



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

Appeal Numbers: IA/05057/2013  
IA/05070/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination  
Promulgated**

**On 27 November 2014**

**On 2 December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHAERF**

**Between**

**ASHMA GUPTA (FIRST APPELLANT)  
BHARAT GUPTA (SECOND APPELLANT)  
(ANONYMITY ORDER NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr S Kandola of the Specialist Appeals Team

For the Respondent: Mr D Coleman of Counsel instructed by Krish Ratna & Co,  
solicitors

**DECISION AND REASONS**

**The Respondents**

1. The Respondents to whom I shall refer as “the Applicants” are mother and son born respectively in 1976 and 1998. They are both citizens of India. They first arrived on 3 May 2004 with leave to enter as visitors. The first

Appellant (the mother) returned to India and re-entered on 16 August 2004 with leave as a student. The mother's leave was extended and subsequently varied to leave as a work permit holder and then as a Highly Skilled Migrant Person and lastly as a Tier 1 (Highly Skilled) Migrant until 7 November 2012. The second Appellant, her son, was granted leave in line.

2. On 17 November 2010 the mother and her husband, the father of the second Applicant, were arrested on suspicion of committing offences relating to immigration. On 16 May 2011 the husband was convicted on fourteen counts of assisting illegal entry into the United Kingdom and on 18 August 2011 was sentenced to four and a half years' imprisonment and made the subject of a Confiscation Order under the Proceeds of Crime Act 2002 of which only part was satisfied. The husband was sentenced in default to a term of an additional two and a half years: see paragraph 12 of the judgment in *R v Mahmud and Gupta [2013] EWCA Crim 2543*.
3. The husband had dealings with a large number of people who claimed to have post-graduate diplomas in Information Technology and Business Management awarded by the Cambridge College of Learning: see *NA & Others (Cambridge College of Learning) Pakistan [2009] UKAIT 00031* and the police report to the Crown Prosecutor of 4 October 2010 pages 27 - 40 in the Respondent's bundle. The mother had been employed by a differently named college and a company in which her husband was at the time involved or had an interest.
4. On 28 June 2012 the husband was served with a liability to deportation letter and subsequently before 23 April 2014 voluntarily left the United Kingdom: see paragraph 12 of the determination of Judge of the First-tier Tribunal Adio promulgated on 16 May 2014 (the original determination) which is the subject of this appeal. At the hearing before me the mother confirmed she had obtained a decree nisi from the courts in England and Wales in relation to her marriage to the second Applicant's father.
5. On 11 July 2011 (between the husband's conviction and sentencing) the applications of the Applicants for further leave outside the Immigration Rules (the IRs) were refused with no right of appeal.
6. On 21 September 2012 the Applicants applied again for leave to remain outside the IRs and on 25 January 2013 the SSHD refused the applications with an in-country right of appeal. Additionally, on 13 March 2013 the SSHD made decisions to deport the Applicants as family members of the husband. These deportation decisions are referred in paragraph 10 of the original determination.
7. The Applicants' appeals against the deportation decisions were heard on 15 July 2014, some time after the hearing on 23 April 2014 of the appeals against refusal of leave outside the IRs leading to the original determination. The Applicants' appeals against deportation were allowed and on 4 August 2014 the First-tier Tribunal refused the SSHD permission to appeal. A renewed application was made by the SSHD and refused on

21 October 2014. There was no evidence the SSHD had taken any further action as a result of the Upper Tribunal's refusal of the renewed application for permission to appeal. The upshot is the Applicants have won their appeals against the deportation orders and their appeals against refusal of discretionary leave outside the IRs were dealt with in the original determination.

### **The Original Determination**

8. By a determination promulgated on 16 May 2014 Judge of the First-tier Tribunal Adio allowed the appeal of the second Applicant by reference to paragraph 276ADE(iv) of the Immigration Rules and the appeal of the first Appellant by way of reference to Appendix FM of the IRs paragraph R-LTRP.1.1(d)(iii).
9. On 30 July 2014 Judge of the First-tier Tribunal Lever refused the SSHD permission to appeal. The SSHD renewed her application on the same grounds and on 10 October 2014 Upper Tribunal Judge Goldstein granted permission to appeal.
10. The grounds for appeal are that Judge Adio erred by not taking into account the deportation action being pursued against the Appellants which took precedence. The other grounds challenge Judge Adio's treatment of the Applicants' claims under Article 8 of the European Convention.

### **The Upper Tribunal Hearing**

11. Mr Kandola sought an adjournment in order to link the present appeals to the deportation appeals of the Applicants. Mr Coleman was concerned that such an application had been made with no prior indication given. I obtained the print-outs showing the history of the Applicants' appeals against the deportation orders from the Tribunal's computer records (ARIA) and they disclosed that the Applicants' appeals against deportation had been successful as already mentioned.
12. Mr Kandola took instructions and confirmed that the SSHD had received notice of the Upper Tribunal's decision to refuse her renewed application for permission to appeal the deportation case already referred to in paragraph 7 and had no record that there was any proposal that it should be challenged. In the circumstances he relied on the SSHD's grounds for appeal.

### **Findings and Consideration**

13. The first ground for appeal asserting the priority of the deportation proceedings has no weight at all and is irrelevant because in the event the Applicants were successful. The other grounds relate entirely to the treatment of the Applicants' claim under Article 8 of the European Convention. They have no relevance to the original determination because the original determination allowed the appeals of the Applicants by way of reference to the IRs. The original determination did not address

in any way the claim under Article 8 of the European Convention. It addressed only the claim under the IRs and allowed the appeals under the IRs. The grounds for appeal do not challenge the Judge's treatment of the appeals under the IRs and therefore do not disclose any error of law in the original determination which shall stand.

### **Anonymity**

14. There was no request for an anonymity order and having considered the papers in the Tribunal file and heard the appeal I do not find that one is required.

### **DECISION**

**The determination of the First-tier Tribunal did not contain an error of law and shall stand.**

**The effect is that the appeals of the Applicants are successful and the Secretary of State's appeal is dismissed.**

Signed/Official Crest  
2014

Date 02. XII.

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal