



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12358/2017
HU/12361/2017
HU/12366/2017

THE IMMIGRATION ACTS

Listed at Manchester
On 24th August 2018

Decision & Reason Promulgated
On 5th October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HAYA [A]

[R A]

[F A]

(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the appellant:

Mr McVeety, Home Office Presenting Officer

For the respondent:

Ms EA Mottershaw, Counsel, instructed by TM Fortis
Solicitors.

DECISION AND REASONS

Introduction

1. Although it is a Secretary of State who is appealing in these proceedings for convenience I continue to refer to the parties as in the First tier Tribunal.
2. The first appellant came to the United Kingdom as a mature student on 26 August 2008. She obtained a Doctorate and currently is employed supervising university students. The second and third appellants are her children, born respectively on 13 September 2000 and 19 October 2003. They came to the United Kingdom at the same time as their mother. She has three other adult children here who have leave as students and an elder child who is in the United States of America. All are nationals of Saudi Arabia. Her husband was also here and returned to Saudi Arabia on 25 September 2016 to tend to his business. They are in regular contact.
3. On 13 November 2016 she made application for herself and her two youngest children for leave to remain based upon their family and private life. This was refused on 2 October 2017. The appeals were heard by Judge of the First tier Tribunal Lloyd on 8 February 2018. In a decision promulgated on 16 February 2018 the appeals were allowed.
4. The grant of permission to appeal held that it was arguable the judge in assessing the proportionality of the decision did not identify sufficiently compelling reasons to justify allowing the appeals. It was arguable that the judge did not take into account the guidance given by the Court of Appeal in EV (Philippines) [2014] EWCA 874.
5. A rule 24 response has been lodged on behalf of the appellants.

The Upper Tribunal

6. At hearing Mr McVeety very fairly referred me to paragraph 3 and an apparent factual mistake by the judge indicating that the second and third appellants had lived in Saudi Arabia until they were almost 5 years old and 12 years old. In fact the case was that they were aged 4 and 7 when they came here. This means that their formative years have been spent in this country and they are now aged 14 and almost 18. He acknowledged that the family had always been here lawfully: they did not have an adverse immigration history. The family speak English, with the first appellant working at the University. They have been here now almost 10 years. The issue arising was the reasonableness of expecting the family, especially the children, to leave. He fairly made the point that the decision of EV (Philippines) [2014] EWCA 874 related to non-qualifying children unlike here. He suggested it might well have been the error at paragraph 3 of the decision which prompted the application for leave to appeal by the Secretary of State.
7. Ms Mottershaw relied upon the detailed rule 24 response drafted by her colleague. Without wishing to detract from the rule 24 response and clear and concise submissions of Counsel I will not repeat them but find I can place reliance upon the arguments advanced.

Conclusion

8. It is my conclusion that no material error of law has been established in the decision. The focus in the appeals was upon the two children. At paragraph 29 the judge accepted all of the appellants had been here over nine years, with the children being qualifying children. The judge correctly identified the issue was whether it was reasonable to expect them to leave the United Kingdom albeit the mistake as to their ages when they came here is repeated. The judge had the benefit of social work report and the children's school reports. The judge concluded they were settled in their schooling and are at a critical stage in their education. At paragraph 36 the judge recorded that seven years is a significant milestone for the purposes of article 8. The judge acknowledged that the family still has strong links with Saudi Arabia and that the children's father lived there. They also have extended family there. The judge balanced these factors and concluded it would not be reasonable to disrupt the education of the children who have developed social, cultural and educational ties in this country and who are at a formative stage in their lives. The conclusion was it would be in their best interests to remain. The judge took into account the public interest considerations in section 117 B and noted in particular the provisions of section 117 B (6). The judge has recited the relevant case law. It is my conclusion that no material error of law has been established. Rather, I find the judge correctly evaluated the factors save for the factual mistake as to the children's age when they arrived.

Decision

No material error of law has been established in the decision of Judge of the First tier Tribunal Lloyd. Consequently, that decision allowing the appeals shall stand.

Francis J Farrelly

Deputy Upper Tribunal Judge