



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/50109/2014**

Appeal Numbers:

IA/50121/2014

IA/50127/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 19 May 2017

Promulgated

On 19 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

**MR R B - FIRST APPELLANT
MRS S K - SECOND APPELLANT
MASTER A B - THIRD APPELLANT
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr T Tabori of Counsel

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of

publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Background

2. The appellants in these three linked appeals are husband and wife, the first and second appellants and a minor child, the third appellant. All three appellants are nationals of India. The first appellant's date of birth is 15 April 1977, the second appellant 10 December 1979 and the third appellant 25 January 2007.
3. The first appellant entered the UK unlawfully in 2001. He has remained in the UK unlawfully. The second appellant entered the UK on 14 January 2006 and 22 April 2006 on a visit visa and remained in the UK unlawfully after that visa expired. The third appellant was born in the UK.
4. The appellants applied for leave to remain in the UK on the basis of private and family life in 2010. Their applications were refused with no right of appeal. After a reconsideration on 2 August 2011 the respondent's decision was maintained. The appellants appealed against that decision to the First-tier Tribunal. Their appeals were dismissed in September 2011. On 6 October 2014 forms IS.75 and IS.76 were sent to the appellant's representative. On 31 October 2014 the completed IS.76 was received by the respondent. Representations were made for the appellants' cases to be considered under the European Convention on Human rights ('ECHR'). The applications were refused by the respondent on 20 November 2014. The appellants appealed against the respondent's decision to the First-tier Tribunal.

The appeal to the First-tier Tribunal

5. In a decision promulgated on 6 January 2016 First-tier Tribunal Judge C M Phillips dismissed the appellants' appeals. The judge found that, despite the length of time that the third appellant had spent in the United Kingdom, it would be reasonable to expect the third appellant to leave the UK with his parents to go to India. The judge did not accept that the appellants could not return to India and reintegrate fully. The judge therefore found that the requirements of Appendix FM were not met. The judge also considered private life under the Immigration Rules and found that none of the appellants met the requirements of the private life route in paragraph 276ADE of the Immigration Rules. The judge considered Article 8 outside the Immigration Rules finding that any interference with the private life of the appellants was justified.

Permission to appeal

6. The appellants applied for permission to appeal against the First-tier Tribunal's decision. On 2 June 2016, First-tier Tribunal Judge Fisher refused

the appellants permission to appeal. The appellants renewed their applications for permission to appeal to the Upper Tribunal. On 27 June 2016 Upper Tribunal Judge Grubb refused the appellants permission to appeal. On 29 November 2016 the appellants submitted a claim for judicial review of the Upper Tribunal's decision to refuse to grant permission to appeal. On 20 January 2017 the Honourable Mr Justice Fraser granted permission to apply for judicial review. Mr Justice Fraser considered that although permission will only rarely be granted in 'so called CART cases' that this was one of those cases. He set out in the Order that if no request for a hearing was made the court would make a final order quashing the refusal of permission decision without a further hearing. On 20 February 2017 Master Gidden ordered that, permission having been granted to apply for judicial review and there being no request for a substantive hearing, the decision of the Upper Tribunal to refuse permission to appeal was quashed. The parties were notified. Thus the appeal came before me.

The hearing before the Upper Tribunal

Submissions

7. The grounds of appeal set out three grounds. The first ground of appeal asserts that the third appellant qualified under Section EX.1 of the Immigration Rules. It is asserted that the judge misunderstood Section EX.1 and wrongly decided that it would be reasonable for the third appellant to leave the United Kingdom. The grounds assert that it cannot reasonably be expected that the third appellant can leave the United Kingdom or for the first and second appellants to leave the United Kingdom when the third appellant is currently set in his standard way of living in the UK and it is all he knows. It is also asserted that the third appellant, a child, should not be held accountable or punished for his parents' wrong doings. During oral submissions Mr Tabori clarified that the appellant did not assert that it can never be reasonably expected for an appellant who has lived in the United Kingdom continuously for seven years or more to leave the United Kingdom.
8. The second ground of appeal asserts that the judge failed adequately to take the best interests of the appellants' child as the primary consideration in assessing proportionality under Article 8. The case law of **Azimi-Moayed and Others (decisions affecting children; onward appeals) [2013] UKUT 197 (IAC)** is relied on. It is asserted that the third appellant was born in the United Kingdom and has been living here for all of his life. It should be accepted that his lengthy residence can lead to the development of social, cultural and educational ties that it would be inappropriate to disrupt in the absence of compelling reasons to the contrary. It was submitted that there are no compelling reasons that justify the disruption that will be caused to the third appellant.
9. The third ground of appeal asserts that the First-tier Tribunal Judge failed to have regard to the decision in **ZH (Tanzania) v SSHD [2011] UKSC 4**

