



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

Appeal Numbers: HU/17757/2018
HU/17760/2018
HU/17763/2018
HU/17770/2018
HU/17780/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 22 May 2019**

**Decision & Reasons Promulgated
On 18 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**M.R.
A.A.
W.
R.
N.**

(ANONYMITY DIRECTIONS MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms L Turnbull of Counsel instructed by Maliks and Khan
Solicitors

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. These linked appeals have come back before me to remake the decisions in the appeals pursuant to the 'error of law' hearing held on 28 March

2019. Appended to this document is a copy of the text of the error of law decision and Directions promulgated on 6 April 2019.

2. The Appellants are nationals of Bangladesh. Their personal details are a matter of record on file, and are not reproduced here in keeping with the anonymity directions that have previously been made in these proceedings and are hereby continued. Suffice to say, the Appellants are a family unit comprising two parents and three children. At the date of the hearing the children's ages were: R - approximately 17 years, 5 months; W - one week short of 8 years; N - 2 years, 8 months.
3. The father of the family, MR, had entered the UK as a visitor on 2 June 2005, and had overstayed his leave to enter as a visitor upon its expiry in December 2005 - securing no further leave to remain despite various applications under the EEA Regulations and pursuant to Article 8 of the ECHR. R was born in Bangladesh; he entered the UK with his mother, AA, on 19 November 2009 with entry clearance as a visitor. The other two children were born in the UK.
4. For completeness, it is to be noted that since these proceedings commenced there has been the addition to the family of twin daughters in May 2018.
5. As was the case before the First-tier Tribunal, the appeals were pursued on the principal basis that the Third and Fourth Appellants, W and R were 'qualifying children'.
6. Pursuant to the Directions issued after the finding of error of law, the Appellants have filed two supplementary bundles. The contents of the bundles, and the contents of the Appellants' bundle that was before the First-tier Tribunal, are a matter of record on file: I do not set out the documents here, but refer to them as is incidental for the purposes of this Decision. For the avoidance of any doubt I have had regard to all of the documents on file in remaking the decisions in the appeals.
7. As was anticipated at the error of law hearing it was not necessary to hear oral evidence. In this context it is to be noted that there had been no express challenge to the primary findings of fact made by the First-tier Tribunal, and Ms Cunha indicated that she did not seek to cross-examine any of the Appellants. The hearing proceeded by way of submissions.

'Best Interests'

8. In determining these appeals it is necessary to have regard to the best interests of the children of the family as a primary consideration - although not a paramount consideration.

9. In this context – as in the appeal generally – the Appellants’ emphasis is on the best interests of the two older children, R and W. In the circumstances I trust I will be forgiven for dealing with the best interests of N and the twins in relatively brief terms.
10. In considering ‘best interests’, in the premises I note that it has been asserted by the parents that the family has no life to return to in Bangladesh having been in the UK for a significant period of time. The First Appellant asserts in his witness statement (dated 7 November 2018) that his parents are deceased and that neither he nor his wife have any family in Bangladesh that they can rely upon for support; it is asserted that they have no property or assets, and it is also claimed that they would struggle to find a job (paragraphs 25 and 26). This is said to inform the parents’ concerns about the welfare of their children in the event that the family returns to Bangladesh.
11. In my judgement these are essentially empty assertions, and not supported by any corroborative evidence. It is not said that there are no relatives in Bangladesh, only that there are no relatives that can support them. No explanation is offered as to why the relatives that remain in Bangladesh cannot offer similar support to that that has been extended by family members in the UK, such as accommodating them as guests – at least during an initial period whilst the First Appellant seeks to establish himself.
12. In any event, and perhaps more pertinently, it is be noted that in the application form signed on 17 July 2017 it was indicated that the Appellants were living with the First Appellant’s sister in the UK in a 5 bedroom house, not paying rent and not working, being dependent upon the First Appellant’s sister and friends. The First Appellant’s witness statement refers to being financially supported by friends who “*are paying for our accommodation and expenses*” (paragraph 28). Supporting letters have been provided by a number of friends who confirm that they have provided financial support to the family. Nothing approaching a reason, far less any evidence, is offered as to why such support that has sustained the family in the UK cannot be replicated in Bangladesh.
13. The First Appellant asserts that he wishes to undertake employment in the future “*and work hard to support myself without recourse to public funds*” (witness statement at paragraph 27). He has not provided any supporting evidence as to why such ambitions could not be fulfilled in his country of nationality: the mere assertion that he “*will struggle to find a job in Bangladesh*” because of his absence and because of his age (paragraph 26) is not an assertion that I am prepared to accept in the absence of relevant supporting evidence. At paragraph 33 of his witness statement the First Appellant acknowledges that the Respondent had stated that there was no evidence to suggest that he and his partner could not obtain

employment; whilst the following paragraph of the witness statement begins *"In relation to the above I would like to state..."*, nothing in paragraph 34 or any of the following paragraphs addresses this particular point.

