



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/05901/2017
HU/05903/2017
HU/05906/2017
HU/05909/2017

THE IMMIGRATION ACTS

Heard at Field House
On 6 August 2018

Decision & Reasons Promulgated
On 13 August 2018

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

H S

N--- K---T--

S--- K---T--

R--- K--- T---

(ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Mr S Kandola, Home Office Presenting Officer

For the Respondents: No appearance

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the third and fourth respondents. They are infants and I see no legitimate public interest in their identities being made known. Breach of this order can be punished as a contempt of court.
2. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal to allow on human rights grounds an appeal by the respondents, herein after "the claimants" against the decision of the Secretary of State refusing them leave

to remain on human rights grounds. The claimants were not represented before me. Their former solicitors had written to say that the claimants did not wish to attend and would not be instructing lawyers as they had in fact made further applications which encapsulated their cases but they also sent a skeleton argument to be relied on at the hearing today. Clearly there was no difficulty over service; they had made a positive decision not to attend and I continued with the hearing in their absence.

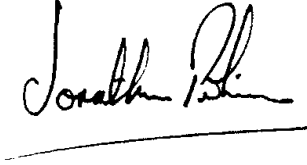
3. The First-tier Tribunal explained in the first paragraph of the Decision and Reasons that the first and second claimants are citizens of India born in July 1988 and April 1984 respectively and the third and fourth claimants are their minor children born in July 2010 and April 2014. They appealed the decision on 11 February 2017 refusing them leave to remain.
4. I can short circuit things considerably in this judgment because of the extremely sensible and responsible attitude Mr Kandola has taken today. The parents are overstayers. That is discreditable and not to be encouraged. We all lose sight of the fact that overstaying is very often a criminal offence but not a criminal offence that the Secretary often shows any interest in prosecuting. Although overstaying is discreditable it is really the limits of the adverse factors here. The children have rights and they are innocent of any deficiencies on the part of their parents. Indeed although it was anticipated that one of the children was about to become a British citizen that child is now recognised as a British citizen and the case effectively depends on a British citizen being removed which clearly is not going to happen. The fact is this is something the First-tier Judge really ought to have anticipated.
5. It has been made very plain by the Court of Appeal in a well-known decision **MA (Pakistan) and Others v SSHD [2016] EWCA Civ 705** which has been followed carefully by this Tribunal in a decision of its President and Upper Tribunal Judge Lindsley in a decision reported as **MT and ET (child's best interest; ex tempore pilot) Nigeria [2018] UKUT 008 (IAC)**. There the President's emphasis to the decision of Elias LJ at paragraph 46:

"There, it is 'expressly stated that once the seven years' residence requirement is satisfied, there needs to be a 'strong reasons' for refusing leave'".
6. There are no such *strong* reasons here. There are reasons but they relate to overstaying and some dishonesty associated with overstaying. They are not anything like sufficient reason to justify the removal of the parents and there is no question of removing the one child and both children have established long residence in the United Kingdom. It is in their best interests to remain and the First-tier Tribunal was entirely entitled to make the decision that it did for the reasons it did.
7. It follows therefore I find no error of law and I dismiss the Secretary of State's appeals against these decisions.

Notice of Decision

The Secretary of State's appeal is dismissed.

Signed

A handwritten signature in black ink, appearing to read "Jonathan Perkins", written over a horizontal line.

Dated: 13 August 2018

Jonathan Perkins, Upper Tribunal Judge