



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

Appeal Numbers: HU/00676/2018  
HU/00680/2018  
HU/00682/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 November 2018**

**Decision & Reasons  
Promulgated  
On 28 November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**MR G P G  
MRS M A  
MASTER A G  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr M Symes, Counsel instructed by Shah Jalal Solicitors  
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of Nepal who appealed under Section 80 of the Nationality, Immigration and Asylum Act 2002 against the respondent's decision dated 5 December 2017 to refuse the appellant's leave to remain in the UK. In a decision promulgated on 2 July 2018, Judge of the First-tier

Tribunal O'Hagan dismissed the appellants' appeals on human rights grounds.

2. The appellants appeal with permission on the following grounds:

Ground 1 – Qualifying child. It was argued that the judge failed to identify what the powerful reasons were which overcame the starting point that leave should be granted to a qualifying child as identified by Elias LJ in **MA (Pakistan) [2016] EWCA Civ 705**.

Ground 2 – It was submitted that the First-tier Tribunal Judge found the family's residence to have been precarious at all times. It was submitted that the judge failed to apply **Agyarko [2017] UKSC 11**, at paragraph 53 which provided that:

“One can, for example, envisage circumstances in which people might be under a reasonable misapprehension as to their ability to maintain a family life in the UK, and in which a less stringent approach might therefore be appropriate.”

### **Background**

3. The first appellant was born in 1977 and is now 40 years old. His wife the second appellant was born on 23 July 1980 and is now 37. Their eldest child, the qualifying child A, was born on 27 March 2008 and was 10 years old at the date of hearing. The second child AG was born on 2 March 2016 and is 2 years old. The first appellant entered the UK on 21 December 2009 as a student with leave valid from 11 December 2009 to 31 July 2012. The second appellant entered the UK on 24 July 2010 having been granted leave as a dependant and has remained ever since. The third appellant entered the United Kingdom on 25 March 2011 and was granted leave as a dependant and has lived in the UK since that date. The fourth appellant was born in the United Kingdom and has lived his entire life here. Following an initial grant of leave the appellant was twice granted further leave his last leave due to expire on 6 May 2017, the first appellant having submitted an application two days prior to his expiration of this leave in the form of a human rights application. It was not disputed that the appellants had not overstayed and had an unblemished immigration history.

### **Submissions**

4. Mr Symes submitted that the critical issue was one of standing. He relied on pages 47 and 50 of the appellants' bundle which contained the qualifying child's school reports which included that in 2015 evidence that the qualifying child was doing well and making 'fantastic progress'. At page 50, in 2016, this was being built on and he had made very strong friendship groups and was good at building relationships and had a wide variety of friends to play with.

5. Mr Symes relied on paragraph 5 of the grounds for permission to appeal (which cited paragraph 46 of **MA (Pakistan)** and submitted that significant weight should have been given to this evidence. Although the judge at [18] acknowledged that anxious consideration was to be given to the evidence, at [30] to [33] the judge rejected the contention that qualifying child did not speak Nepalese and found at [34] that the qualifying child had formed a certain level of friendships but found that his best interests were likely to lie with his parents. Mr Symes submitted that what the judge did not do, was apply **MA (Pakistan)** and the judge failed to state what the powerful reasons were to justify departure. In respect of ground 2, Mr Symes relied on what was said in **Rhupiah [2018] UKSC 58**, in approving what was said by Sales LJ in the court of Appeal, that although a tribunal should have regard to the consideration that little weight should be given to private life, it is possible that this may be overridden in an exceptional case by particularly strong features of the private life in question. It was Mr Symes' position that the judge was wrong to hold precariousness against the family unit.
6. Mr Symes made submission on **KO (Nigeria) [2018] UKSC 53**. He submitted that Paragraph 6 of that case poses the correct test:
 

“The appellant’s case in short, is that in determining whether it is reasonable to expect a child to leave the UK with a parent (under Section 117B(6)), or whether the effect of deportation of the parent on the child would be “unduly harsh” (under Section 117C(5)) the Tribunal was concerned only with the position of the child, not with the immigration history and conduct of the parents, or any wider public interest factors in favour of removal. By contrast the Secretary of State argues that both provisions require a balancing exercise, weighing any adverse impact on the child against the public interest in proceeding with removal or deportation of the parent.”
7. Mr Symes submitted that it was slightly unhelpful that the case focused on paragraph 117C but he conceded that paragraph 18 indicated that it must be considered where the parents, apart from the relevant provision, are expected to be; since it would normally be reasonable for the child to be with them. Looking at [34] and [35] of the decision and reasons, Mr Symes submitted that the judge had not looked at what the powerful reasons were although he accepted that the judge had looked at the qualifying child’s integration and friendships.
8. It was Mr Symes’ submission that there was a threshold error and that on reconsideration **KO** would have to be looked at. He submitted that against the appellant was that there was no real expectation of status, but in their favour was that the actions of the parents could not be held against the child in assessing reasonableness.
9. Mr Whitwell submitted that at [26] the judge cited **MA (Pakistan)** and at [28] indicated that he had to take into account that the matters were

intensely fact sensitive but that the starting point was that unless there were powerful reasons to the contrary, leave should be granted.

