



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/13759/2017
HU/13768/2017, HU/13769/2017
HU/13770/2017, HU/13771/2017
HU/13772/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 30th October 2018

Decision & Reasons Promulgated
On 14th February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

SM & OTHERS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. O L Atugbe,
For the Respondent: Mr. A Tan, Home Office Presenting Officer

DECISION AND REASONS

1. The First-tier Tribunal ("FtT") has made an anonymity order and for the avoidance of any doubt, that order continues. SM and his dependants are granted anonymity throughout these proceedings. No report of these proceedings shall directly or

indirectly identify them. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

2. The appellants are all citizens of Pakistan. SM is the husband of ST, the second appellant, and the father of QA (*born 18.06.96*), NA (*born 06.06.03*), FS (*born 05.12.04*) and MA (*born 18.04.07*), the third, fourth, fifth and sixth appellants. SM entered the UK on 16th October 2017 as a visa exempt official of the Pakistani government. His wife and children appear to have arrived in May 2008, with leave to remain in the UK until 8th October 2011. SM and his family were granted further leave to remain until 11th August 2012, and on 9th August 2012, they made an in-time application for leave to remain outside the immigration rules. That application was refused on 30th October 2013 and an appeal against that decision was dismissed on 8th April 2014. The family had exhausted their rights of appeal, when an application for permission to appeal was refused by the Upper Tribunal on 29th May 2014.
3. On 14th March 2016, SM and his family again applied for leave to remain in the UK, outside the immigration rules. That application was rejected on 29th July 2016 because the correct Immigration Health Surcharge had not been paid. A further application for leave to remain on the basis of family and private life was made by SM, NA, FS and MA on 17th August 2016. By that time, QA was over the age of 18 and she made a separate application in her own right. The applications were refused for the reasons set out in decisions dated 12th October 2017. The decisions attracted an in-country right of appeal. The appeals were heard by FfT Judge Tully on 15th May 2018 and dismissed for the reasons set out in a decision promulgated on 22nd May 2018. It is that decision that is now the subject of the appeal before me.

The decision of FfT Judge Tully

4. The family's immigration history is set out at paragraphs [2] to [3] of the decision. At paragraph [2], the Judge summarises the reasons given by FfT Judge Pickup in

his decision promulgated on 8th April 2014, for dismissing the previous appeal. The Judge noted that FfT Judge Pickup had made a “... *finding that [SM] had submitted a false document in support of the application, lied about his work history and the Judge also dismissed the appeal on Human Rights grounds.*”.

5. At paragraph [4] of the decision, FfT Judge Tully records the concession made by the appellant’s representative that “... *because it was proposed that the family be removed as a unit there was no impact on family life. She accepted that the only arguable ground was private life.*”. At paragraph [9], the Judge notes that she heard evidence from SM, ST and QA, and that in reaching her decision, she had regard to the evidence including the appellant’s 426-page bundle. The Judge’s findings and conclusions are set out at paragraphs [14] to [53] of the decision.
6. FfT Judge Tully had referred to the previous decision of FfT Judge Pickup, at paragraph [2] of the decision. However, in reaching her decision, FfT Judge Tully considered for herself the evidence now relied upon by SM which was said to undermine the previous finding made by FfT Judge Pickup that SM had used a false document in support of an application, and lied about his work history. At paragraph [17] of her decision, FfT Judge Tully considered the payslips and bank statements relied upon by SM, but found that the evidence produced did not undermine the findings made by FfT Judge Pickup.
7. At paragraph [19], FfT Judge Tully noted that the appellants had entered the United Kingdom lawfully but that the employment of SM that gave rise to that entry, had terminated in October 2011. She noted that FfT Judge Pickup had considered the appellants’ human rights claims, and concluded that the removal of the family as a family unit would not be in breach of their human rights. In reaching that decision, FfT Judge Pickup had had regard to the best interests of the children.
8. At paragraph [20] of her decision, FfT Judge Tully records that in evidence, SM ultimately accepted that he knew in 2014 that he had no lawful basis to remain in

the UK, but decided to remain because his children were at school. The Judge referred to the other applications made by SM and found, at [20], that “... *the appellants in this case have, in full knowledge of their legal position, played a waiting game and made multiple repeat applications in a cynical attempt to frustrate their removal from the UK. I find that this severely damages their credibility.*”

