration at the Indian consulate after fulfilling appropriate administrative procedures directed to identification of the child and the parents and their nationality. The child's age has no impact on the process.”

6. Further, at [38], Mr Ockelton, sitting as a Deputy High Court Judge in *MK* stated:

> “Given the importance of actual nationality rather than the ability to acquire it, a claimant's ability to show that he or she meets the statutory requirement of not having or having had any nationality becomes an individual issue. If the question depended on the possibility of the acquisition of nationality it could be answered, or largely answered, by an examination of the relevant foreign law; but if it depends on actual acquisition, the foreign law is merely the background against which the individual's actual acts and their effect are to be seen.”

7. In my opinion, the appellants have misconstrued the reasoning of Judge Pedro. Whilst it does appear at [21] that the judge finds unattractive the parents’ refusal to register the child’s birth with the Indian Consulate purely as a means to prolong the family’s continuing residence in the United Kingdom, I find that it emerges clearly from the judge’s analysis that he considered that the parents would apply for registration should the return of the family to India be required. The First-tier Tribunal was required to make findings of fact; by reference to the detailed passages of analysis quoted above, I consider that one such finding is that the parents currently have an intention to apply for registration if required to return to India. As the judge stated at [21], the only obstacle to the parents registering the child’s birth was that the child ‘would have a better future

in the United Kingdom'; if the child is not in the United Kingdom, then it is obvious that, in order to protect her best interests, the parents would register as a citizen of India. Moreover, if there is any doubt that the First-tier Tribunal has not articulated that finding clearly enough, then, were I to remake the decision on the same facts, I would certainly make such a finding. As a consequence, any problem concerning the judge's observation that the parents 'could' apply for registration (as opposed to whether they 'would' do so) is removed. Applying for registration is, therefore, simply be one of several arrangements which the family would need to make in order to prepare for their return to India.

8. In the light of what I say above, I find that the First-tier Tribunal's analysis is legally accurate and represents a clear analysis of the relevant facts. Even if the judge has concentrated too much upon what the parents could do as opposed to what they would do, I have indicated that, if I were to remake the decision, I would find that parents have a present intention to apply for registration while still in the United Kingdom and before departure notwithstanding their refusal or reluctance hitherto to do so. Accordingly, I see no reason to set aside the decision of the First-tier Tribunal and the appeal is dismissed.

Notice of Decision

This appeal is dismissed

Signed Date 31 December 2019

Upper Tribunal Judge Lane

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.