



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

Appeal Numbers: AA/13352/2015
AA/13591/2015
AA/13623/2015
AA/13625/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 19th January 2018**

**Decision & Reasons Promulgated
On 9th February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**MRS F V A S (FIRST APPELLANT)
MR M J M N (SECOND APPELLANT)
MR A F (THIRD APPELLANT)
MISS H F (FOURTH APPELLANT)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms N Bustani
For the Respondent: Mr E Tufan (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellants' appeals against decisions to refuse their protection and human rights claims were dismissed by First-tier Tribunal Judge Baldwin ("the judge") in a decision promulgated on 2nd October 2017. They first came before the First-tier Tribunal in June 2016 and were dismissed under the Immigration Rules ("the rules") and on asylum and human rights grounds. Following an onward appeal, the Upper Tribunal remitted them to the First-tier Tribunal, limited to requiring the human rights grounds of appeal to be reheard and decided. The adverse findings regarding asylum and humanitarian protection made in the First-tier Tribunal in 2016 were preserved.
2. The judge found that the Article 8 case advanced by the appellants contained discrete elements, including the first appellant's mental ill health, the extent of the medical and support services available to her and the best interests of the third and fourth appellants, the children of the family. Overall, the judge concluded that the appellants could not succeed and that removal of all the family members together would not be disproportionate or otherwise unlawful.
3. In an application for permission to appeal, two grounds were advanced. The first concerned the position of the children, and particularly the older, born on 30th March 2011. As at the date of the hearing before the judge, on 19th September 2017, she was 6½ years old. Nonetheless, paragraphs in the grounds expressly assert that the children of the family have been in the United Kingdom for over seven years (paragraph 10) and that the fact of seven years' residence must be given significant weight (paragraph 14) and forms the basis for leave to be granted unless there are powerful reasons to the contrary (paragraph 15). It is also asserted in this context that there are no countervailing reasons why the appeals should not be allowed, as "section 117B(6) is met".
4. It was contended in the second ground that the judge erred in failing to deal with the cases as conjoined appeals, in the light of guidance given by the Upper Tribunal in PD and Others [2016] UKUT 00108.
5. Permission to appeal was granted on 27th November 2017. In a rule 24 response prepared on behalf of the Secretary of State, the appeal was opposed on the basis that the judge had made a thorough assessment and properly considered the best interests of the children and the position of all the family members.

Submissions on Error of Law

6. In the light of the date of birth of the older child, I asked Ms Bustani how the first ground could succeed on the basis that the children of the family have been present here for more than seven years. She accepted that the ground fell away and the case could not be advanced as a case in which such a period of residence could be shown.

7. However, there was no overall assessment of the family in the decision. The first appellant came here in August 2008. Very little was known about the circumstances of her husband, the second appellant. He was, nonetheless, part of the family. The two children had not been present here for seven years but their circumstances required careful consideration. The judge found that the first appellant, their mother, had been traumatised.
8. The best interests assessment appeared at paragraph 36 of the decision but it was not particularly thorough. At paragraph 37, the judge appeared to revert to the first appellant's circumstances and overall, the decision seemed to focus on her position and not those of the entire family or the other members.
9. Mr Tufan said that the case was similar in some respects to EV (Philippines), where the children of the family were also present in the United Kingdom for less than seven years. The Court of Appeal concluded that a "real world" assessment had to be made. There was nothing before the First-tier Tribunal to suggest that other family members could succeed. The judge considered the medical report. The best interests of the children appeared to be the strongest feature of the case. The judge considered their circumstances at paragraphs 36 and 37 and it was clear that he made a careful analysis. He looked at the position outside the rules, noting that the parents were educated and that close family members were present in Sri Lanka. Delay on the respondent's part had not caused any prejudice. The judge also found that the first and second appellants would remain together with their children, on removal, thus furthering the children's best interests.
10. Ms Bustani made a brief reply. The facts in EV (Philippines) were very different. What was missing in the present decision was consideration of each family member's circumstances. It was not necessary for the children to reach the threshold of seven years. Their position required careful consideration in any event. The decision lacked the detail showing that the family's circumstances, including the second appellant's circumstances, had been properly considered.

Conclusion on Error of Law

11. Ms Bustani sensibly recognised that the bulk of the grounds, where emphasis was placed on the presence of the children in the United Kingdom for over seven years, rather fell away. The decision shows that the judge had the ages of the children and their circumstances clearly in mind.
12. The judge granting permission noted that some of the paragraphs in the decision are rather long. There is some force in this but a careful reading shows that the judge made a painstaking assessment in the light of the evidence before him. He carefully considered the circumstances of the entire family and, I find, gave due weight to the particular circumstances relating to each individual member.

13. As Ms Bustani said, much of the decision concerns the first appellant but this is hardly surprising in view of the extent of the medical evidence relating to her. The judge found that she had suffered trauma in the past and remained very troubled.
14. So far as the children are concerned, the judge expressly addressed their best interests in paragraph 36 of the decision but clearly had their circumstances in mind throughout the analysis. For example, at paragraph 33 he referred to documentary evidence from the school regarding the older child's attendance and her progress.
15. At paragraph 35, the judge noted that the children will form part of the family unit on removal, together with the second appellant, the first appellant's husband. He described the second appellant as well educated and as having worked previously in Sri Lanka. The adult appellants have their parents and a number of siblings in Sri Lanka.
16. Although the judge reverted to the first appellant's circumstances at the beginning of paragraph 37, towards the end of that paragraph the position of the children is again brought into the picture. The judge focussed on the ties established by the older child, in pre-school education and within the family unit. He expressly mentioned her sibling in this part of the decision. In that same paragraph what the second appellant knows about the medicines and support the first appellant needs was also taken into account. Mention was made again of the presence in Sri Lanka of several close adult relatives.
17. Overall, contrary to what is asserted in the grounds, the judge clearly has considered the position of the individual appellants and has also assessed the circumstances of the entire family. In other words, he has treated the appeals as conjoined and his approach to the evidence and his analysis is fully consistent with guidance given by the Upper Tribunal in PD and Others.
18. Read overall, the decision shows a thorough engagement with the evidence and a careful assessment. The judge has given cogent and sustainable reasons for concluding that the appeals fell to be dismissed. The grounds in support of the application for permission to appeal have not been made out. The decision contains no material error of law and shall stand.

Notice of Decision

The decision of the First-tier Tribunal shall stand, as it contains no material error of law.

Signed

Date 08 February 2018

Deputy Upper Tribunal Judge R C Campbell

ANONYMITY

I will maintain the anonymity order made by the judge and the order shall remain in place until varied or discharged by a competent court or tribunal.

Signed

Date 08 February 2018

Deputy Upper Tribunal Judge R C Campbell