



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

Appeal Numbers: HU/12275/2016
HU/12281/2016
HU/12283/2016

THE IMMIGRATION ACTS

**Heard at Newport
On 22nd August 2018**

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

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

TRACEY [A]

[R S]

[A S]

(ANONYMITY DIRECTION NOT RETAINED)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss Grubb

For the Respondent: Mr Howells

DECISION AND REASONS

Introduction

1. The first Appellant born on 30th March 1984 is the mother of the second and third Appellants born on 8th June 2010 and 10th January 2007 respectively. They are all citizens of Jamaica. The Appellant had made an

application for her and her children to remain in the UK on the basis of their family and private life. That application made on 2nd April 2014 was refused by the Respondent on 26th April 2016. The Appellant then appealed that decision and her appeal was heard by Judge of the First-tier Tribunal O'Rourke sitting at Newport on 25th August 2017. He dismissed the appeals. Application for permission to appeal was made and that application was granted by First-tier Tribunal Judge Martins on 15th March 2018. It was said that it was arguable that the judge had failed to consider the third Appellant's appeal in relation to paragraph 276ADE or the application at paragraph EX.1(a) and failed to consider the third Appellant's entitlement to British citizenship. Directions were issued for the Upper Tribunal to firstly decide whether an error of law had been made by the First-tier and the matter comes before me in accordance with those directions.

Submissions on Behalf of the Appellants

2. Ms Grubb submitted that there had been no consideration by the judge of the second Appellant when the judge had considered matters under EX.1. It was further said that the judge had failed to take into account the length of residence in the UK of the third Appellant given that he had been in the UK long enough to be entitled to British citizenship as of right. It was said that in this respect the judge had failed to give anxious scrutiny when he had considered matters outside the Rules under Article 8 and that further there had been no assessment of the best interests of the children when considering matters outside of the Rules.

Submissions on Behalf of the Respondent

3. Mr Howells referred me to the Respondent's reply letter dated 27th April 2018 and provided submissions in line with the points raised within that reply letter.
4. At the conclusion I reserved my decision to consider the submissions made and the documentary evidence. I now provide that decision with my reasons.

Decision and Reasons

5. The judge needed to consider the position of the three Appellants firstly within the Immigration Rules and thereafter it is necessary under Article 8 outside of the Rules. Having set out a summary of the evidence and the submissions made, that is what the judge did.
6. In examination of the Appellant's cases under the Rules the judge at paragraph 25 had looked at the first Appellant's position as a parent under EX.1. Although the judge erred by referring to EX.1(b) rather than EX.1(a), no point was or is taken on that matter as it is clear the judge looked at the relevant law under EX.1(a). He found that it would not be unreasonable for the third Appellant (the child of the first Appellant) to

leave the UK. The judge is criticised for not considering the second Appellant in that assessment under EX.1(a). Such criticism is misplaced. EX.1(a)(cc) refers to the child who is not a British citizen having lived in the UK continuously for at least seven years immediately preceding the date of application. The date of application is identified by the judge at paragraph 1 was 2nd April 2014. The second Appellant was born on 8th June 2010 and therefore had not lived in the UK for seven years prior to the date of application and accordingly did not fall within the terms of EX.1(a). In terms of the third Appellant when the judge did consider that case he provided an adequacy of reasons why return to Jamaica would not be unreasonable.

