



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

Appeal Numbers: HU/13295/2017  
HU/03485/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 8 February 2019**

**Decision & Reasons  
Promulgated  
On 5 March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PEART**

**Between**

**MR VISHALKUMAR HARSHADBHAI PATEL  
MRS MINALBEN VISHALKUMAR PATEL  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr Abbas

For the Respondent: Mr Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of India. They were born respectively on 3 February 1982 and 21 January 1984. They appealed against the respondent's decisions to refuse them leave to remain dated 13 October 2017.
2. The appeals were dismissed by Judge Seelhoff (the judge) in a decision promulgated on 2 August 2018. For the reasons he set out at [41]-[63] he

found there would not be significant obstacles to the appellants returning to India and that notwithstanding taking into account the children's best interests, the respondent's decision was proportionate.

3. The grounds claim the judge failed to give regard to the police certificate dated 20 July 2016 at page 58 of the appellant's bundle and NPCC letter dated 22 July 2016 at page 57 of the appellant's bundle. (Ground 1). The appellant said he had no reason to withhold the information in respect of his convictions because he had obtained the documentation to be provided in support of his application. The omission on the application form was innocent. By not considering the police certificate which was dated before the submission date of the application, the judge had not given adequate weight to the appellant's account of him having an innocent mind. The submission of the police certificate was significant and the failure to consider it was material.
4. The grounds also claim that in considering the eldest child's status as being precarious because there was no live application before him in respect of that child (see [58] of the decision), the judge failed to consider that a child should not be blamed for matters for which it was not responsible such as the conduct of a parent. (Ground 2). Because the view the judge formed regarding the conduct of the father, and the fact that there was no live appeal for the children before him, his consideration of the best interests of the children and their circumstances was flawed.
5. Judge Page refused permission on 3 September 2018. He said inter alia:

*"2. ... I am not satisfied that this application amounts to anything more than disagreement with conclusions the judge has reached on the evidence, dressed up as legal argument. The judge has reached findings at paragraphs 41-63 that are carefully reasoned and those conclusions were properly open to the judge to reach on the evidence. Although complaint has been made that the judge has failed to give proper regard to a police certificate and an NPCC letter it does not follow that no regard was given to these documents. It was not incumbent upon the judge to list every single document before him when reaching his decision, because there has been no specific reference to a document it does not follow that it was not considered. Read as a whole the decision of the Tribunal does not appear to contain any arguable errors of law".*
6. The grounds were renewed to the Upper Tribunal. Deputy Upper Tribunal Judge Doyle granted permission on 16 November 2018. He said inter alia:

*"2. The judge finds that the appellants' oldest child is a qualifying child. It is arguable that there is inadequate consideration of paragraph 276ADE of the Rules and s.117B(6) of the 2002 Act. It is arguable that at [62] the judge applies the wrong test in law".*

### **Submissions on Error of Law**

7. Mr Abbas relied upon the grounds. Mr Clarke relied upon the Rule 24 response.

### **Conclusion on Error of Law**

8. The judge heard this case before **KO [2018] UKSC 53**. Nevertheless, the grounds anticipated **KO** in relying upon **Zoumbas** that: *“a child must not be blamed for which he or she is not responsible, such as the conduct of a parent”*.
9. There is no doubt that Mr Patel had a poor immigration history. As regards Ground 1, the judge was entitled to reach his findings in that regard.
10. As regards Ground 2, the judge was entitled to make the finding he did on the evidence before him. The judge carried out an appropriate proportionality exercise at [60]–[63]. Mr Patel’s conviction and his failure to mention it would have led to a mandatory refusal of the original application in any event. The judge considered the family background and the return to India scenario at [56]–[59]. The judge had no information regarding the children except an attendance letter from the school and a series of one-page character references. There was no suggestion that any of the witnesses were aware of Mr Patel’s history of deception and criminal convictions. None of the witnesses attended court. The judge was faced with a paucity of evidence.
11. In my view, if the principles in **KO** had been addressed the outcome would have been the same. It was reasonable and proportionate to expect Mr Patel’s wife and children to return with him to India.
12. The judge’s decision contains no error of law and shall stand.

No anonymity direction is made.

Signed

Date

28 February 2019

Deputy Upper Tribunal Judge Peart