



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/29944/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 November 2015**

**Decision & Reasons Promulgated
On 29 December 2015**

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Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**A R
AND FIVE APPELLANTS
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr D Clarke, Home Office Presenting Officer

For the Respondent: Mr R Sharma, Counsel instructed by Woodford Wise Solicitors

DECISION AND REASONS

1. This is the respondent's appeal but for the sake of convenience I will refer to the parties as the "appellants" and to the Secretary of State as the "respondent" as per the First-tier Tribunal. There was an anonymity direction made which I continue.
2. The appellants are citizens of Mauritius. The main appellant is married with three sons and a daughter. His wife is the second appellant. The

children's dates of birth are 30 September 1994, 6 November 1996, and 3 June 2000 and are the third to fifth appellants. The eldest daughter is not a party to these proceedings, her date of birth is 20 November 1990. The appellant made an application for leave to remain on human rights grounds, which was refused on 5 July 2014 with reference to paragraph 276ADE of the Immigration rules.

3. In a Decision and Reasons before the First-tier Tribunal (Judge Coffey) ("FtT") promulgated on 15 April 2015, the FtT allowed the appeal. The appeals of the appellant and his wife were allowed on human rights grounds under Article 8 outside of the Rules. The appeals of the children were allowed under the Immigration Rules paragraph 276ADE [32 to 34]. The FtT determined that either the pre-2012 version of the Rules applied [36] or alternatively that it was not reasonable for the children to return to Mauritius [37]. The FtT considered relevant case law including **EV (Philippines) and others v SSHD [2014] EWCA Civ 874** and **Azimi-Moayed and others (decisions affecting children; onwards appeals) Iran [2013] UKUT 197 (IAC) [39 & 40]**. Section 55 "best interests" considerations were also taken into account, namely the family as a unit and education in Mauritius. The refusal letter made reference to the ages of the children as at the time of the decision. They were minors at the date of application.
4. The respondent applied for permission to appeal on the grounds firstly, that the third and fourth appellants could not succeed under the Rules as they were no longer under 18 years of age; being 18 and 20 years of age respectively. That ground was withdrawn by Mr Clarke and I do not propose to deal with that further.
5. The second ground was that the FtT erred by considering the "best interests" of all the children in addition to those of the fifth appellant aged 14 years. The FtT failed to place weight on the public interest following **EV (Philippines)** and in particular failed to consider that it was reasonable for the fifth child to follow the parents given that neither parent have leave to remain in the UK. It was contended that the FtT erred by concluding that the best interests of the children who were in education in the UK outweighed the benefit to the children of remaining with their parents.
6. Permission to appeal was granted by First-tier Judge Heynes on 23 July 2015 on the grounds as argued. In its Decision and Reasons the FtT found that the family entered the UK as visitors in 2004. The eldest son was a minor at the time the application was made which the FtT found was on 4 September 2012.

Decision

7. I have heard submissions from both representatives this morning. The only ground pursued by the respondent was the second ground, which relates to the issue of the best interests of the children. The FtT established that the appeals were to be considered under the rules in force during

transitional period namely the pre 13.12.2012 version of paragraph 276ADE [37]. Alternatively the FtT concluded that the reasonableness test was met in any event [38]. I am satisfied that the First-tier Tribunal was correct to consider the best interest of all the children and did so having looked at all relevant factors including length of residence, connection with Mauritius, education, ties in UK [39-41]. The FtT placed weight on the length of residence in the UK [40] during significant years and that fact that the children were in full time education at critical times studying at secondary level, A level and GCSE, and would be disadvantaged by lack of fluency in French[39].

8. I also find that the FtT also considered the public interest in returning the children to Mauritius in circumstances where the parents had no lawful status in the UK and further had regard to the public interest as expressed in Section 117 nationality, Immigration & Asylum Act (as amended)[54]. The FtT concluded that the Rules were met or alternatively that it was not reasonable for the family in particular the children, to return to Mauritius such was the strength of their private lives in the UK.
9. It is my firm view therefore that the decision discloses no material error of law. The FtT cannot now be criticised for a matter which was not raised before it at the hearing and where the Secretary of State was represented. The grounds of appeal amount to a clear disagreement with the decision made and it is of some surprise that permission to appeal was granted.

Notice of Decision

The appeal is dismissed.

The decision of the FtT shall stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 14.12.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 14.12.2015

Deputy Upper Tribunal Judge G A Black