9. At paragraphs [21] to [30], FfT Judge Tully considered whether the appellants are able to meet the private life requirements set out in paragraph 276ADE of the immigration rules. For the reasons set out at paragraphs [21] to [28] of her decision, the Judge found that SM, ST and QA cannot meet the requirements of paragraph 276ADE. The Judge did not accept having considered the evidence, including the evidence regarding the health of QA, that there would be significant obstacles to the three adults reintegrating into life in Pakistan, a country where they have family and of which they have cultural and linguistic knowledge.
10. The Judge then turned, at [29], to consider the position of the three minor children, NA, FS and MA, noting that they were 13, 11 and 9 at the date of the application. The Judge noted that each of those children had been in the UK for over seven years at the date of the application. She noted however that the children would be returning to Pakistan as part of a close family unit, with extensive family support from both immediate and extended family. The Judge found that the children have a reasonable if not fluent, command of Urdu. The Judge stated:

“They are young and at an age where they would be likely to adapt to linguistic changes as did the 3rd appellant when she was brought here from Pakistan at a similar age. In any event English is a language that is widely used in Pakistan. The appellants cannot very well argue that they could not reasonably adapt to life in Pakistan because they elected to bring the older child [QA] to the UK at a similar age. She attended an English speaking school as a native Urdu speaker and they are keen to impress upon me the level of her integration since. I cannot see how it is right that they can say on one hand that it was acceptable to bring [QA] to the UK when she was 11 and she has integrated and formed a valuable life here when they had no family here, she had no language skills, but on the other say that it would be impossible for the other 3 children to do what effectively is the same in reverse. They are arguably in a better position as they have extensive

family in Pakistan and are able to speak Urdu. None of the 3 children has any health issues and I do not accept that it would be unreasonable for them to return to the country where they were born and whom they are nationals, with the family unit. I deal with their education below and will not repeat those issues here save to say that the findings apply equally to the Rules."

11. Having found that the requirements of the immigration rules cannot be met, the Judge addressed the Article 8 claim outside the rules, by reference to the five stage test referred to by the House of Lords in **Razgar [2004] UKHL 27**, at paragraphs [31] to [53] of her decision. The Judge found that the decision to refuse leave does not impact upon the family life of the appellants, because they will be removed together as a family unit. The Judge accepted however that they enjoy a private life and that the decision to refuse leave, will interfere with that private life. The Judge noted at [33], that the question is whether the decision is proportionate. The Judge referred, at [36], to the options that may be open to QA as an adult. Insofar as the three younger children are concerned, the Judge stated, at [38] and [39] as follows:

"38. ... I accept that the three younger have been in the UK for a long time (well over 7 years) and would have little real memory of being in Pakistan. I have taken due regard of the time they have been here and that this is not their decision but that of their parents. However this is not a situation that envisages them returning unsupported. They would be with their parents and siblings; they are a close family unit. They would also have extensive extended family including grandparents, aunts and uncles for support on return. They would have the advantage of getting to know extended family better and access to the culture of their birth country on return. There is nothing in the evidence before me that shows that the family suffered any real hardship in their lives before they came to UK and the first appellant was clearly able to secure prestigious employment with the Consulate. In my view it would be wrong to assume that life in Pakistan is somehow automatically less favourable than in the UK. There is nothing in the evidence before me to suggest that this family led anything other than a normal family life before they came.

39. They would be leaving behind friends and the support networks they have established here and I accept that this would be difficult for them particularly for the older two children (now 13 and 14). However many families move around the world for employment or family reasons, as did this family when [QA] was a similar age. They are clearly a family who are willing to make changes in life and they themselves considered that this would be a decision that was suitable for [QA] a similar age. They are a large family and would have siblings to support each other until they made new friends; they would simply be making a reverse trip. They speak the language in Pakistan and would have the advantage that the

extended family (presumably there are cousins) who could ease their introduction. They would no doubt have access to social media to maintain contact with friends."

