Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08652/2019
HU/08659/2019
HU/08670/2019
HU/08662/2019

THE IMMIGRATION ACTS

Heard at Manchester via Skype on 29 October 2020 **Decision & Reason Promulgated on 17 November 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MARIJANA [P]
MOHAMMAD [K]
[Z K]
[M H K]

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss Solanki of One Pump Court Chambers.
For the Respondent: Mr Tan Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellants' appeal with permission a decision of First-tier Tribunal Judge Shore ('the Judge'), promulgated on the 17 December 2019, in

which the Judge dismissed the appeals of this family unit on human rights grounds.

2. Permissions to appeal was refused by another judge of the First-tier Tribunal but granted on a renewed application by the Upper Tribunal, the operative part of the grant being in the following terms:

> "2. In broad terms(as the grounds are lengthy, arguable unnecessarily so), the grounds assert that: (1) the FtT erred applying the test in Treebhawon and Others (NIAA 2002 Part 5A – compelling circumstances test) [2017] UKUT 00013(IAC) in analysing very significant obstacles to integration; (2) failed to consider the separation of the family and the impact of that on the minor appellants; (3) failed adequately to analysis objective evidence on the obstacles to integration to integration in Serbia and India; (4) and erred in his assessment of the appellants' credibility.
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> 3. The FtT arguable erred in law in failing to consider very significant obstacles by applying the authority of SSHD v Kamara [2016] EWCA Civ 813 (ground 1). While the remainder of the grounds appear to be weaker, as the FtT carried out a detailed analysis of both the country evidence, produced on the morning of the hearing, in relation to Serbia and India at [85] to [86]; and explained in detail his credibility concerns ([77] to [84]) and analysed the impact on the family at [88] and [89], the grant of permission is not limited in its scope and permission is granted on all grounds."

Error of law

3. Ground 1 asserts the Judge applied the wrong test when assessing the claim under paragraph 276ADE by failing to apply or even mention the decision in Kamara.

4. In SSHD v Kamara [2016] EWCA Civ 813 it was held that the concept of integration into a country was a broad one. It was not confined to the mere ability to find a job or sustain life whilst living in the other country. It would usually be sufficient for a court or tribunal to direct itself in the terms Parliament had chosen to use. The idea of "integration" called for a broad evaluative judgment to be made as to whether the individual would be enough of an insider in terms of understanding how life in the society in that other country was carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private and family life.

5. In the case of Sanambar v SSHD [2017] EWCA Civ 1284 the Court of Appeal said that consideration of the issue of obstacles to integration requires consideration of all relevant factors some of which might be described as generic. Factors such as intelligence, employability and general robustness of character could clearly be relevant to that issue. The broad evaluation required could also include the extent to which a parent's ties might assist with integration.

6. Although there is no mention of the decision in Kamara in the determination that of itself is not a material legal error if the Judge applied the correct test when assessing the evidence.

7. At [23] the Judge writes:

> "23. Ms Lambert commented that the Appellant appeared to be making a back-door Article 3 claim. I disagreed. The issues raised were part of the necessary assessment of whether there were very significant obstacles to re-integration into India or Serbia and/or the proportionality of removal under Article 8. I advised Ms Lambert that I would hear the evidence and would then give her time to read the supplementary bundle before she made her closing submissions."

8. This demonstrated the fact the Judge understood the need to consider the evidence as a whole and to make a holistic assessment of the whether integration was feasible, as required in Kamara.

9. Both advocates also referred to [91] in which the Judge writes:

> "91. I dismiss the First and Second Appellant's appeals under paragraph 276ADE(1)(vi), as they have not shown very significant obstacles to their integration into India. The Third and Fourth Appellants cannot succeed on paragraph 276ADE (1). The reason I make these decision is that *"Mere hardship, mere difficulty, mere hurdles, mere upheaval and mere inconvenience, even where multiplied, are unlikely to satisfy the test of "very significant hurdles" in paragraph 276ADE of the Immigration Rules."* I have no doubt that relocating to India and/or Serbia will involve hardship, difficulty, hurdles and inconvenience for the Appellants, but the points made in the reasons for refusal on paragraph 276ADE(1)(vi) are correct. I have no doubt the lives in one or both of their countries of origin will not be the same as their lives in the United Kingdom, but they have not shown on the evidence that they face very significant obstacles."

10. The provision of the refusal letter referred to and accepted by the Judge in his findings are as follows:

> "We do not accept that there would be very significant obstacles to your integration into Serbia if you were required to leave the UK because it is considered that you do not have to return to the same area that your family live in. You have clearly shown tenacity and resourcefulness to build a life for yourself in a country that was foreign to you without support form your family. There is nothing to suggest you cannot do this by relocating to a different area of Serbia. Your claimed partner, [Mohammed K] can, if he wishes apply for a visa to visit you in Serbia and take steps to join you there, where you can continue your family and private life as a family unit. Any private life you have established in the UK has been done in full knowledge that you had a precarious immigration status."

11. It is not made out the Judge failed to consider all relevant aspects of the claim in coming to the conclusion the appellants could not succeed under the Immigration Rules.

