



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

Appeal Numbers: HU/13285/2016
HU/15137/2016
HU/15143/2016
HU/15145/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 27th September 2018**

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

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**DC (FIRST APPELLANT)
LC (SECOND APPELLANT)
JC (THIRD APPELLANT)
RC (FOURTH APPELLANT)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms K Reid, Counsel instructed by Marsh and Partners
Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellants against the decision of Judge Gurung-Thapa, promulgated on 2nd May 2017, to dismiss their appeals against refusal of their applications for leave to remain in the United Kingdom on private life grounds. The first two Appellants are husband and wife and the third and fourth Appellants are their children.
2. The background to this appeal is very neatly summarised at paragraphs 3 and 4 of Judge Gurung-Thapa's decision, which I quote:
 - “3. The first appellant entered the UK illegally in 2000. He returned to Albania and he claims to have illegally re-entered the UK in 2003. He has never had valid leave in the UK.
 4. The second and third appellants entered the UK illegally in 2006 (or 2005) and they never had valid leave in the UK. The fourth appellant was born in the UK in 2014. She has never had any valid leave in the UK.”
3. The judge considered their cases through the lens of those parts of the Immigration Rules that encapsulate the Secretary of State's view of the operation of Article 8 of the Human Rights Convention in private life cases, specifically, paragraph 276ADE of the Immigration Rules. So far as the first, second and fourth Appellants were concerned, the only prospect of them succeeding under that paragraph was if they were able to show that they would face 'very significant difficulties' to their integration on return to Albania. However, in the case of the third Appellant (JC) he was only required to show that it would not be 'reasonable' to expect him to leave the United Kingdom. This was because he had resided in the United Kingdom for some eleven years and was thus qualified for special consideration under the Rules. The judge accordingly focussed almost entirely upon his position, for if he could not succeed then it was difficult to see how the other appellants could do so.
4. It is unnecessary to recite the Grounds of Appeal to the Upper Tribunal in full. This is because the essence of each of them is that the judge misdirected herself as to the reasonableness of JC leaving the United Kingdom.
5. The leading case on the correct approach to the question of the 'reasonableness' of a 'qualifying child' leaving the United Kingdom is **MA (Pakistan) [2016] EWCA Civ 705**. Prior to that decision, this Tribunal had held that the question of reasonableness depended upon an entirely child-centric analysis. However, it is now clear that the question of reasonableness involves balancing the best interests of the qualifying child against the public interest in maintaining the economic wellbeing of the country through effective immigration controls. In summary, where a child is a qualifying child under paragraph 276ADE of the Immigration Rules (or, for that matter, under Section EX of Appendix FM of the Immigration Rules or Section 117B(6) of the 2002 Act) the law recognises that children who have been in the United Kingdom for at least seven years are likely to

have put down strong roots. Moreover, the longer that the child has been residing in the United Kingdom and the older the child is at the time of the analysis, the stronger those roots are likely to have become. Accordingly, a 'qualifying child' should be granted leave to remain in United Kingdom unless there are strong reasons for not doing so.

6. The above summary is based upon paragraph 46 of the judgment of the decision in MA (Pakistan) in which, under the heading "applying the reasonable test", Elias LJ said this:

"Even on the approach of the Secretary of State, the fact that a child has been here for seven years must be given significant weight when carrying out the proportionality exercise. Indeed, the Secretary of State published guidance in August 2015 in the form of Immigration Directorate Instructions entitled 'Family Life (as a partner or parent) and Private Life: 10 Year Routes' in which it is expressly stated that once the seven years' residence requirement is satisfied, there need to be 'strong reasons' for refusing leave (para 11.2.4). These instructions were not in force when the cases now subject to appeal were determined, but in my view they merely confirm what is implicit in adopting a policy of this nature. After such a period of time the child will have put down roots and developed social, cultural and educational links in the UK such that it is likely to be highly disruptive if the child is required to leave the UK. That may be less so when the children are very young because the focus of their lives will be on their families, but the disruption becomes more serious as they get older. Moreover, in these cases there must be a very strong expectation that the child's best interests will be to remain in the UK with his parents as part of a family unit, and that must rank as a primary consideration in the proportionality assessment."

7. With this in mind, I turn now to the judge's self-direction in relation to this issue. It appears at paragraph 64 of her decision:

"In the case of **MA (Pakistan)**, the court held that where the 'seven year rule' is satisfied, all this amounts to for the purpose of section 117B is that it is a factor of some weight leaning in favour of leave to remain being granted. It is not a determinative factor."

8. It is undoubtedly the case that residence by a child in the UK for a period of seven years is not "a determinative factor". However, to state that it is simply a factor "of some weight" is not in my judgement an accurate restatement of the passage from **MA (Pakistan)** that I have just recited. It in my judgement falls far short of accurately representing the weight attaching to the best interests a child who is a 'qualifying child' for these purposes. This error resulted in the judge failing to identify any "strong reasons" that may have been capable of justifying refusal of leave to remain and the consequent dismissal of the appeal from that refusal.
9. The remaining question is whether the evidence before the First-tier Tribunal pointed to the existence of strong reasons that justified its decision notwithstanding its failure to identify them. Having first invited

submissions from the representatives upon the matter, I have concluded that such reasons did in fact exist. My reasons are as follows.

10. The immigration history of the first and second Appellants - summarised at paragraphs 3 and 4 of the decision of the judge and quoted at paragraph 2 above - was in my view a sufficiently strong reason to justify the refusal of the application for leave to remain and thus the dismissal of the appeal against that decision. Indeed, it is difficult to imagine a worse immigration history. Ms Reed characterised it as one of "overstaying". That is not however an accurate description. Save for the younger of the two children (who was born in the UK) each of the appellants entered illegally. None of the appellants has ever had leave to remain in the United Kingdom and cannot therefore be said to have 'overstayed' it. There is accordingly a very strong public interest in not appearing to give the impression that if such conduct is persisted in for a sufficiently long period it will be rewarded with settled status.
11. I was reminded by Ms Reed that JC is now older and has spent even longer in the UK than was the position at the time of the First-tier Tribunal hearing. I nevertheless conclude that this is outweighed by the public interest considerations set out above. I also bear in mind that the family's relocation to Albania would inevitably entail some disruption to the education of the children. However, this also occurs when parents voluntarily choose to relocate and the evidence in this appeal does not suggest that the child appellants are currently at a critical stage of their education. I also bear in mind the factual findings of Judge Gurung-Thapa, noting in particular that she disbelieved the claim of the adult appellants that there had not been contact with their respective parents in Albania for many years, preferring instead the evidence of JC to the effect that there was daily telephone contact between them. She also found that JC had some limited facility in Albanian language. That, perhaps, was the inevitable consequence of living in a household with Albanian-speaking parents.
12. I have therefore concluded that whilst the First-tier Tribunal made the error of law that I identified at paragraph 8 (above) it is not appropriate in the circumstances to exercise my discretion by setting aside its decision to dismiss the appeal.

Notice of Decision

The appeal is dismissed

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

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and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 8th October 2018

Deputy Upper Tribunal Judge Kelly