



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/03943/2018

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THE IMMIGRATION ACTS

Heard at Field House

On 21 December 2018

Decision & Reasons

Promulgated

On 15 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

DALJEET [G]

SANT [G]

[S K G]

(ANONYMITY ORDER NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Murphy (for City Heights Solicitors)

For the Respondent: Mr N Bramble (Senior Presenting Officer)

DECISION AND REASONS

1. These are the appeals of Daljeet [G], and her daughters Sant (born 21 November 1998) and [SKG] (born 5 November 2011), all citizens of India, against the dismissal of their appeals of 4 September 2018,

themselves brought against the Respondent's decision of 19 January 2018 to refuse their human rights claims. For convenience I will refer to individual family members by their first names.

2. The immigration history supplied by the Respondent states that Daljeet entered the UK on 20 October 2010 as a student, with leave as a student extended until 17 May 2014. An application of 14 May 2014 was refused on 7 July 2015. She applied for an EEA residence card as the family member of an EU national, in applications made in June and August 2015, refused in August 2015 and April 2016. This latter matter is something that it will be necessary for me to revert to in due course.
3. Their applications were brought on grounds of the private and family life that they had established in the UK, in circumstances where Daljeet's husband had been abusive and subjected her to domestic violence before leaving the UK. The applications were refused on the basis that Daljeet had not rebutted the Respondent's belief that she had acted dishonestly in relying on English language test results procured by use of a proxy tester. The family's UK connections were not considered sufficient to make their departure from the UK unjustifiably harsh or otherwise exceptional.
4. Daljeet and Sant had allegedly suffered domestic abuse at the hands of Sant's father, who had been removed from the UK in March 2016, whilst attempting to enter the country on a Spanish passport which did not belong to him. They had last had contact with him when Sant received her A-level results in 2017, before which period they had spoken monthly. During their time together in the UK he had inflicted domestic abuse on them, particularly on Daljeet, but including an assault on Sant resulting in a black eye.
5. The First-tier Tribunal considered the allegation of English language fraud, noting that reports indicated that 69% to 90% of the tests at Elizabeth College had been deemed invalid. A criminal investigation into the college bore this out. Daljeet's past English language qualifications did not establish that she would not have involved herself in proxy testing, as had been noted by the Upper Tribunal giving guidance on the issue in *MA*, and her English language proficiency at the hearing was an unreliable indicia of her ability six years earlier. She had been vague as to the location of the test centre, and her claim that nobody else had known she was sitting the test and that she had paid for the rail tickets in cash appeared to be convenient explanations for the lack of corroborative evidence that might reasonably be expected to be available. Whilst the test had taken place some time ago, she had had an opportunity to reflect on her recollection of events, her mind presumably focussed by the appeal proceedings, yet her evidence was nevertheless nebulous. The First-tier Tribunal considered itself satisfied, in the light of these

considerations, that the Appellant had used a proxy tester to help with her results.

6. The Judge went on to consider the human rights claims. The allegations of domestic violence were considered implausible: there was no explanation why they would stay in contact with an abusive man following his removal from the UK, and given he had apparently rejected Sant, who was not his biological child, it was not plausible that he would want to keep in touch with her school progress. The evidence from a GP was predicated on the GP's unsurprising acceptance of his patient's account.
7. The evidence that Daljeet was not on good terms with her sister in India was undermined by the fact that the sister had contacted her with news of their mother's death in January 2018. Generally the Appellants' evidence had the air of concoction, being designed to bolster their human rights claims to remain in the UK.
8. There was no reason to think that the Appellants would not receive the support of family members on a return to India. Daljeet's husband could be assumed to be available to help them, the evidence of his abusive behaviour having been rejected.
9. Sant was now a young adult and her non-cohabiting relationship with her boyfriend was not a barrier to her return to India; it could be maintained during academic breaks if they wished to do so, and via modern means of communication. Her relationship attested to her independence and she would have reasonable prospects of pursuing her studies in dentistry or pharmacy, which she had so far been unable to pursue in the UK given her precarious immigration status, in India as in the UK.
10. [SKG] had lived in the UK for almost seven years, but the jurisprudence on "near misses" showed that this did not mean her case should be treated as if she had been resident here longer. It was in any event wholly reasonable to expect her to return to India with her mother and sister.
11. The family had consistently been present in the UK on a precarious basis, and though they spoke English and might be financially independent, those were essentially neutral factors. At this point it is readily apparent that the direction of the First-tier Tribunal's thinking was all one way; having rejected all material connections with the UK as sufficient to render departure disproportionate, and having found that course of action to be in the public interest in the context of the Secretary of State having established dishonesty in the mother's immigration history, the appeal would inevitably fall for dismissal.

