



UPPER TRIBUNAL

(IMMIGRATION AND ASYLUM CHAMBER) APPEAL NUMBERS:

IA/17354/2014

IA/17356/2014

IA/17358/2014

IA/17359/2014

THE IMMIGRATION ACTS

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**Heard at: Field House
On: 13 January 2015**

**Decision & Reason Promulgated
On: 4 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS MAJLINDA SYKAJ
MASTER SEDJAN SYKAJ
MASTER ARAVIS SYKAJ
MASTER MELISON SYKAJ
NO ANONYMITY DIRECTIONS MADE**

Respondents

Representation

**For the Appellant: Mr N Bramble, Senior Home Office Presenting
Officer**

**For the Respondents: Mr M Harris, counsel (instructed by M and K
Solicitors)**

DETERMINATION AND REASONS

1. For the sake of convenience I shall refer to the appellant as the secretary of state and the respondents as “the claimants.”
2. The claimants are mother and three sons, all citizens of Albania.
3. They originally appealed against the decision of the secretary of state refusing their applications for further leave to remain in the UK pursuant to the Immigration Rules, Appendix FM EX.1.
4. The reasons for refusal letter took into account that the three children, then aged 12, 10 and 7, had lived in the UK for seven years. They were however not British citizens. It was accordingly considered reasonable to expect them to be removed to Albania as a family unit.
5. The First-tier Tribunal Judge had no sympathy for the first claimant, the mother. He referred to her previous history as a concerted and contrived effort to defeat the immigration controls of a country by a determined effort to remain here even after she had once been removed. To enable such a person to remain here, even in the face of Article 8 considerations, would require much more than simply the routine reference to Article 8 interests [15].
6. The position with regard to the children claimants however was different. The errors and mistakes of the mother are not to be visited on them. Their interests are considered pursuant to s.55 BCIA. He directed himself in accordance with the Supreme Court judgement in Zoumbas [2013] UKSC 74.
7. He noted that the application was made on 19 September 2012. As at 13 December 2012, when the rules were amended, the requirement of “reasonableness” was added by HC760. That contained a transitional provision. Where the application for leave was made before 13 December 2012 and the application has not been decided before that date, it will be decided in accordance with the Rules in force on 12 December 2012 [18].
8. In this case the application was decided on 21 March 2014. Accordingly, the “position must be taken” as at the time of the rules before 13 December 2012 where there was no “reasonableness” requirement to satisfy [19].
9. This meant that the children satisfied the seven year rule and could not be removed. That had the effect of strengthening the position of their mother, the first claimant. He directed himself in accordance with Razgar and allowed her appeal as well.
10. On 2 December 2014, First-tier Tribunal Judge Kelly granted the secretary of state permission to appeal. The first ground of the application

contended that in holding that paragraph 276ADE did not contain a test of “reasonableness”, the Judge misapplied the immigration rules to the facts of the second claimant's appeal. Even if the second claimant did benefit, this did not ‘inherently’ preclude the family from relocating to Albania. It was also argued that the Tribunal misdirected itself in relation to its consideration of the appeals under Article 8 of the Human Rights Convention.

11. At the hearing before the Upper Tribunal on 13 January 2015, Mr Harris on behalf of the claimants accepted that the statement of changes in the immigration rules, HC820, amended HC 760. Changes implemented by HC 760 would apply.
12. In paragraph 1 of the “changes” it is provided that in the implementation section of the statement of changes in immigration rule HC760, the changes in paragraphs 201 (where paragraph 276ADE (iv) was amended by inserting “and it would not be reasonable to expect the applicant to leave the UK” shall apply to all applications decided on or after 13 December 2012 regardless of the date the application was made.
13. Accordingly, the issue as to whether or not it would be reasonable to expect the applicant to leave the UK was a relevant requirement under the rules before the First-tier Tribunal Judge.
14. Both representatives therefore accepted that the decision of the First-tier Tribunal Judge involved the making of an error on a point of law and that it would have to be set aside and re-made.
15. Both representatives submitted that in the circumstances, it would be appropriate for the matter to be remitted to the First-tier Tribunal for a fresh decision.
16. Mr Harris requested that for the sake of finances and convenience, namely, that there would be several witnesses attending the hearing to give evidence that the hearing should be heard at Taylor House which afforded them easy access from where they lived.

Assessment

17. It is unfortunate that the First-tier Tribunal Judge was not referred to the statement of changes in the immigration rules effected by HC820 of 12 December 2012. Although the date of application was before the implementation of the statement of changes, it was nevertheless provided that changes in paragraph 201 in Immigration Rules HC760 shall apply to all applications decided on or after 13 December 2012 regardless of the date the application was made. That meant that paragraph 276ADE (iv) required that it would not be reasonable to expect the applicant to leave the UK.

18. I find that this is an appropriate case for remitting the appeal to the First-tier Tribunal in conformity with the Presidential Guidelines. I find that it is in the circumstances appropriate for the appeal to be transferred from the First-tier Tribunal sitting at Birmingham to the First-tier Tribunal sitting at Taylor House, London. There is no opposition to the transfer sought.

Notice of Decisions

The decision of the First-tier Tribunal involved the making of a material error of law. The decision is accordingly set aside and will be re-made.

I direct in the circumstances that it would be appropriate for the appeal to be transferred from the First-tier Tribunal sitting at Birmingham to the First-tier Tribunal sitting at Taylor House, London.

No anonymity direction is made.

Signed

Dated: 2/3/2015

Deputy Upper Tribunal Judge Mailer