12. Ground 2 asserts the Judge failed to deal with the best interests of the children and the question of family separation. Reliance on the wording of the Refusal Letter by the appelanst is misleading in relation to this issue. It was submitted on the appellants behalf that the Judge found there is a subsisting marriage and relationship and at [88.8] that it was in the best interests of the children, the third and fourth appellants, to remain with both parents and at [88.9] that it would be reasonable for the children to follow their appelanst to their country of origin. The submission that makes the decision wrong is incorrect, for even if the refusal infers the first appelanst mother will be removed to Serbia and the children's father to India, as Mr Tan pointed out in his submissions in the refusal letter it was not accepted the appellant and Mr [K] were in a genuine and subsisting relationship, hence the decision to split the family. The Judge finds this made out and considered the merits of the appeal by refence the family unit as a whole.

13. When consideration is given to any removal the respondent will have to seek the advice of the Returns Panel in relation to the issue of splitting the family or any other outcome in light of the Judges findings.

14. Ground 3 assets the Judge erred in failing to consider the objective evidence. The Judge records at [19] that the appellant had produced a bundle of 222 pages and also produced a bundle of further submissions including a series of documents of location evidence for India and Serbia. This evidence was filed late necessitating the comment by the Judge at [23] of the need to grant further time to the Presenting Officer before she made her submissions.

15. At [85] the Judge comments on the material and makes specific findings in relation to the location/country evidence. It is not made out the Judge failed to understand the country material or the context in which it was presented. The Judge was aware of the reference to Islamophobia in Serbia. The Judge was entitled to comment upon the quality of the material provided. The Judge was not required to set out each and every aspect of the evidence and even though the country material suggested some difficulty for those of Kashmiri ethnicity in India, if the second appellant travels to Serbia with the first appellant he will not return to India. In any event, it was not made out the extent of any difficulties the second appellant may experience was sufficient to warrant a grant of international protection or find it disproportionate in all the circumstances for him to return to his home state.

16. Whilst there is an examples in the bundle of a mosque being destroyed in 2017 the material before the Judge was insufficient to warrant a finding first appellant is entitled to a grant of international protection on the basis of any risk of persecution or ill-treatment arising from her faith or that any difficulties by way of discrimination or otherwise was sufficient to make return disproportionate, or make it not in the best interests of the children to return their with their mother.

17. Ground 4 asserts the Judge erred in assessing credibility; claiming the findings made regarding the appellant's credibility are irrational for the reasons set out in the grounds seeking permission to appeal.

18. The Judge noted the foundation of the claim related to a disconnect from family and claimed risk that may arise on return which the Judge did not find had been made out.

19. The Judge sets out his core findings of fact in [88] and [89] which have not been shown to be outside the range of findings open to the Judge on the evidence.

20. The Judge, in addition to the documentary evidence, had the benefit of seeing and hearing oral evidence being given and the weight to be given to that evidence and the perception created in the mind of the Judge when considering the evidence in the round has not been shown to be irrational. It is not made out the findings made are outside the range of those reasonably available to the Judge on the evidence.

21. Similarly, the assertion the Judge failed to consider material evidence is not made out when the decision is read as a whole.

22. This is a human rights appeal. At [94] the Judge writes:

> "94. I have taken into account the five-step process in Razgar [2004] UKHL 27 and also the consideration of the House of Lords in Huang [2007] UKHL 11. I have made the following findings on the Razgar test:
>
> 94.1 I find that the refusal amounts to an interference by a public authority with the exercise of the Appellants' rights to respect for his private or family life:
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> 94.2 I find that such interference has consequences of such gravity as potentially to engage the operation of Article 8;
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> 94.3 I find that such interference is in accordance with the law;
>
> 94.4 Such interference is necessary in a democratic society in the interest of the economic well-being of the country, and;
>
> 94.5 Such interference is proportionate to the legitimate public end sought to be achieved because when I balance the legitimate public interest, to which I have given considerable weight, the lack of evidence from the Appellants and my findings set out above, the best interests of the children and the test under section 117B of the 2002 Act against the private and family life established by the Appellants , the balance falls in favour of the Respondent. That is so when taking each appellant individually and then assessing them as a family unit. I do not hold the poor immigration history of the First and Second Appellant against the Third and Fourth Appellants in the balancing exercise. My findings do not establish exceptional circumstances for the Appellants

23. It is clear the appellants disagree with the Judges findings and wish to remain in the United Kingdom, but Article 8 does not permit a person to choose where they wish to live, per se.

24. This is a detailed decision in which the Judge makes clear findings supported by adequate reasons. The weight given to the evidence has not been shown to be irrational and neither has it been shown the findings made are outside the range of those reasonably available to the Judge on the evidence. Whilst the appellant attempts to challenge the steppingstones used by the Judge on his journey between the evidence and final decision, it is not made out the Judge has erred in law in a manner material to that decision sufficient to warrant the Upper Tribunal interfering any further in relation to this matter in his conclusions. Whilst the appellants representative may believe that alternative findings could have been made and/or should have been made, that is not the applicable test as the Court of Appeal have recently reminded us in KB (Jamaica) [2020] EWCA Civ 1385.

Decision

25. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

26. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 13 November 2020