12. The Judge had already rejected the claim that the family would be without financial support upon return to Pakistan and noted, at [41], that there was no credible evidence to suggest that the children could not access education in Pakistan. The Judge found that it would be reasonable for the youngest child who was about to start high school, to start his secondary education in Pakistan, and that he *"is at an age where he would adapt."* The Judge noted, at [42] and [43], that the consequences would be more significant for NA and FS, who are more advanced in their education, but in the end, concluded that each of the children would be able to continue their education in Pakistan and would have an extensive support network available to them.
13. The Judge referred to the public interest considerations now set out in s117 Nationality, Immigration and Asylum Act 2002. At paragraphs [47] and [48], the Judge stated as follows:

"47. In my view the public interest argument in this case is significantly enhanced by the actions of the first two appellants. Although they came to the UK legally in 2007 and 2008, when their leave expired they made an application to stay in 2013 on an entirely false premise. They lied to the court about the entire basis for that application and attempted to deceive the court by using a forged document. Although Judge Pickup appears to have laid the blame for that at the door of the 1st appellant, the 2nd appellant must have known that the document was false because it related to her husband's employment; she must have known when he stopped working at the Consulate. She was complicit in the fraud. I do not accept that either is of good character because they have been willing to deceive in order to obtain an advantage to which they were not entitled.

48. Furthermore when they had taken full advantage of the appeal process and they knew that they had no basis to stay, they did not leave as they ought to do. They made a calculated decision to remain in the UK, in full knowledge that they had no basis of stay, because they wanted the children to continue to benefit from a state education to which they were no longer entitled. There is no right to education in Human Rights law; it is not the responsibility of the UK to educate any child. The appellants came to the UK knowing that their leave was dependent on the appellant's employment and would have to return after it ended, even if this meant disrupting the children. This was presumably a factor they took into

account when they decided to come. Those who abuse the state education system in this way contribute to the over stretching of public resources and disadvantage those who need, and are entitled to the limited educational resources available. It is very much in the public interest that people who have manipulated the immigration system to the extent that these appellants have, are not rewarded for their actions; it encourages others to do the same. It would no doubt seem perverse to the public mind that an appellant can stay illegally in the UK with the express intention of securing free education for their children to which they are not entitled, and then rely on the fact that they have done so to avoid removal. The fact that children are facing removal this age is down to the calculated decision taken by the 1st and second appellant to remain illegally after their previous appeal was dismissed. I do bear in mind however that these are the actions of the parents and not the children affected by this decision and it would be wrong to punish the children for their actions."

14. Having considered other relevant factors, at paragraph [53] of her decision, FfT Judge Tully stated:

*"I have weighed all the factors in this case carefully. The most significant factor in the appellants' favour is undoubtedly the best interests of the children. In **Zoumbas v SSHD UKSC** it was held that there was no "irrationality in the conclusion that it was in the children's best interests to go with their parents to the Republic of Congo". No doubt it would have been possible to have stated that, other things being equal, it was in the best interests of the children that they and their parents stayed in the United Kingdom so that they could obtain such benefits as health care and education which the decision-maker recognised might be of a higher standard than would be available in the Congo. But other things were not equal. They were not British citizens. They had no right to future education and health care in this country. They were part of a close-knit family with highly educated parents and were of an age when their emotional needs could only be fully met within the immediate family unit. In **Zoumbas** it was established that this was one factor but not a trump card. Whilst I have found that it would not be in the best interest of [NA] to be disrupted at this precise stage of her education, this is not a trump card. There are weighty factors in this case that sway the public interest argument against the appellants.*

The appeal before me

15. The grounds of appeal relied upon by the appellants criticise the decision of FfT Judge in a number of respects. The appellants submit that the Judge erred in making her decision, *"without considering the best interests of the children"*. It is said that the Judge did not apply s55 of the 2009 Act, and failed to apply the principles

set out by the Supreme Court in ZH (Tanzania). It is said that the Judge also erred by giving little weight to the fact that the children will face hardship if removed to Pakistan, particularly as the youngest child was a one-year-old when he came to the UK. The appellants also contend that the Judge failed to consider the “*statement of the Supreme Court in Zoumbas -v- SSHD [2013] UKSC that a child should not be blamed for matters for which it is not responsible.*”. The appellants claim that the Judge erred in her conclusion that it was in the children’s best interests to go with their parents, and removal from the UK will not be in breach of their private life.

16. Permission to appeal was granted by FfT Judge Scott Baker on 22nd August 2018. Although not a ground of appeal directly advanced by the appellants, FfT Judge Scott Baker noted as follows:

“The judge had, in part, considered the best interests of the children at [34] to [44] and at [45] to [53] considered the applicability of section 117 of the Nationality Immigration and Asylum Act 2002 but crucially failed to make discreet findings with reference to section 117B(6) which was applicable as the children had been resident in the UK for a period in excess of seven years and were therefore qualifying children.

