



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006308
Case No: UI-2022-006309
Case No: UI-2022-006310
Case No: UI-2022-006311
First-tier Tribunal Nos:
HU/55548/2022
HU/55550/2022
HU/55552/2022
HU/55553/2022
LH/00835/2022 & Others

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 01 May 2023

Before

UPPER TRIBUNAL JUDGE KEITH

Between

Prabjot Kaur (1)
Jaskirat Kaur (2)
Harvinder Singh (3)
Jaspal Kaur (4)
(NO ANONYMITY ORDER MADE)

Appellants

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr R Sharma, instructed by Connaught Law Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 24 April 2023

DECISION AND REASONS

1. The appellants appeal against the decision of a Judge of the First-tier Tribunal, Judge Hobson (the 'FtT') who in a decision promulgated on 12th December 2022, dismissed the appellants' appeals against the refusal of their leave to remain in the UK on the basis of their rights to respect for their family and private lives. At the core of the appellants' appeals and the FtT's decision was the period of the third appellant's unlawful residence in the UK. The fourth appellant, his wife, and

two (now adult) children, the first and second appellants, all Indian nationals, had entered on visit visas in 2014 and overstayed, while the third appellant had claimed to have entered the UK unlawfully on 3rd May 2003. The FtT had considered whether there were very significant obstacles to the appellants' integration in their country of origin, India. The FtT did not accept this, based partly on their family members still in India and the third appellant's ability to work, as he had done previously. They also had family and friends in the UK. The FtT carried out a 'balance sheet' proportionality exercise, by reference to section 117B of the Nationality, Immigration and Asylum act 2002. He rejected the appeals. In so doing, he rejected the third appellant's claim to have entered the UK when he did, concluding that it was "some time in the 2000s" (paragraph 12a).

The appellants' appeals and the grant of permission

2. In their grounds, first, the appellants say that the date of the third appellant's entry to the UK had never been contested. Second, and as a consequence, the FtT had erred in not applying sufficient weight to the third appellant's continuous residence, which was nearly 20 years. Third, despite the provisions of section 117B of the 2002 Act, there remained a limited degree of flexibility (see Rhuppiah v SSHD 2018 UKSC 58). Fourth, it was incumbent on the FtT to explain what weight he had applied to particular factors in the 'balance sheet' approach (see TZ (Pakistan) v SSHD [2018] EWCA Civ 1109).
3. FtT Judge Aldridge granted permission on 17th January 2023. The grant of permission was not limited in its scope.

The hearing before me

4. While Ms Everett made no formal concession and whilst neither representative had a copy of the refusal decision in respect of the third appellant, Ms Everett confirmed that the minute of the hearing prepared by the Presenting Officer who had appeared before the FtT indicated that the issue of the third appellant having nearly 20 years' continuous residence in the UK had been noted and it did not appear that the respondent had ever taken issue with that fact. A refusal letter for one of the other appellants had not disputed the claim. Ms Everett also accepted that as this was a ground of appeal on which permission had been granted and in the absence of a rule 24 reply, it was incumbent on the respondent to have adduced a relevant document, had it wished to resist the challenge that the third appellant's continuous residence had never previously been contested. It may be that not having considered the issue before (as the period of continuous residence was nowhere near 20 years), the respondent contests the issue in future, but she could add nothing further. Mr Sharma accepted that this was, in reality, the sole ground of appeal pursued.
5. I am conscious that I should not substitute my view of what I would have decided and I am also conscious of the danger of focusing on isolated factors or evidence. Nevertheless where, as here, the FtT's analysis was necessarily nuanced, as part of a 'balance sheet' assessment, I am satisfied that the FtT erred in law in the making of his decision, proceeding on the basis of findings about the third appellant's continuous residence in the UK, where the appellants had not appreciated that the issue was disputed, nor had they adduced evidence on the point. While even if third appellant's claim is accepted, this would still not mean that he meets the long residence requirements of Immigration Rules, it

affects any analysis of the weight attached to be appellants' Article 8 rights. Accordingly, I set aside the FtT's decision without preserved findings.

Disposal of the appeal

6. I explored with the representatives whether it was appropriate to retain remaking in the Upper Tribunal or to remit matters to the First-tier tribunal. They urged me to remit remaking to the appeal to the First-tier Tribunal, not least because if, as was now apparent, the respondent took issue with the period of the third appellant's continuous residence, the appellants wished to adduce new evidence, not previously before the FtT, on that issue. I agreed that it was appropriate, by reference to paragraph 7.2 of the Senior President's Practice Statement, to remit remaking to the First-tier Tribunal, to a judge other than Judge Hobson.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside, to be reconsidered without preserved findings by the First-tier Tribunal. The issue of the third appellant's continuous residence in the UK is likely to arise.

Directions to the First-tier Tribunal

This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact.

The remitted appeal shall not be heard by First-tier Tribunal Judge Hobson.

No anonymity direction is made.

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24th April 2023