12. However, at this point the Judge added a coda to her decision, noting that the immigration history featured two applications for EEA residence cards in circumstances where the Appellants could not have reasonably been thought entitled to such documents. Then the Judge expressed her final conclusion, i.e. that the appeal fell to be dismissed.
13. Grounds of appeal contended that the decision was legally flawed because
 - (a) The Judge had directed themselves that family life should be discounted on the basis that residence in the UK was precarious, whereas the legislation only required private life to be so treated;
 - (b) The Judge had speculated that there may have been some impropriety regarding the EEA residence card applications so giving rise to an appearance of bias;
 - (c) There was nothing implausible about a victim of domestic violence remaining in contact with a former abuser given the well-known patterns of that kind of abuse;
 - (d) There was no reason to doubt the First Appellant's honesty in relation to the English language fraud allegation based on her evidence, and the reasons given, i.e. a lack of evidence of buying a train ticket for cash and her lack of knowledge of the test centre's location, were inadequate.
14. Permission to appeal was granted by the First-tier Tribunal on 9 November 2018 on the basis that the Judge's speculation about the EEA residence card applications might arguably have affected his other conclusions. It was difficult to see that the other grounds were arguable given there were no strong family life connections in the UK. The finding of the implausibility of ongoing contact with an abusive husband was not only driven by the questionable theory that a victim could readily quit their abuser's influence, but was additionally predicated on the proposition that it was odd that he would have retained an interest in the progress of a child who he was said to have rejected.
15. Before me, Ms Sriharan argued that the strong adverse credibility findings that featured throughout the decision below could only have been motivated by the Tribunal's overall view of the mother's honesty, and one could not be confident that that conclusion was truly independent of the concern expressed regarding her possible involvement in fraudulent EEA applications. She maintained that the other grounds of appeal were viable, though did not develop them in any detail. Mr Bramble maintained that the thinking expressed on the historic EEA residence card applications was an aside which had not materially impacted on the reasoning of the First-tier Tribunal.

Findings and reasons

16. It seems to me that the First-tier Tribunal's decision overall is not flawed by any material error of law. There was little by way of private and family life ties outside the family unit. The younger daughter's ties did not fall to be assessed via the rubric of reasonableness as she lacked a sufficient period of residence in this country, but in any event, do not cover a period over which she had any independent life outside the family unit. There was scant evidence of any domestic abuse from the former partner, and the findings as to the implausibility of the asserted relationship and the lack of corroborative evidence to answer those concerns are perfectly reasonable ones, to which the Judge was entitled to come. The First-tier Tribunal was entitled to find that the First Appellant had not rebutted the concerns raised by the Secretary of State based on English language fraud.
17. The digression into the question of the EEA residence card applications was, in the overall context, ill-advised. Indeed it promoted this otherwise unnecessary appeal to the Upper Tribunal. But I do not consider that it showed bias; the reasonably well informed objective bystander would not think any worse of a Judge who made observations about the possibility of a person's immigration history raising issues that might prompt additional suspicions than those so far raised by the Secretary of State.
18. However, I do not consider that this digression had any material impact on the reasoning of the Judge. The Judge expressly recognised that the concern being raised was based at least partly on speculation, and the comment is clearly compartmentalised, expressed quite independently of the material reasoning on the rest of the case. Indeed it follows the conclusions on the proportionality of removal of the family, and is located well after the material findings on the primary facts to which questions of credibility and honesty were relevant.
19. I accordingly find there was no material error of law in the decision of the First-tier Tribunal. The references to the EEA applications that form part of the First Appellant's immigration history should not be taken into account by any future decision maker, as they were founded on speculation rather than evidence. Whether or not the matter is looked into further is a matter for the Respondent.

Decision

The appeals are dismissed.

Signed

Date 2 January 2019

A handwritten signature in black ink, appearing to read 'M A Symes'. The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Deputy Upper Tribunal Judge Symes