7. He had considered the position of the first Appellant under the terms of private life namely paragraph 276ADE(iv) and had found for an adequacy of reasons given that it would not be unreasonable for the first Appellant to return to Jamaica. It is true that he did not as perhaps he should have, also considered the position of the third Appellant under paragraph 276ADE. The second Appellant was again excluded from consideration because of paragraph 276ADE(1).
8. However the judge having concluded the Appellants did not fall within the Immigration Rules had looked at the case of the Appellants outside of the Rules under Article 8 and had applied the appropriate test in **Razgar**. He had also, as he was bound to do, considered all aspects of Section 117B of the 2002 Act. In that regard he had specifically considered Section 117B(6) of the 2002 Act at paragraph 30(vi). It is clear that he was aware that at the date of hearing both the second and third Appellants had been living in the UK for over seven years and therefore both qualified for consideration under Section 117B(vi). He applied the correct test required. He has specifically referred at paragraph 36 to the guidance in **MA (Pakistan)** where it was said that the court should not simply focus on the child but have regard to the wider public interest consideration and he had found for adequate reasons given that there were “powerful reasons” for considering the wider public interest.
9. He had further at paragraph 30(vii) had regard to the best interests of the children, noting correctly that it was a primary but not the principal factor when balancing that against the public interest. He had quoted from the guidance given in **EV (Philippines)** and a reference to **AE (Algeria) [2014] EWCA Civ 653**. His quotation from paragraph 60 of **EV (Philippines)** was appropriate to the facts of the case before him. He thereafter listed factors he regarded as relevant when applying the guidance. Those were factors open to him to consider and based on the evidence.
10. The central and significant part of the submissions made on behalf of the third Appellant was the judge should have recognised and taken account of the fact that the third Appellant, given the length of stay in the UK, was entitled to British citizenship. That submission is somewhat misconceived. Firstly, and as a side issue, it was a submission that did not appear within

the Appellant's bundle prepared by solicitors nor raised by the first Appellant herself at the hearing. Importantly, whether a person is a British citizen or not is a matter of fact. Had the third Appellant been a British citizen then there would have been no case to consider in respect of that Appellant. The third Appellant may well have been entitled to apply for registration as a British citizen under the British Nationality Act 1981. Had such an application been made it was at the Home Office discretion whether to grant under Section 3 of the British Nationality Act 1981. Any decision to refuse (which may have been unlikely) would not have been appealable to the First-tier Tribunal. Accordingly the third Appellant was not a British citizen, the initial decision to grant or not citizenship was not for the First-tier Tribunal Judge to make and he would not have had any jurisdiction to hear an appeal if citizenship had been refused. The theoretical right of the third Appellant to apply for citizenship therefore was not a relevant factor. The length of the third Appellant's time in the UK was the relevant factor and that was known by the judge and dealt with in his decision.

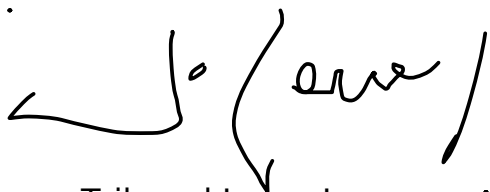
11. It was an error for the judge to have failed to look at the third Appellant's position under paragraph 276ADE(iv) of the Rules, however it was not material as he had considered the test of reasonableness of return in the same way in his consideration of the case outside of the Rules under Section 117B(6) of the 2002 Act and had provided adequate reasoning based on the same factual matrix indicating no different decision would have been reached had he looked at the matter under paragraph 276ADE(iv).

Decision

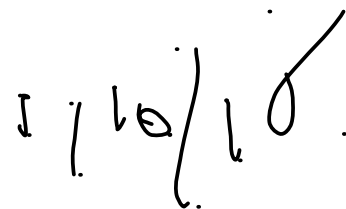
12. No error of law was made by the judge in this case and I uphold the decision of the First-tier Tribunal.

No anonymity direction is made.

Signed



Date




Deputy Upper Tribunal Judge Lever

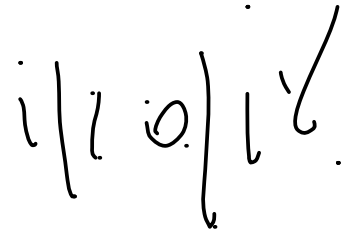
TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

A handwritten signature in black ink, appearing to read "J. Lawry". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke.

Date

A handwritten date in black ink, appearing to be "1/10/16". The numbers are written in a simple, slightly slanted style.

Deputy Upper Tribunal Judge Lever