The matter comes before me to consider whether or not the decision of FfT Judge Tully involved the making of a material error of law, and if the decision is set aside, to re-make the decision.

17. On behalf of the appellants, Mr Atuegbe adopted the skeleton argument sent to the Tribunal on 26th October 2018. Taking the lead from the observations made by FfT Judge Scott Baker when permission to appeal was granted, the appellants submit that FfT Judge Tully did not in her decision, consider s117B(6), even though it was mentioned in paragraph [45] of the decision. Mr Atuegbe submits that in reaching her decision, the Judge did not have sufficient regard to the fact that the children are qualifying children for the purposes of s117B(6) of the 2002 Act. As to the decision of the Supreme Court in KO (Nigeria) & Others -v- SSHD [2018] UKSC 53,

Mr Atuegbe submits that FfT Judge Tully did not consider, as required under s117(6)(b), whether it would be reasonable to expect the children to leave the UK.

18. The appellants submit that the Judge erroneously focused upon the poor immigration history of SM, the use of deception in an earlier application, and the availability of support in Pakistan. The appellants submit that the best interests of the children were not properly considered and they submit that the proper approach to such a case is that set out by the President, Mr Justice Lane, at paragraphs [31] to [34] of the decision in MT and ET (child's best interests: *ex tempore pilot*) Nigeria [2018] UKUT 00088 (IAC). It is said that here, the children have been in the United Kingdom for over 10 years and do not have any direct ties to Pakistan, especially the younger children. QA has established herself quite well in the United Kingdom and she has legitimate expectations to carry on with her studies here, having completed her GCSEs here. NA has been here for more than half of her life, even though she is not yet 18 years. She too is looking forward to taking her GCSEs at some point soon. It is submitted that although the parents have a poor immigration history, that is not sufficient to render the removal of the family, reasonable.
19. In reply, Mr Tam submits that in reaching her decision, FfT Judge Tully carefully considered the requirements to be met by an applicant for leave to remain on the grounds of private life, under paragraph 276ADE of the immigration rules. At paragraph [29] of her decision, in addressing the position of the three minor children, the Judge noted that the children have been in the UK for a period of at least 7 years. She noted that that was a matter that weighs in their favour. In that paragraph, the Judge goes on to consider whether it would be reasonable to expect the children to leave the United Kingdom. It was open to the Judge to conclude that the appellants do not meet the requirements for private life under paragraph 276ADE. Mr Tan submits that the same reasoning must apply to any consideration of the public interest under s117B(6). Under the immigration rules and the statute, the question for the Judge is whether or not it would be reasonable to expect a child

that has lived continuously in the UK for seven years, to leave the UK. He submits that any failure to make express reference to s117B(b) later in the decision, is immaterial. The Judge was plainly aware that the children had each been in the United Kingdom for over 7 years, and there is a reflective consideration of the best interests of the children throughout the decision. Mr Tan submits that decisions such as this are entirely fact sensitive, and although it is correct to note that the longer a child has been in the United Kingdom, the stronger the ties, that is not to say that there is any particular cut-off point.

Discussion

20. I reject the claim that the Judge erred in making her decision without considering the best interests of the children, or by failing to apply the principles set out by the Supreme Court in ZH (Tanzania) and considering the best interests of the children as a primary consideration. It is plain that the Judge had regard to the duty under s55 and the best interests of the children. The Judge noted, at [19], that FfT Judge Pickup had previously considered the best interests of the children in his decision and the appellants were refused permission to appeal, because the Article 8 rights of the family and the best interests of the children had been adequately addressed by FfT Judge Pickup. At paragraph [34] of her decision, FfT Judge Tully refers to the "*body of caselaw addressing the significance of the best interests of children*" affected by a decision of this nature and refers to the decision of the Supreme Court in ZH (Tanzania), noting that the best interests of a child shall be a primary consideration. At paragraph [44], the Judge noted that the best interest of the children affected, whilst a primary consideration, is not the only consideration. At paragraph [53], the Judge went as far as to note that the "*..most significant factor in the appellants' favour is undoubtedly the best interests of the children.*". In my judgement, in reaching her decision, the Judge clearly considered the best interests of the children as a primary consideration. At paragraph [54] of her decision, the FfT Judge concluded:

“Weighing all of the factors which I have outlined above and taking into account the children's best interest as a primary but not the only factor, I do not accept that the evidence before me shows that the appellants' circumstances are such that they outweigh the public interest argument in refusing them leave to remain.”

