Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/09083/2016
HU/09087/2016
HU/09088/2016
HU/09092/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 February 2018	**On 7 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

MRS A G PATEL
MR G V PATEL
+2
(NO ANONYMITY ORDER)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Jaqviss, instructed by Bespoke Solicitors
For the Respondent: Ms Ahmed, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant and proceedings

1. The appellants are Indian citizens. They appeal with permission granted at the First-tier Tribunal, decisions of Judge Manyara promulgated on 03 July 2017 in which the judge dismissed their appeals against the refusal of their human rights applications. The first appellant came to the UK as a student in 2008, her husband followed as her dependent. The couple have two children, the eldest child was born on [ ] 2009 and the youngest on [ ] 2013.

2. The first appellant's student leave was extended until July 2014. That leave was curtailed for non-attendance so that it expired in April 2014. At that point the appellants became overstayers. An application was made in May 2014 but that was refused, and an application for reconsideration rejected on 18 August 2014. There was no challenge to that decision. The couple did not leave, but stayed, supporting themselves by working illegally.

3. In March 2016 they made another application on the same grounds. That application failed under the Immigration rules because neither of the adults had any individual basis upon which they could expect to be allowed to remain. They could not satisfy the adult Private Life requirements because there were no insurmountable obstacles to their returning to India, and they could not satisfy the Family Life parental route, not least because both parents and children would be leaving as a family unit. The children could not satisfy the child Private Life requirements because neither had obtained the gateway requirement of seven years residence, being only five and two years old at the time.

4. The appellants appealed to the Ft-T. Counsel did not argue that there were insurmountable obstacles to the parents reintegrating to India. The appellants raised a new argument: that due to the passage of time since refusal the adults were, by the time of the hearing on 03 July 2017, parents of a child who had obtained seven years residence, relevant to s117B (6) of the Nationality and Immigration Act 2002. I pause to note that whilst that did not provide the child any Private Life entitlement to remain under the rules, because the gateway requirements are fixed to the date of application, the position under the rules is not necessarily the complete answer in an Article 8 case, and because the adults now had a child who had reached seven years residence, and so came within the gateway requirement of the qualifying child definition set out at s117 of the Nationality and Immigration Act 2002, there needed to be a consideration of whether it was reasonable to expect the eldest child, a daughter to relocate.

5. Before the Ft-T it was argued that removal of the family would now be disproportionate because it would not be reasonable to expect the eldest child to relocate given her long residence and integration here, the lack of any family with whom the family could live in India, and difficulties with her continuing her education in India as she did not speak Gujarati.

6. The judge began by assessing the child's best interests and found them to be to stay with her parents, and concluded it was reasonable to expect her to relocate to India with them, so that the decision to remove was proportionate.

The appeal to the Upper Tribunal.

7. In summary the grounds are:

   (a) The judge failed to adequately reason the Article 8 dismissal in respect of the position of the eldest child because:

      (i) The test in MA (Pakistan) [2016] EWCA Civ 705 is that where a child has obtained seven years residence that must carry "significant weight" and that there would need to be strong reasons for leave not to be granted. There are "no strong reasons" in this case.

      (ii) The judge failed to give significant weight to the long residence of the child and seems to require strong reasons for the child to be granted leave rather than the other way around. This is shown by the judge's concentration on whether there were compelling reasons requiring leave, such as destitution and health issues. Matters which had not met the threshold of significant obstacles to reintegration of the adults should have been considered again in the context of the reasonableness of expecting the eldest child to relocate.

      (iii) The judge does not deal with the argument that the removal was an interference with the family life the eldest child enjoyed with her paternal aunt, her husband, and their children whom she saw every week-end.

My consideration and findings

8. The judge correctly self-directed in terms at paragraph 61, with explicit reference to the case of MA (Pakistan) and the passage relied on in the grounds.

9. The submission that there were no strong reasons in this case for leave not to be granted is extraordinary because the adverse immigration history was not in issue.

10. The judge, in a 21-page decision covers the entire factual matrix that was argued. The judge's starting point was the position of the parents and children under the rules. That is not surprising because s 117 sets out that the public interest is in immigration control i.e. the rules position. The vehicle for the fact finding is the rules at 276 ADE. The judge concluded that with the father having lived independently and worked as an electrician in India, and both having successfully established a life here, working and raising their family, and with the mother's education, they could be expected to obtain employment and establish their family and

private lives in India, and provide adequately for their day to day needs. Those findings are not challenged.

11. The grounds challenge the judge's reference to compelling circumstances operating to show that the rules do not provide an adequate consideration of the article 8 position, pointing out that s 117B (6) does not require compelling circumstances. There is no merit in that criticism. It fails to read the whole decision. In substance, at the point complained about, the judge is very obviously investigating the respondent's position that the rules provide the complete answer. Finding that there is nothing additional in the parents position she turns to the position of the eldest child, and recognises that there is further consideration required under s 117 B (6).

12. The grounds challenge the judge's reference to factors such as destitution and health issues arguing that the bar has been set too high, akin to the significant obstacles test rather than the reasonableness of relocation assessment required. There is no merit in that criticism. The judge is looking at the case of EV Philippines, and so deals with the matters flagged up as relevant in that decision in the language of the decision, but the conclusion is not that the parents will not be destitute but that they are capable of independent living, so that they do not require family in India with whom they could live. The health reference is simply a statement that health is not a complicating factor. It is nonsensical to suggest that the judge was setting any preconditions or requirements in the assessment of reasonableness of relocation of the eldest child.

13. The ground criticising the judge for failure to expressly reason how the eldest child's relationships with her UK relatives have been taken into account when looking at the reasonableness of expecting the child to relocate to India, where there is no such family, is without merit. The argument fails to appreciate that the judge noted that the only person who attended was the aunt's husband, and that whilst there was contact with the family there was nothing beyond normal emotional ties between the two families, who saw each other at weekends. I was not taken to anything specific concerning the eldest child in this context which could have affected the outcome. There is no requirement to reason insignificant factors.

14. There is no force in the submission that the judge failed to give the child's length of residence significant weight. Not only is the residence referred to time and again, the judge self-directs correctly in terms of the significant weight to be attached to that length of residence. The judge weighs all the relevant factors including the best-interests assessment and the position on return, as against the immigration history of the parents, and concludes that it is reasonable to expect the eldest child to leave with her family.

15. The decision is lengthy and at times, when considering the interrelationship of rules, statute and case law, the reasoning might be described as circuitous, but there is no doubt, reading the decision as a

whole, that the judge has correctly self-directed and reached a conclusion open on the evidence and within the assessment thresholds.

16. The decision reveals no error of law.

Decision

17. The decision of the First-tier Tribunal dismissing the appeal reveals no error of law and stands.

Signed Date 14 February 2018
Deputy Upper Tribunal Judge Davidge