



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

Appeal Number: HU/06487/2018  
HU/06494/2018  
HU/05238/2018

**THE IMMIGRATION ACTS**

**Heard at Priory Courts Decision & Reasons Promulgated  
Birmingham On 5 February 2019 On 26 February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**SKG  
SG  
BKG  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Mahmood of Counsel instructed by Maya Solicitors

For the Respondent: Mr M Diwnycz Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The appellants appeal against a decision of Judge Saffer (the judge) of the First-tier Tribunal (the FTT) promulgated on 7 September 2018.

2. The appellants are citizens of India. The first and third appellants are the parents of the second appellant who was born in the UK on 10 September 2010. They applied on 6 December 2017 for leave to remain in the UK on the basis of their family and private lives. The applications were refused on 7 February 2018.
3. The appeals were heard together on 24 April 2018. The judge at paragraph 21 found that if it were not for SG there would be 'no merit whatsoever in this appeal.' The judge recognised at paragraph 26 that the issue in the appeals was whether it would be unreasonable for SG to go to India with her parents. The judge accepted that the parents had a genuine and subsisting parental relationship with SG and she was a qualifying child because she was born in the UK and had lived in the UK continuously in excess of seven years. If it was found to be unreasonable to expect SG to leave the UK and go to India, then not only would her appeal succeed but so would the appeals of her parents.
4. The judge at paragraph 25 concluded that the best interests of SG would be served by remaining with her parents wherever that may be. The judge then went on to consider whether it would be reasonable to expect SG to leave the UK, and concluded in the circumstances that it would. The appeals were dismissed.
5. The appellants applied for permission to appeal to the Upper Tribunal. Permission to appeal was granted by Judge Robertson who found arguable merit in two of the grounds, but little arguable merit in the remaining grounds although permission to appeal was granted without restriction.
6. Judge Robertson found it arguable that the judge had erred at paragraph 32 in making a finding that the third appellant acted dishonestly in failing to disclose a criminal caution in her application form rather than mistakenly failed to disclose that caution. It was unclear what weight was given to the dishonesty in the proportionality assessment, and given the guidance in KO (Nigeria) [2018] UKSC 53 that the criminality of a parent should not factor into an assessment of whether it would be reasonable for a child to leave the UK, it may be that this error, if established, is material.
7. It was also found that the judge had arguably erred in law in failing to apply the principles in MT and ET [2018] UKUT 00088 (IAC).

### **My Consideration and Conclusions**

8. At the hearing before me Mr Mahmood relied upon the two grounds referred to above. It was argued that the judge was wrong to find dishonesty on the third appellant's part and it was pointed out that this point has not previously been taken by the respondent in relation to numerous other applications that the third appellant had made and the third appellant had made a simple error rather than acting dishonestly and she did not regard the caution as a previous conviction because she had not gone to court. It was submitted that this finding of dishonesty had

been used by the judge when considering whether it would be reasonable to expect SG to leave the UK.

9. With reference to MT and ET, it was submitted that the judge had not followed the guidance which is that there should be powerful reasons for refusing leave to remain to a child with seven years or more continuous residence.
10. Mr Diwnycz did not concede that there was a material error of law and took the view that it was a matter for the Tribunal to decide.
11. In my view the judge did not err in concluding that the first and third appellants could not succeed with their appeals in the absence of the second appellant (SG). I find no error of law in the judge's conclusion at paragraph 21 that there is no merit in the appeals of the first and third appellants.
12. The judge recognised that the issue in the appeals was whether it was reasonable to expect SG to leave the UK. The judge was aware that SG had been born in the UK and had lived in this country continuously for in excess of seven years.
13. The judge was, in my view, entitled to find that the third appellant had been dishonest in completing the application form by failing to disclose a criminal caution. The explanation given by the third appellant was that she did not realise the caution was a criminal conviction. That was not the question she was asked in the application form, as at 6.3 the question specifically asked whether an individual has been subject to, or received, any other penalty in relation to a criminal offence, for example caution, reprimand, warning or similar penalties in the UK or any other country.
14. I do not accept that the finding of dishonesty against the parent featured in the consideration by the judge as to whether it would be reasonable to expect SG to leave the UK. The judge at paragraph 32 when referring to the dishonesty of the third appellant records 'I also bear in mind the need to maintain the integrity of immigration control which counts against the adults but not SG.'
15. Having found at paragraph 25 that the best interests of SG would be to remain with her parents, and I find no error of law in that conclusion, the judge goes on to consider reasonableness in relation to SG at paragraphs 27-30. The judge does not factor into that consideration his finding of dishonesty against the third appellant.
16. The judge records that SG was born in the UK and has lived all her life in this country, and makes reference to activities such as attending school and extra-curricular activities and attending birthday parties of friends. The judge does not accept that SG could not communicate in Punjabi and gives cogent and adequate reasons for that conclusion.
17. The judge considers a psychiatric report prepared by Dr Saleem, making the point that this report was prepared on the basis that the author had

been told that SG would have linguistic difficulties in India, and had been told that her parents were out of touch with life in India, whereas the judge had made findings to the contrary. The judge has not ignored the report and has given adequate reasons for not accepting the conclusion. The judge concludes in paragraph 29 that the evidence indicates that SG would be able to speak the language in India, 'is academically able and sociable, and would be likely to form friendships with her school peers in the same way as she has done here.' I find no error of law in the conclusion reached by the judge, which was a conclusion open to him on the evidence.

18. The judge considered MT and ET at paragraph 40 observing that the child in that case had been in the UK for 10 years whereas SG had not, and SG was not at a crucial stage in her education. I do not find that the judge has acted contrary to the guidance in KO, which was not published when the judge made his decision. The judge has not held the dishonesty of the parent against SG, but has assessed the best interests and the issue of reasonableness on the basis that neither of the parents has any leave to remain in the UK. At paragraph 18 of KO it is stated that it is relevant to consider where the parents are expected to be, since it will normally be reasonable for the child to be with them. In my view the judge provides strong reasons why it is reasonable for SG to leave the UK, noting that she is an Indian citizen, her parents are Indian citizens, she would not have linguistic difficulties, there is a developed education system in India which is accessible, she has family in India including her grandparents, she would have no unmet needs in India and she is returning with her parents.
19. The judge has considered the evidence with care and made findings open to him on that evidence and provided sustainable reasons for those findings. It may be that another judge would have reached a different conclusion but that is not the test and not relevant, as the decision in this case discloses no material error of law.

### **Notice of Decision**

The decision of the FTT does not disclose a material error of law. The appeals are dismissed.

### **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.

Signed



Date 14 February 2019

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Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

I have dismissed the appeals and therefore there can be no fee award.

Signed 

Date 14 February 2019

Deputy Upper Tribunal Judge M A Hall