That conclusion was plainly one that was open to the Judge on the evidence.

21. I also reject the claim that the FfT Judge erroneously focused upon the poor immigration history of SM, and the use of deception in an earlier application, essentially blaming the children for matters for which they are not responsible. The Judge noted, at [38], that she had taken due regard of the time that the children have been in the UK and that this is not their decision but that of their parents. At paragraph [48], the Judge noted that the fact that children are facing removal at this age is down to the calculated decision taken by SM and ST to remain illegally after their previous appeal was dismissed. The Judge states that she had borne in mind however that “*..these are the actions of the parents and not the children affected by this decision and it would be wrong to punish the children for their actions.*”
22. I accept the submission made by Mr. Tam on behalf of the respondent. The written grounds of appeal amount to nothing more than a disagreement with the findings of the Judge that were properly open to her.
23. The Judge refers at paragraph [45] of her decision to the public interest considerations set out in s117B of the 2002 Act. I accept that in considering the Article 8 claim outside the rules at paragraphs [46] to [53] of the decision, the FfT Judge does not expressly refer to s117B(6) of the 2002 Act, and does not expressly refer to the children as qualifying children. The question for me is whether any omission to make discreet findings in respect of the public interest consideration set out in s117B(6), is material to the outcome of the appeal.
24. In KO (Nigeria) and Others -v- SSHD [2018] UKSC 53, a decision handed down on 24th October 2018, Lord Carnwath, with whom Lord Kerr, Lord Wilson, Lord Reed and Lord Briggs agreed, referred to paragraphs 276ADE(1)(iv) of the Immigration

Rules, and s117B(6) of the 2002 Act. Having referred to the requirement that appears at paragraph 276ADE(1)(iv) of the rules, he stated, at [7]:

“It will be seen immediately that the substance of this provision, in particular the seven year criterion and the “reasonableness” tests, appears identical to that of section 117B(6), taken with the definition of “qualifying child”

25. At paragraphs [17] to [19], Lord Carnwath stated:

“17. As has been seen, section 117B(6) incorporated the substance of the rule without material change, but this time in the context of the right of the parent to remain. I would infer that it was intended to have the same effect. The question again is what is "reasonable" for the child. As Elias LJ said in *MA (Pakistan) Upper Tribunal (Immigration and Asylum Chamber) [2016] EWCA Civ 705, [2016] 1 WLR 5093, para 36*, there is nothing in the subsection to import a reference to the conduct of the parent. Section 117B sets out a number of factors relating to those seeking leave to enter or remain, but criminality is not one of them. Subsection 117B(6) is on its face free-standing, the only qualification being that the person relying on it is not liable to deportation. The list of relevant factors set out in the IDI guidance (para 10 above) seems to me wholly appropriate and sound in law, in the context of section 117B(6) as of paragraph 276ADE(1)(iv).

18. On the other hand, as the IDI guidance acknowledges, it seems to me inevitably relevant in both contexts to consider where the parents, apart from the relevant provision, are expected to be, since it will normally be reasonable for the child to be with them. To that extent the record of the parents may become indirectly material, if it leads to their ceasing to have a right to remain here, and having to leave. It is only if, even on that hypothesis, it would not be reasonable for the child to leave that the provision may give the parents a right to remain. The point was well-expressed by Lord Boyd in *SA (Bangladesh) v Secretary of State for the Home Department 2017 SLT 1245* :

"22. In my opinion before one embarks on an assessment of whether it is reasonable to expect the child to leave the UK one has to address the question, 'Why would the child be expected to leave the United Kingdom?' In a case such as this there can only be one answer: 'because the parents have no right to remain in the UK'. To approach the question in any other way strips away the context in which the assessment of reasonableness is being made ..."

19. He noted (para 21) that Lewison LJ had made a similar point in considering the "best interests" of children in the context of section 55 of the Borders, Citizenship and Immigration Act 2009 in *EV (Philippines) -v- Secretary of State for the Home Department [2014] EWCA Civ 874, para 58*:

"58. In my judgment, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does, that

is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?"