in which it was held that the best interests of the child must be of primary consideration and that children were not to be blamed for the errors of their parents. It is asserted that it would be in the best interest of the third appellant to remain in the United Kingdom. He is in full-time education and has established his way of life here.

10. Mr Tabori submitted a skeleton argument at the commencement of the hearing and amplified the arguments in oral submissions. Mr Tabori relied on the decision of **Kaur (children's best interests/public interest interface) [2017] UKUT 00014**. He referred extensively to paragraphs from that decision. It was submitted that the judge had erred in paragraph 55 of the decision by focusing or considering that children are focused on their parents rather than their peers and are adaptable. His reading of this paragraph (i.e. 55) was that the judge appeared to be saying that over a period of seven years a child would be focused on its parents. He submitted that this was an erroneous approach which failed to reflect the fact, as set out in a number of cases, that a child will acquire a private life over a period of time not just at the end of seven years. He submitted that the judge has erred by failing to recognise that somewhere along the continuum a child increasingly ceases to be focused on its parents. The judge has failed to consider in any detail the third appellant's private life and this flows from the erroneous approach in paragraph 55. He submitted that the general public law principles set out in the guidance to EX.1 ought to have been taken into consideration by the judge. He referred specifically to paragraph 14 of the respondent's guidance and the following factors:
 - (a) whether the child or parents have existing family or social ties with the country – the person who has extended family or networks of friends should be able to rely on them for support to help reintegrate on return;
 - (b) whether the child has attended school in that country;
 - (c) whether the parents and/or child have lived or visited the country before for periods of more than a few weeks – the question here is whether having visited or lived in the country before that the child would be able to adapt and/or that the parents would be able to support the child in adapting to life in that country.
11. It was submitted that the first and second appellants have no network of extended family or friends whom they might rely on upon return to India. They have no social ties with India. The third appellant has no ties with India himself. He has never attended school in India and has never lived in or visited India and he only speaks broken Punjabi the mandatory language in Punjab. It was submitted that the judge erred in assuming that the third appellant's best interests solely concerned his living with his parents and that this assumption led to a failure to consider the extent of the third appellant's private life in the UK and the difficulty he would face on integration. It was also submitted that the third appellant was 9 years of age at the date of the hearing which significantly extends the seven-year threshold at which the public interest does not require removal. It

was asserted that the third appellant was closer to the threshold for being able to register as a British citizen than to the seven-year threshold but this was not weighed in the reasonableness balance by the First-tier Tribunal.

12. It was asserted that the First-tier Tribunal Judge failed to correctly apply the reasonableness test. The judge, when finding that the appellant will be able to enter the education system and that there is nothing in the school reports or evidence that countervails against a finding that he is normally adaptable and his wellbeing will not suffer, omitted to consider that the child has been here for over seven years and that that must be given significant weight when carrying out the proportionality exercise. It was submitted that there must be a very strong expectation that the third appellant's best interests would be to remain in the United Kingdom with his parents as part of the family unit and that must rank as a primary consideration in the proportionality assessment. Reliance was placed on paragraph 46 of **MA (Pakistan) & Ors, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Anor [2016] EWCA Civ 705 (MA (Pakistan))**. It was asserted that the judge had paid no regard to the friendships that the third appellant had formed, the activities that he undertook, his success in school and his membership at sports clubs etc. The judge had not sufficiently enquired into the circumstances when determining the best interests of the third appellant. He had not been called to give evidence and no questions had been put to him. The judge has not considered the extent to which the third appellant has become a distinct person with his own private life and has simply assumed that as a he can return as part of a family unit. Reliance was placed on the decision at paragraph 2 in **Kaur**. The judge clearly has not undertaken a proper assessment in this case. He submitted that it is simply inadequate to say that there are no health or related issues. There are no adequate reasons to support the judge's assessment of reasonableness. At paragraph 70 the judge relied on the finding of the previous Immigration Judge without any acknowledgement that four years had passed since the previous decision and that infected the judge's approach to consideration of Article 8 proportionality. It was submitted that the judge also discounted the relevance in the proportionality limb of the **Razgar** test that the third appellant was approaching the eligibility for registration as a British citizen. It was submitted that in stating only that it was not compelling or there were no compassionate circumstances is not a proportionality balancing exercise. It was submitted that compelling circumstances refers only to Section 117C deportation cases not 117B.
13. Mr Clarke in response submitted that there was no error of law identified in the grounds of appeal. He asserted that it was too late to introduce the policy guidance. It was not clear that this had been put before the First-tier Tribunal Judge, it was not relied on in the grounds of appeal and that therefore that issue should not be taken into consideration. With regard to the seven years and paragraph 55 he submitted that when considering the wording in the case of **Azimi-Moayed** the First-tier Tribunal Judge appears to be paraphrasing from that decision and has simply made a slip by not

