Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/29732/2014
IA/29737/2014, IA/29738/2014
IA/29739/2014, IA/29740/2014

THE IMMIGRATION ACTS

Heard at : Field House	**Decision & Reasons Promulgated**
On : 9 March 2016	**On : 24 March 2016**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

KADDA TALBI
LOUAFIA MAGRAOUI EPSE TALBI
[YT]
[AMT]
[ADT]

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Doyle instructed by M & K Solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, husband and wife and their three children ([YT], born on 22 August 2005; [AMT], born on 20 May 2009; and [ADT], born on 30 June 2011), are citizens of Algeria. They have been given permission to appeal against the

decision of the First-tier Tribunal dismissing their appeals against the respondent's decision to remove them from the United Kingdom following the refusal of their human rights claims.

2. The first two appellants arrived in the United Kingdom on 14 June 2005 with leave to enter as visitors until 30 November 2005. They overstayed their visas. On 21 July 2010 the first four appellants applied for leave to remain in the UK but their applications were refused. On 10 August 2010 the first appellant was served with removal papers. On 9 November 2010 the appellants applied for asylum, but the application was refused on 3 December 2010. They did not appeal against the decision. On 28 February 2013 all five appellants applied for leave to remain on human rights grounds, but their applications were refused on 14 June 2013. The respondent reconsidered the applications and refused them again on 20 June 2014.

3. The appellants appealed against that decision. Their appeal was heard in the First-tier Tribunal on 29 June 2015 by First-tier Tribunal Judge Juss. Judge Juss refused a request for the matter to be remitted to the Secretary of State to make a decision on section 55 of the UK Borders Act 2007 and went on to consider the matter himself. He found that the eldest child, [YT], was a qualifying child for the purposes of section 117B(6)(a) of the Nationality, Immigration and Asylum Act 2002 (as amended), but that it could not be said that it was unreasonable to expect him to leave the UK for the purposes of section 117B(6)(b). He considered the best interests of the children and found that removal would not be disproportionate and he dismissed the appeals.

4. Permission to appeal was sought on behalf of the appellants on the grounds that the judge, in dismissing the appeals under paragraph 276ADE(1)(iv) of the immigration rules, had failed to make findings as to what were the children's best interests; that the judge had failed to make clear findings as to the weight to be attached to the private life established by the three children; and that the judge had erred by taking the eldest child's resourcefulness and adaptability as a conclusive factor. It was also asserted that the judge had failed to conclude that the respondent's decision was not in accordance with the law owing to a failure to give proper consideration to section 55.

5. Permission to appeal was initially refused, but was subsequently granted by the Upper Tribunal on 23 November 2015.

Appeal hearing and submissions

6. There was discussion, at the hearing, as to whether the appeal should be adjourned to another day, since the third appellant, [YT]'s application for British citizenship had been accepted by the Secretary of State in a letter of confirmation dated 4 March 2016 and, as a result, the Home Office would be reviewing the status of the whole family. Mr Jarvis was in favour of an adjournment, but Mr Doyle, having taken the appellant's instructions, wished to proceed. I decided to proceed to determine the error of law issue, since this was unaffected by the change in circumstances.

7. Both parties then made submissions. Mr Doyle expanded upon the grounds, submitting that there had been a failure by the judge to identify what the children's best interests were, an insufficient consideration of the children's private life ties to the UK, an erroneous emphasis on the resourcefulness of the eldest child and a failure to consider the short-term impact on and disruption caused to the children by their removal to Algeria. Mr Doyle also submitted that the judge ought to have remitted the case to the Secretary of State to seek the views of the children in carrying out her section 55 duties.

8. Mr Jarvis submitted that the grounds were simply a disagreement with the judge's decision. The judge gave proper consideration to the best interests of the children and was not required to remit the matter to the Secretary of State. The judge properly considered the question of reasonableness in regard to the children. He had followed the relevant authorities. There was nothing wrong with his approach.

9. Mr Doyle responded by reiterating the submissions previously made.

10. I advised the parties that in my view there was no material error of law in the judge's decision requiring it to be set aside. My reasons for so concluding are as follows.

Consideration and findings

11. Whilst permission was granted in this case on the basis that the judge had arguably erred by failing to consider whether the eldest child met the relevant immigration rule (paragraph 276ADE(1)(iv)), Mr Doyle helpfully accepted, in line with the decision in AM (S 117B) Malawi [2015] UKUT 0260, that this was in fact addressed by the judge's consideration of reasonableness in the context of section 117B(6) of the 2002 Act. His submission was, however, based on the matters raised in the grounds, namely the judge's consideration of the best interests of the children.

12. I turn first of all to the question of whether the judge erred by failing to remit the matter to the Secretary of State in relation to her section 55 duties. I do not find any error made by the judge in that regard. At [4] of his decision the judge gave consideration to that question, as raised on behalf of the appellant, and found that the respondent had given consideration to section 55 in the refusal decision, which indeed she had at pages 10 and 11, and that it was for the Tribunal to consider the matter. The judge's decision not to remit the matter to the Secretary of State but to consider section 55 himself was, furthermore, clearly consistent with the decision in MK (section 55 – Tribunal options) [2015] UKUT 223 where that very issue was considered, referring to the previous decision in JO and Others (section 55 duty) Nigeria [2014] UKUT 517, and where reference was made at [27] to the rejection of the argument that the Tribunal was obliged to remit even in circumstances where the respondent had not discharged her duties under section 55.

13. Furthermore, and contrary to Mr Doyle's submission, there was no requirement for the children to be consulted by the respondent in order for her section 55 duties to have been properly fulfilled. That is made clear in the President's decision in MK, where the matter was considered in particular at [36(d)] and where the President found that the relevant issue was whether there was sufficient evidence to enable the Tribunal to conduct a properly informed assessment of the child's best interests. In the appellant's case before Judge Juss there clearly was sufficient evidence before him for him to assess the children's best interests, and he properly proceeded on that basis.

14. Mr Doyle submitted that Judge Juss had failed to make findings as to where the best interests of the children lay, in accordance with the guidance at [34] in EV (Philippines) & Ors v Secretary of State for the Home Department [2014] EWCA Civ 874 and had failed to consider the children's ties to the UK, concentrating only on the resourcefulness of the eldest child. However I do not agree. The judge plainly considered the length of time the eldest child had been in the UK, his education and his friends and other ties to the UK. He considered the documentary and oral evidence before him in that regard. It is clear from his findings that he considered [YT]'s best interests to lie in remaining with his family and he gave full and cogent reasons for concluding that he could reasonably return with his family to Algeria. The judge properly focussed on [YT] as he was the eldest child and the only "qualifying child" in terms of his length of residence in the UK, but at [15], when weighing up the children's best interests against other relevant considerations, he also took into account the two other children and their circumstances and medical conditions. The judge was entitled to take into account [YT]'s resourcefulness and adaptability, but it is clear that he did not treat that as being conclusive. He was, likewise, entitled to take account of the immigration status of the first two appellants when balancing the best interests of the children against the public interest considerations and that is consistent with the findings of the Court of Appeal in EV at [58].

15. Taken as a whole, the judge's determination contains a detailed assessment of the children's best interests and a careful balancing of all relevant considerations, following the approach laid out in established case law. The judge's conclusions were fully and adequately reasoned and were properly open to him on the evidence before him. The grounds of appeal disclose no errors of law in his decision.

DECISION

16. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeals stands.

Signed

Upper Tribunal Judge Kebede