Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HU 05164 2020
& HU 05166 2020

THE IMMIGRATION ACTS

Heard at First-tier Tribunal	**Decision & Reasons Promulgated**
On 11 January 2022	**On 27 January 2022**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SUNITA RANI
SUKHJINDER SINGH
(anonymity direction not made)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr N Mohammad, Counsel instructed by Legis Chambers
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by two citizens of India against a decision of the First-tier Tribunal promulgated on 9 July 2021 dismissing their appeals against a decision of the respondent on 26 March 2020 refusing them leave to remain on human rights grounds.

2. The appellants entered the United Kingdom lawfully in January 2010 as a Tier 4 Student and her dependant. They have had two children in the United Kingdom, a son, G who was born in January 2017 and so is now almost 5 and another son, J, who was born in August 2019 and is therefore approximately 2½

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years old. The First-tier Tribunal concluded, like the Secretary of State, that refusing them leave to remain did not interfere disproportionately with their protected private and family life.

3. There are three grounds of appeal. Permission has been given on all grounds and I am grateful to Mr Mohammad for his realistic and economical presentation of the case today.

4. The first ground of appeal complains that there was no proper regard for the consequences of a previous adviser's misfeasance. The words used might be thought clumsy (Mr Mohammad had not settled the grounds) but the underlying point is clear enough. This is a case where, at some stage, the appellant made an application supported by false documents. They were not in any way to be blamed for that except to the extent that they had the misfortune to choose to instruct somebody who was not honest. Their innocence has been accepted by the Secretary of State and is substantiated by documents before me although the point was established before the First-tier Tribunal. That is very unfortunate for the people concerned but is not in itself a reason to allow them to remain in the United Kingdom.

5. The grounds draw attention to a decision of the President of this Tribunal in **Mansur (Immigration adviser's failings: Article 8) Bangladesh [2018] UKUT 00274 (IAC)**. I have had an opportunity of reading that case. There, the President made it absolutely plain that the previous adviser's failings would rarely have any impact on the public interest in a person's removal. Only in very unusual circumstances will a legal representatives' error diminish the public interest in enforcing immigration control. The President gave examples of how it could happen but they are not directly relevant here and the First-tier Tribunal was clearly alert to the point. It was considered at paragraph 61 and I can see no possible basis for saying that the First-tier Tribunal misunderstood or misapplied the law or came to any conclusion that was in any way irrational. It is a feature of the case; it was considered but it does not really assist the appellants at all.

6. The second ground again can be dealt with, I find, quite summarily. There was failure, it is said, to give due weight to the first appellant's health issues. Well, the first appellant does have health issues including diabetes and there was a perfectly clear point made in her statement that treatment for diabetes was expensive but that was utterly unparticularised. I do not know what "expensive" means, either subjectively from the point of view of the appellant or objectively from the point of view of what such treatment costs in India. Ms Everett said, with considerable justification, that it is a disease common in India and Mr Mohammad, with equal justification, reminded me that I do not have judicial knowledge of what treatment. The point that is more important is that the appellant did not lay any evidential foundation beyond the bare assertion that it was expensive that begins to suggest that the treatment would be either unavailable because it is not there or unavailable because she could not access it in a way that becomes anything like a weighty point in a human rights Article 8 balancing exercise. The necessary groundwork was either not done or not disclosed.

7. I am more concerned about ground 3 because it does, I find, have some theoretical merit. The essence of the complaint is that the judge did not deal with the appellant's complaint that the Secretary of State had delayed but the difficulty I have with that is I cannot see how there is any material point to be made here. This is a case where the appellants entered the United Kingdom with leave, applied to extend that leave, eventually were unsuccessful and ran out of leave and remained in the United Kingdom. It is very different from the essential fact in **EB (Kosovo) v SSHD [2008] UKHL 41** on which the appellant seeks to rely because there, the Secretary of State delayed in making a decision when a person had leave and the appellant in that case got on with her life and the courts found more than a little sympathy for her circumstances. It is plain that delay can sometimes be a relevant factor but it is very difficult to find delay relevant when there has not been some degree of fault on the part of the Secretary of State such as, for example, an application being misplaced and there is no decision for a prolonged period. This is not that kind of case at all. The delay in enforcing removal, to the extent there has been delay here, has been the result of the Secretary of State processing further applications that the appellant chose to make. There is nothing wrong in making further applications but I cannot accept that delay in removal as a result of considering the applications could, absent extraordinary circumstances, be turned around on the Secretary of State to say that processing the applications is some sort of acquiescence in the presence of the appellant in the United Kingdom which diminishes the public interest in removal.

8. Mr Mohammad again was absolutely correct when he said that, usually at least, the longer and element of private and family life continues, the stronger an Article 8 claim gets. It does, usually, because presence in the United Kingdom usually significantly increases a person's private and family life but such increase is not necessarily very significantly and not in a way that overcomes the public interest in enforcing immigration control. So, whilst the First-tier Tribunal Judge might have failed to engage specifically with a ground of appeal, there is, in my judgment, so little in the point that there is no material error on the part of the Judge.

9. It follows therefore that although I, like the First-tier Tribunal, am very aware that this is a case involving people who have been in the United Kingdom for some time and there are two children to consider, find that there has been no material error of law.

Notice of Decision

10. The appeal is dismissed

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 14 January 2022