referring to 'from the age of 4 years'. With regard to the submissions that the judge had a duty under Section 55 to enquire into the factors around the best interests of the child of his own volition he submitted that it is not the role of the judge to act as an advocate and to conduct cross-examination on issues that have not been addressed or brought to the judge's attention by the parties. The appellant was legally represented. He relied on the case of **MK (Section 55 - Tribunal options) Sierra Leone [2015] UKUT 00223 (IAC)** at head note 1 where it sets out that the onus rests on the appellant. He submitted that the judge has directed himself correctly and the judge cites the relevant case law. The judge identified the relevant case law and set out at paragraph 49 that the best interest of the third appellant are a primary consideration. The judge referred to the guidance set out in **Azimi Moayed**, considered a number of factors in paragraphs 50-60 and clearly took all the evidence into consideration when arriving at a conclusion as to the best interests of the third appellant. The judge clearly considered the reasonableness of the third appellant returning to India. He submitted that the judge was correct to consider how the third appellant's parents will fare in India because this will have a bearing on the third appellant's best interests. At paragraph 55 the judge was clearly aware and took into consideration the appellant's age. He submitted that the judge looked at the difficulties that the appellants had suggested they would face on return. With regard to the appellants' reliance on paragraph 46 of **MA (Pakistan)** he submitted it is a fact sensitive analysis. The judge made that fact sensitive analysis and made a finding, in light of all the evidence and looking at the detail, that the best interests of the third appellant would be to be with his parents. The judge correctly followed the relevant case law. He submitted that it is clear from **MA (Pakistan)** that the test with regard to private life under Section 117B, EX.1 or 276ADE are all the same.

14. In reply Mr Tabori accepted that he could not say whether or not the policy guidance had been put to the judge but his point was that this is part of the argument that relevant considerations were not taken into account. With regard to the seven years issue set out in paragraph 55 he submitted that the Home Office Presenting Officer accepted or suggested the judge had made a slip which supported his argument. The judge has not considered the factors set out in the witness statements of the appellants in paragraphs 8 to 11 and the case that was put with regard to the difficulties and the integration of the third appellant. He submitted that the judge is required to make findings of fact and that there has been no analysis of whether the factors identified make it unreasonable for the appellant to leave the United Kingdom.
15. I reserved my decision. Both parties agreed that if I were to find an error of law I could remake the decision on the papers before me and the further evidence that had been filed with the Tribunal.

Discussion

16. The judge set out in paragraphs 30 to 43 the burden and standard of proof and applicable law. There is no suggestion that the judge incorrectly identified the burden or standard of proof or that the judge applied any incorrect case law.
17. Dealing firstly with the submission (set out in the skeleton argument that the judge simply followed the previous assessment of proportionality made by Judge Ross and failed to take into account that 4 years had passed since that decision was made. The judge correctly set out:

“44. The starting point for my decision is the determination of Immigration Judge Ross promulgated on 23 September 2011. ...

18. The judge then set out some key findings.

45. The findings at paragraph 8 are as follows:

‘I have given careful consideration to the appellants’ position which I accept is that the first appellant has been present in the UK since 2001 and the second appellant since 2006. However, the first appellant came here illegally. He was not a refugee in need of protection, but clearly an economic migrant. He relies on the fact that he has worked in the UK: however, I find that none of that work can have been legal since he has never had any status here. The second appellant obviously obtained her family visit visa by giving inaccurate information, since she did not stay with her brother but came to stay with the first appellant. Further, I found that she had no intention to return to India at the end of the six months and therefore must have made a false declaration that she was a genuine family visitor. The third appellant is only 4 years old. Whilst I accept he may have started school in the UK, there are schools in India which he could join immediately.’

46. The findings in paragraph 10 are as follows:

‘In relation to Article 8(1), the appellants’ family life is entirely between the appellants themselves. There are no other family members in the UK from whom they would be separated if returned to India. Family life for the appellants will continue uninterrupted in India. In relation to the appellants’ private lives, I accept that over their years in the United Kingdom some private life will have developed.’

47. The Immigration Judge went through the **Razgar [2004] UKHL 27** questions and found that any interference with private life to be in accordance with the law and necessary. The Immigration Judge went on to consider proportionality and the best interests of the third appellant. Taking into account all the facts, the Immigration Judge concluded that on balance it is proportionate for the appellants to be removed to India. The appellants were appeal rights exhausted on 8 November 2011. The appellant states in his witness statement that on 24 December 2011 he made representations under paragraph 395C of the Immigration Rules and these were refused on 20 November 2014 with a right of appeal.

48. No argument was taken before me with the proportionality assessment in the previous determination. I was urged to find that the third appellant meets the requirements of the Immigration Rules and to take account of the fact that there are no family ties with India, the third appellant cannot read or write Punjabi, has never been to India, is in education in the United Kingdom and in a little over a year will qualify to apply for naturalisation.”
19. It was asserted that the First-tier Tribunal (at paragraph 70) simply followed the proportionality outcome from the First-tier Tribunal. For reasons, I give below, I do not consider that that is what the First-tier Tribunal Judge did. However, even if that were the case, if no issue was taken with the proportionality assessment that had been undertaken by the previous judge then as that earlier decision is her starting point no issue can be taken that that it was an error of law to follow that proportionality assessment.
20. At paragraph 70 the judge set out:
- “70. I find as did the previous Immigration Judge that any interference with the private life of these appellants will be in accordance with the law. However, despite the findings set out above, for the sake of completeness and in case I am wrong in finding that Article 8, private life is not engaged because the second **Razgar** test is not met, I have had regard to Article 8 outside the Immigration Rules and Section 117B of the 2002 Act.”
21. It is clear from this paragraph that the judge was making her own finding that the interference with the private life of the appellants would be in accordance with the law. This does not concern proportionality. At this juncture the judge is considering the third limb of the **Razgar** test which is whether or not the interference is in accordance with the law not whether or not such interference is proportionate.
22. All three grounds of appeal overlap and Mr Tabori, in oral submissions, tended to merge all three grounds. I will deal with the second and third grounds of appeal together as they overlap considerably.

The best interests of the third appellant.

23. Essentially the arguments are that the judge failed to treat the best interest of the third appellant as a primary consideration, that children were not to be blamed for the errors of their parents and that the judge failed to take the best interests into account as a primary consideration when assessing proportionality under Article 8.
24. The judge correctly set out that the best interests of the third appellant are a primary consideration (at paragraph 49). The judge considered these as such and in line with Section 55 of the 2009 Act and **ZH (Tanzania) [2011] UKSC 4**.

25. It is clear that the judge has taken into consideration all the evidence provided. The judge sets out at paragraphs 50 and 51:

“50. The appellants have provided evidence that the third appellant was born in the United Kingdom on 25 January 2007 and has Indian nationality. There is a letter from the third appellant stating that he has never been to India and does not know anyone there. He loves School and does not want to lose his friends there. There are copies of his school reports from reception to year 3 (2015) and his own reflections. It can be seen from his reports that he is generally making good progress and attaining the expected levels for his age or above. There are certificates showing that the third appellant completed courses of instruction in key areas of football.