To the extent that Elias LJ may have suggested otherwise in *MA (Pakistan)* para 40, I would respectfully disagree. There is nothing in the section to suggest that "reasonableness" is to be considered otherwise than in the real world in which the children find themselves.

26. Although the conduct of the parents is not directly relevant to the public interest consideration set out in s117B(6), the record of the parents may become indirectly material, if it leads to their ceasing to have a right to remain here, and having to leave. It is only if it would not be reasonable for a child to leave the UK that s117B(6) of the 2002 Act may give the parents a right to remain.
27. At paragraph [29] of her decision, FfT Judge Tully considered the position of the three younger children under paragraph 276ADE(1)(iv), having noted that each of them has been in the UK for over 7 years. In the end, having considered relevant factors including the family support available to them, financial support available to the family, the languages they speak, their respective ages, their health, and education, that she did not accept that it would be unreasonable for the children to return to Pakistan. The Judge noted in the balance that that was the country where each of them was born, of which they are nationals, and to which they would be returning as a family unit. That was, in my judgement, a finding and conclusion that the Judge was entitled to reach having had regard to the best interests of the children as a primary consideration.
28. In considering the Article 8 claim outside the rules, the FfT Judge stated, at [35] and [36]:

"35. ... in this case the children concerned have been brought up to date on a day to day basis by their parents since they *were* born and in my view it is very much in the children's interests that this continues. There is no suggestion that this arrangement would be affected by the decision; they will be removed a family unit.

36. In this case it is arguable that the family life of the children concerned will be enhanced by return to Pakistan because they will be given the opportunity to be immerse themselves in the family life of their extended family all of whom live in Pakistan.”

29. At paragraphs [37] to [43] of her decision, FfT Judge Tully addressed matters relevant to an assessment of whether it would be reasonable to expect the children to leave the UK. She properly noted that the children are in no way to be held responsible for their parent's misconduct, but as has been said repeatedly, the children are not a "trump card". As Lord Carnwath states, a "real world" view must be taken. In the real world, families move countries and continents all the time, frequently so that the parents can find, or continue with work. It is clear from a careful reading of the decision of the FfT Judge that she considered the particular circumstances of this family, in the real world.
30. In my judgement, a careful reading of the decision of FfT Judge Tully as a whole establishes that she was mindful throughout that the children had lived in the UK for a continuous period of seven years or more, with their parents. She did not accept that it would be unreasonable for them to return to Pakistan with their parents. The seven year criterion and the “reasonableness” test, in paragraph 276ADE(1)(iv) of the rules is identical to that in section 117B(6) of the 2002 Act. As Lord Carnwath confirmed in KO (Nigeria), section 117B(6) incorporated the substance of the rule without material change, but this time in the context of the right of the parents to remain.
31. Where the parents are expected to be is plainly relevant since it will normally be reasonable for the children to be with them. As Lord Carnwath stated, at paragraph [18] in KO (Nigeria), the record of the parents may become indirectly material. Here, FfT Judge Tully was careful to recognise that it would be wrong to punish the children for their parents’ actions. The parents' conduct was relevant in that it meant that they had to leave the country. It was in that context that the Tribunal should consider whether it was reasonable for the children to leave with them. The appellants claimed that the best interests of the children would have been for the

whole family to remain here. In the 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 to suggest that that would be other than reasonable. In my judgement, *FtT* Judge Tully had correctly considered whether it would be unreasonable to expect the children to leave the UK. She carefully considered the evidence before her, and treated the best interests of the children as a primary consideration.

32. The appellants do not identify any additional factor that would be relevant under s117B(6), that *FtT* Judge Tully had not already considered when determining whether the requirements of paragraph 276ADE(1)(iv) could be met. Absent any error in the Judge's approach or a finding that it would be unreasonable to expect the children to leave the United Kingdom, in my judgement, any omission by the *FtT* Judge to expressly consider s117B(6) of the 2002 Act, is immaterial.
33. It follows that in my judgment, the decision of the *FtT* Judge is not infected by a material error of law and I dismiss the appeal.

Notice of Decision

34. The decision of the *FtT* Judge is not infected by the making of a material error of law and the appeal against the decision of *FtT* Judge Tully is dismissed.
35. An anonymity direction is made.

Signed

Date

28th December 2018

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

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

Signed

Date

28th December 2018

Deputy Upper Tribunal Judge Mandalia