10. Mr Whitwell submitted that it also had to be considered, that at [26] the judge directed himself as to Section 117B. The judge went on to look at all the factors including finding at [33] that the qualifying child speaks both English and Nepalese, at [34] that his private life is family centric; although he has friends and will have the social integration that most children of that age will have achieved, he is still at an age (10) where the primary focus of his life will be within his family. The third part the judge looked at was at [35], the qualifying child's schooling, noting at [38] that there will be some disruption but it will be limited and that he is still in primary education and several years away from sitting GCSEs/A levels. At [40] the judge finds that the qualifying child's best interests are to remain in the UK but did not consider that the weight of that best interests is any greater than any other child of that age.
11. Mr Whitwell relied on the judge's findings at [41] and indicated that the relevant test was the one considered in **EV (Philippines) v Secretary of State for the Home Department [2014] EWCA Civ 874**; the question was how emphatic the answer is in relation to those best interests.
12. In respect of **KO (Nigeria)** Mr Whitwell submitted that the Supreme Court found that the best interests' assessment has to be conducted in the real world. At paragraph 12 of **KO**, the Supreme Court referred to the respondent's guidance and that the best interests of children are generally to remain with their parents. Mr Whitwell submitted that this is precisely what the judge took into consideration. Paragraph 17 of **KO (Nigeria)** considered that guidance and where the parents are expected to be and the conclusion at [19] was that the best interests' assessment must be conducted on the basis of the facts as they are in the real world.
13. It was Mr Whitwell's submission that the judge took into account the private life and education and considered both the children, considering the younger child at [42]. He submitted that, although it was not clear to what extent the powerful reasons test survived **KO**, the judge's reasoning was sufficient to provide those powerful reasons, specifically that the answer to the best interests assessment, in this case, was not a particularly emphatic one.
14. In relation to ground 2, Mr Whitwell relied on paragraph 53 of **Agyarko** and submitted that the paragraph in question was not talking about a younger child, as in this case and the circumstances in this case are not ones where the family might have been under a reasonably misapprehension as to their ability to maintain life in the UK might have expected to have remained.
15. Mr Whitwell submitted that page 74 of the respondent's guidance is relevant and these are factors which Mr Whitwell submitted that the judge

took into consideration: for example, who will the child be living with, whether there are wider ties, whether they can integrate.

16. In reply Mr Symes submitted that looking at pages 74 and 75 of the respondent's guidance, the factors also include whether the children has attended school in the country of return, which these children have not. Mr Symes further submitted that there was nothing in the judge's findings about the disruption to their schooling, at [33] and [35], and essentially the judge had viewed this from the wrong prism.

## **Conclusions**

17. I am satisfied that the judge followed the correct approach and directed himself correctly including to **MA (Pakistan)**. This is not a case where the judge found that it was reasonable for the children to depart because of any wrong doing by their parents but rather, as identified by the Supreme Court at paragraph 51 of **KO (Nigeria)**, this was also a case where the:

'parents' conduct was relevant in that it meant that they had to leave the country.

...it was in that context that it had to be considered whether it was reasonable for the children to leave with them. Their best interests would have been for the whole family to remain here. But in a context where the parents had to leave, the natural expectation would be that the children would go with them, and there was nothing in the evidence reviewed by the judge to suggest that that would be other than reasonable.'

18. Similarly, in the case before me, the judge found that the best interests would have been for the children to remain in the UK, but in the context where the parents had to leave, as although the judge accepted that the family have an unblemished immigration history ([49]), they have no other right to be in the UK other than their claim under Article 8, the natural expectation therefore would be that the children would go with them. There was nothing in the evidence reviewed by the judge which would suggest that it would be anything other than reasonable.
19. The judge applied the correct approach to both the best interests assessment and the consideration of reasonableness and considered that in the real world, where it was reasonable for the qualifying child to relocate, including given his relative young age and that the level of social integration was that which most children of his age would have achieved but that his life and primary focus will have been with his family. There was no substantive challenge to those findings, including that the best interests of children is to be in the care of their parents in general.
20. There was also no error in that reasonableness assessment, in the judge taking into consideration that with the support of his parents the qualifying child A could adjust to life in Nepal and the judge fully took into consideration, including at [35] that whilst he may lack confidence it is not

uncommon for children to have to relocate and make new friends. It is implicit in the judge's findings that he took into account that the children had not attended school in the country of return. The judge took into account (contrary to Mr Symes' submission) that removal could be detrimental to the child's education (at [36]) but found, and there was no challenge to that finding, that whilst there would be some disruption it would be limited including given that he was still in primary education and several years away from GCSEs and A levels.

21. I am of the view that the judge followed exactly the approach which is now advocated by **KO (Nigeria)** taking into account all the relevant factors when assessing reasonableness (including as set out in the non-exhaustive list in the respondent's guidance) and assessed the situation of both the qualifying child and the appellants in general, in the real world. In those circumstances, there were powerful reasons for the appeals not to succeed.
22. In respect of the second ground this was not pursued with any great force and I agree with Mr Whitwell that this is not a case where the appellants could ever have any misapprehension, reasonable or otherwise, about their ability to maintain a family life in the UK. Although Mr Symes relied on **Rhuppiah** and it is true that the 'little weight' provision may be overridden in an exceptional case by particularly strong features of the private life in question, as is evident from the judge's findings, this was not a case with particularly strong private life features, notwithstanding the qualifying child.
23. The decision of the First-tier Tribunal does not contain an error of law and 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 their 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: 21 November 2018

Deputy Upper Tribunal Judge Hutchinson

**TO THE RESPONDENT**  
**FEE AWARD**

As the appeal is dismissed, no fee award is made.

Signed

Date: 21 November 2018

Deputy Upper Tribunal Judge Hutchinson