51. Using the guidance set out in the case law including **E-A** and **Azimi-Moayed** I find that it is in the best interests of the third appellant to live with and be brought up by his parents. Whilst it is generally in the interests of children to have both stability, (which these appellants have not provided evidence of in the United Kingdom) and continuity of social and education provision, which the third appellant has had to date in the United Kingdom, it is generally in the interests of children to have the benefit of growing up in the cultural norms of the society to which they belong, which in the third appellant’s case is India.”

26. Whilst the judge has not set out every individual piece of evidence he has given a flavour of the third appellant’s own expression of his private life with his friends, his attendance at school and his social activities. The judge has noted the third appellant’s wish to remain in the UK with his friends. The conclusion reached by the judge, that the third appellant’s best interests lie in being brought up by his parents, is clearly the only conclusion that the judge has come to at this stage. This is hardly a surprising conclusion as this is a young child (aged 8 at the date of the hearing). Although a child’s best interests are a primary consideration, they are not a ‘trump card’. In **ZH (Tanzania)** the court held:

26 “This did not mean (as it would do in other contexts) that identifying their best interests would lead inexorably to a decision in conformity with those interests. Provided that the Tribunal did not treat any other consideration as inherently more significant than the best interests of the children, it could conclude that the strength of the other considerations outweighed them...”

27. A judge must consider a child’s best interests in light of all the circumstances. The judge in this case proceeded to consider the question of whether it would be reasonable to expect the third appellant to leave the UK to accompany the parents to the country of origin. There is no error of law in that approach.

28. Mr Tabori argued forcefully that the judge erred in paragraph 55 by saying that over a period of seven years a child would be focused on its parents. This failed to reflect the fact that a child will acquire a private life over a

period of time - a child increasingly ceases to be focused on its parents. At paragraph 55 the judge set out:

55. At the age of 8 (almost 9) at the date of the hearing no reason has been shown why it should not benefit the third appellant to acquire the ability to read and write in Punjabi and add these skills to the ability that he has to speak, read and write English. He has spent the first years of his life in the United Kingdom, the first seven years being likely to be less significant than the later years because very young children are focused on their parents rather than their peers and are adaptable.

29. This paragraph must be considered in context. The judge was considering whether or not it would be reasonable for the third appellant to leave the UK. The judge took into account that the third appellant was nearly 9 years of age. In **Azimi Moayed** the Upper Tribunal considered:

iv) Apart from the terms of published policies and rules, the Tribunal notes that seven years from age four is likely to be more significant to a child than the first seven years of life. Very young children are focussed on their parents rather than their peers and are adaptable.

30. The judge in this case has considered the guidance - there is nothing incorrect in stating that the first seven years is likely to be less significant than later years or that very young children are focused on their parents rather than their peers. This accords with what was noted in **Azimi Moayed**. There is nothing to suggest that the judge considered that it was only after the first seven years that a child would start to focus on peers or that the judge failed to consider that a child will begin to acquire a private life during this period.

31. The judge commenced his proportionality exercise from paragraph 72 onwards setting out:

"72. It is common ground that none of these appellants has a criminal record or has engaged in any activities or developed any associations that are not conducive to the public good. It is accepted that the suitability test in the Immigration Rules is met.

73. The length of residence and the circumstances in which the appellants came to the United Kingdom have been accepted. The appellant has been reporting regularly since July 2012. The appellant has not claimed that he should benefit from having remained in the United Kingdom for reasons beyond his control. The fact that the third appellant is a little over a year away from having remained in the United Kingdom for ten years has been relied upon. None of these factors are compelling or compassionate so that I find that there are no additional factors not covered by the Immigration Rules or compelling circumstances not sufficiently recognised under the Immigration Rules. The perceived desirability of education in England for the third appellant does not itself outweigh the public interest considerations set out in Section 117B of the 2002 Act (as amended) (see **EV (Philippines)**)."

32. I do not accept the submission that the judge has only taken these factors into consideration in the proportionality exercise and has failed to consider the third appellant's best interests as a primary consideration. As the judge set out at paragraph 71 he was considering factors which were not fully covered by the Immigration Rules - those factors having been set out earlier in the decision when the judge was considering whether the appellants met the requirements of the Immigration Rules. The judge's approach was correct. At paragraph 74 the judge weighed in the balance that the maintenance of effective immigration control is in the public interest. Then at paragraph 75 he set out that the public interest does not require the removal of the appellants if it would not be reasonable to expect the third appellant to leave the United Kingdom. The judge stated *"As set out above and against the background of the findings set out above, and after careful consideration, I have found that it is reasonable to expect the child (third appellant) to leave the United Kingdom. There is no need for me to re state the reasons for this finding"* It is clear, therefore, that the judge, in the proportionality balancing exercise, took all the factors in paragraphs 50-60 and 63 (consideration of the third appellant's best interests and reasonableness of expecting him to leave the UK) into consideration.
33. No specific paragraphs in the First-tier Tribunal decision were referred to by the appellant to support the assertion that the judge has 'blamed' the third appellant for the errors of his parents. The judge has set out the immigration history of the first appellant in paragraph 3. I cannot see any adverse reference to the first and second appellants' unlawful status when the judge was considering the third appellant's best interests or when considering the reasonableness of his leaving the UK. Any adverse factors arising from a parent's conduct cannot be taken into account when considering a child's best interests but when considering the issue of reasonableness wider public interest factors may be weighed in the balance. The judge does not appear to have taken the adverse immigration history into account when considering reasonableness under the immigration rules or under Article 8 and applying section 117B(6) of the 2002 Act. In **MA (Pakistan)** the court of appeal considered the correct approach to determining the best interests of a child and whether it is reasonable to expect a child to leave the UK. The court was considering section 117B(6) of the 2002 Act. The test is essentially the same as under EX.1(b). The court held that when considering the issue of reasonableness wider public interest factors may be weighed in the balance. In **Kaur** the Upper Tribunal held that where the evaluation of parental immigration contributes to a conclusion which will involve the family unit departing the UK does not amount to blaming the children (paragraph 28). Although the first and second appellants appalling immigration history could have been weighed adversely in the balance when considering the reasonableness of the third appellant leaving the UK, in fact the judge did not do so.
34. The judge then went on to state that it was:

“Not strongly suggested that any of the factors apart from the third appellant’s length of residence countervail against the public interest and I have found that the claimed difficulties of return and lack of family in India have been exaggerated so that I find that the public interest prevails.”

35. There was no error of law consideration of the third appellant’s best interests, the reasonableness of him leaving the UK or in the proportionality exercise undertaken by the judge.

The ‘reasonableness’ test

36. It is asserted that the judge misunderstood Section EX.1 and wrongly decided that it would be reasonable for the third appellant to leave the United Kingdom.

37. Having reached the conclusion that the third appellant’s best interests lay in being with his parents the judge proceeded to consider whether or not it would be reasonable to expect him to leave the UK. The judge set out in paragraph 52:

“52. It is settled law that the removal of the third appellant with his parents does not involve any separation of family life. There is nothing independent to show that the third appellant would have difficulty in adapting to life in India. He speaks Punjabi and on return will have the assistance of his parents both of whom were born, grew up, were educated, married and established themselves in India. The appellant has a grandmother and some other relatives in India and I find the claimed estrangement from all relatives in India to have been exaggerated by the appellant for the purposes of the claim. The evidence was not volunteered in a full and frank way or consistently with the evidence provided at the previous hearing. As can be seen from the evidence, the attempts by the appellants’ representative to have the appellants adopt their witness statements were so mired in difficulty that little weight that can be attached to the contents of the statements.

53. When considering the best interests of the third appellant I find the evidence that the first and second appellants have established a strong private life in the United Kingdom to be weak amounting to assertions by them, supported by two letters from members of the Sikh community. They have not demonstrated any English language attainment as evidence of integration in the United Kingdom.

54. I have considered the ties with India. There are no language difficulties in India where the first and second appellants have strong social and cultural ties and had long periods of residence. The appellant has a skill as a skimming plasterer and has been a farmer in India so he should be employable there. He has not made any attempt to find work in India. The second appellant is said to have worked in a household or households in the United Kingdom and there is nothing to show that this type of work is not available in India. There are family members in India and I find that the family will find it easy to re-integrate into society in India..

...

56. I find that the difficulties on return to India put forward by the first and second appellants at the hearing were exaggerated. The testimonial letters do not show how the family is being supported or confirm that it is their church that is providing the support claimed by the appellant in his oral evidence. The first appellant has never had leave to remain and the second appellant must have made a false declaration that she was a genuine family visitor so that they have never been in a position to give the third appellant any sense of security in the UK or reasonable expectation of indefinite leave to remain. Any attempt to pretend to the third appellant otherwise has not been shown to be well-founded and cannot bind the Tribunal.
57. It was held in **Azimi-Moayed** that short periods of residence, particularly ones without leave or the reasonable expectation of leave, are unlikely to give rise to private life deserving of respect in the absence of exceptional factors. Exceptionality is not a test under Article 8 and the third appellant is not to be punished for the shortcomings of his parents. It was held in **Azimi-Moayed** that protection of the economic wellbeing of the society amply justified removal.
58. On removal to India the third appellant will be able to enter the education system there albeit that this will be a little later than he would have entered if the first and second appellants had returned to India after their appeal was dismissed on 23 September 2011 and they became appeal rights exhausted. During the additional period in the United Kingdom the third appellant has progressed in the education system in England and gained additional skills but there is nothing in the school reports or evidence that countervails against a finding that he is normally adaptable and his welfare and wellbeing will not suffer on removal to India with his parents.
59. I note in the round the submission that the third appellant was said to be eligible to naturalise when he is aged 10, that is in January 2017.
60. It was submitted for the appellants that the respondent had not dealt fully or properly with the Section 55 issues but by reference to **SS (Nigeria) [2013] EWCA Civ 550** I note that in the vast majority of cases the Tribunal will expect the relevant interests of the child to be drawn to the attention of the respondent/Tribunal. The appellants have submitted a letter from the child and school reports and it was not submitted to me that there was scope for the Tribunal to indulge in further enquiries."
38. The judge then considered family life under the Immigration Rules finding that the requirements of Appendix FM were not met. With regard to EX.1 the judge at paragraph 63 found that:
- "I find, despite the length of time that he has spent in the United Kingdom, that it would be reasonable to expect the third appellant to leave the United Kingdom. It has not been shown that his removal with his parents to India, his country of nationality is not in his best interests

or unreasonable, or, that his welfare or wellbeing will be adversely affected by his removal as part of a family unit with his healthy and capable parents.”

39. It is clear that the judge had taken into consideration all the factors set out in the paragraphs I have cited above when arriving at the conclusion, in paragraph 63, that it would be reasonable to expect the appellant to leave the United Kingdom. This was a finding that was open to the judge. The judge took into consideration all the relevant factors specifically rejected the claimed estrangement from all relatives in India finding it to have been exaggerated by the appellant for the purposes of the claim.
40. The judge then moved to consider private life under the Immigration Rules. It was accepted, in relation to the third appellant, that the test is the same i.e. that it must be reasonable to expect the child to leave the United Kingdom. Mr Tabori submitted that the judge, in paragraph 66, elided the position of all three appellants rather than considering the third appellant’s private life and on that basis whether it would be reasonable to expect the third appellant to leave the United Kingdom. The judge’s findings in respect of the third appellant’s private life must be considered in the context with the findings under family life. The judge had set out in detail the factors that he had taken into account with regard to the third appellant’s current life in the United Kingdom and therefore did not need to set them out again when considering private life. The judge considered whether or not the first and second appellants met the requirements of paragraph 276ADE and correctly took those factors into consideration as they would have a bearing potentially on the reasonableness of the expectation of the third appellant leaving the United Kingdom.
41. I do not accept the submission that the judge, on the facts of this case, was under any duty to make any further enquiries either of the child himself or to ask for any other evidence that had not been submitted at the hearing. The appellants were legally represented and had submitted evidence from the third appellant with regard to his wishes. The judge took that into account. As set out in paragraph 60, the judge noted that the relevant interests of the child should be drawn to the attention of the Tribunal and “it was not submitted to me that there was scope for the Tribunal to indulge in further enquiries”.
42. There was no error in the judge’s assessment of the reasonableness of the third appellant being expected to leave the UK.
43. The decision of the First tier Tribunal did not contain any material errors of law.

Notice of decision

There is no material error of law in the decision of the First-tier Tribunal. The decision of the Secretary of State stands.

Signed P M Ramshaw

Date 9 June 2017

Deputy Upper Tribunal Judge Ramshaw