Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number:** HU/13421/2019 (P)
HU/14852/2019 (P)

THE IMMIGRATION ACTS

Decided under rule 34 **Decision & Reason Promulgated**
On 18 November 2020

Before

UT JUDGE MACLEMAN

Between

BHEEMREDDY & CHIDIPOTHU

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS (P)

1. This determination is to be read with:

   (i) The respondent's decisions, refusing the appellants' applications for leave to remain in the UK, based on long residence and private life.

   (ii) The appellants' grounds of appeal, on human rights, to the First-tier Tribunal.

   (iii) The decision of FtT Judge Minhas, promulgated on 21 January 2020.

   (iv) The appellants' grounds of appeal, on error of law, to the UT, stated in their application for permission dated 3 February 2020.

   (v) The grant of permission by FtT Judge Keane, dated and issued on 13 August 2020.

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(vi) The UT's directions, issued on 21 August 2020, with a view to deciding without a hearing whether the FtT erred in law and, if so, whether its decision should be set aside.

(vii) The appellants' "further representations", filed on 4 September 2020, linked to the skeleton argument which was before the FtT.

(viii) The respondent's "response under rule 24", dated 9 September 2020.

2. The UT's directions also gave parties the opportunity to submit on whether there should be a hearing. Neither party seeks a hearing. The UT may now decide the above questions, under rules 2 and 34, without a hearing.

3. Having considered all the above, I find that the grounds and submissions do not disclose that the making of the decision by the FtT involved the making of any error on a point of law.

4. Ground 1 is error "by not considering the [appellants'] submissions … in the skeleton argument". The considerations listed in that argument are at [8 (a) – (c)].

5. Matters (a) and (b), the extent to which the appellants had lawful leave, are to be found at [2, 3, 4, 10, & 25] of the decision.

6. Matter (c), the first appellant's MBA, is at [19]. The decision does not suggest that she would be anything but "a credit to society".

7. Matter (d), the alleged severe hardship facing the appellants from their families, is explicitly decided against them, for reasons in which no error is suggested.

8. Matters (e), private and family life in the UK, and (f), friends and family, are obviously the subject of the decision throughout. There may be no explicit mention of plans to undertake a PhD if leave is granted, but there is no error in not mentioning every minute detail.

9. I see nothing in the decision to justify the suggestion that matters which the judge plainly set out were then excluded from her proportionality assessment. Ground 1 shows no oversight.

10. Ground 2 is error "in consideration of the legal test in *GM* [2019] EWCA Civ 1630". The rules are said to be "not incremental" over the article 8 test, so that in "merging" the "very significant obstacles" requirement in the rules into the proportionality assessment, the judge has set "a far higher standard than … required by established jurisprudence".

11. The passage quoted from *GM* is to the effect that rules and policy are not to be construed as being more stringent than article 8. It is not an authority that if the rules are not satisfied, a lower test applies; which would subvert the whole scheme of the rules and of part 5A of the 2002 Act.

12. *KO (Nigeria) and others* [2018] UKSC 53 was about the treatment of qualifying children and their parents under part 5A. Under the heading "general approach" Lord Carnwath, giving the judgement of the court, said:

> "[5] I start with the expectation that the purpose is to produce a straightforward set of rules, and in particular to narrow rather than widen the residual area of discretionary judgment for the court to take account of public interest or other factors not directly reflected in the wording of the statute. I also start from the presumption, in the absence of clear language to the contrary, that the provisions are intended to be consistent with the general principles relating to the "best interests" of children …"

13. This is not a case about separation of family members, or about children, but that general approach applies also to "very significant obstacles to integration". The judge did not err by finding that to fall short of that test did not leave the appellants with an easier one.

14. Further, the present case did not turn on any fine formulation of the legal tests surrounding article 8, but on its own facts and circumstances.

15. It is difficult to see that any judge might realistically have found the circumstances of the appellants to disclose very significant obstacles, or have found anything to turn the proportionality balance in their favour.

16. Ground 2 shows no error.

17. The decision of the FtT shall stand.

18. No anonymity direction has been requested or made.

Hugh Macleman

UT Judge Macleman
16 November 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email.