14. Accordingly, I approach the issue of 'best interests' on the premise that the Appellants have not shown that the family would not be able to sustain itself in Bangladesh in a similar way to other families in Bangladesh through the head of household taking employment, and/or otherwise - in so far as it might be necessary - with the assistance of additional financial support from family and friends based in the UK.

'N' and the twins

15. N and the twins are still very young, and as the First-tier Tribunal Judge observed *"the focus of their lives will be their parents"* (paragraph 26). They have not commenced formal education. There is no suggestion that they have any health issues. There is no suggestion that they are accessing any sort of services or facilities in the UK that would not be available to them in Bangladesh. Necessarily, their best interests are served by remaining in the care of both parents. There is no evidential basis to support the notion that such care would be better provided in either the UK or Bangladesh. Accordingly, there is no evidential basis to conclude that there would be any detriment to the best interests of any of N and the twins if they were to relocate to Bangladesh in the company of their parents.
16. Further, I note that in the report dated 2 December 2018 prepared by Sally-Anne Deacon (see further below) it is noted that given the ages of N and the twins it is not possible to ascertain their wishes and feelings in respect of relocation. Quotations from the First Appellant cited in the report to the effect that his children *"think of themselves as British and of the UK as being their home"*, must with regard to N and the twins, necessarily, be viewed through the prism of Ms Deacon's observation that it is not possible to ascertain their wishes and feelings.
17. Notwithstanding Ms Deacon's observation in this regard, she goes on to state in her 'Summary and Conclusion':

"However, given the enormity of the changes ahead, their presentation on the levels of integration and investment into the UK, I feel wholly confident that should they be able to control their future they would elect to remain."
18. In my own consideration of 'best interests' I do not consider it relevant to take into account what the wishes of a child might be if the child was capable of understanding her predicament, in circumstances where the

evidence suggests that the age of the child is such that she has no relevant cognition.

19. What then follows in the 'Summary and Conclusion' are a number of paragraphs focusing on the particular circumstances of R and W, before the following conclusion is stated:

"I have no hesitation in concluding this report with the view that [R, W, N, and the twins'] best interests would not be protected or promoted should they return to Bangladesh and for this to be enforced would be unduly harsh and disproportionate."

20. I cannot identify or follow any reasoning in the report that justifies such a conclusion in respect of N and the twins.
21. I acknowledge the importance of stability and security in a young person's life – as referenced by Ms Deacon in her report. However, I do not accept that international migration inevitably adversely affects the stability and security of a child's home life. Migration, both within and across international borders, is a commonplace phenomenon and in most cases the impact on children is readily and effectively managed by competent and loving parents. It seems to me that this will be the more so where a child is very young and essentially has only limited cognition of the relocation, and is not being removed from a close peer group outside the family.
22. I note that the Skeleton Argument dated 22 May 2019 prepared by Ms Turnbull for the 'remaking' hearing does not seek to place any emphasis or reliance on the particular circumstances of N and the twins. Indeed the quotations set out in the Skeleton Argument from Ms Deacon's report are limited to those that expressly relate to R and W. Ms Turnbull confirmed in her oral submissions that the focus for the purposes of the appeal was on the 'qualifying children'.
23. In all such circumstances I note that it is not expressly argued that it would be adverse to the best interests of N and the twins if they were to relocate to Bangladesh with their parents. In any event I find that there would be no detriment to their best interests in such relocation. Their best interests are served by remaining in the care of their parents, and there is no evidence that this is better promoted in any one particular geographical location.

'R'

24. R is in his 18th year and has been living in the UK since November 2009: he entered about one month before his eighth birthday, and by the date of the hearing had been in the UK for 9 years and 6 months.

25. R completed his primary education in the UK, and undertook all of his secondary education here. (Various supporting documents are on file in respect of R's education.) At the date of the hearing R was attending college in Luton pursuing a course in Light Vehicle Maintenance (Level 1), which ran from 3 September 2018 to 29 June 2019. So far as I am able to ascertain from the various assessment summaries on file he has made good progress on this course. He remained living in the family unit during this course.
26. R produced a handwritten witness statement before the First-tier Tribunal (undated, but filed under cover of letter dated 5 December 2018).
27. The First Appellant's witness statement refers to R wishing "*to go onto university and become a car engineer in the future*" (paragraph 35). R refers to wanting to be an "*engineer and light mechanic so I could fix cars*"; he also states that he wants to learn about hybrid engineering "*and fix cars that's hybrid in the future*".
28. In Ms Deacon's report it is said that R "*is aware of the precarious nature of his continued residence in the UK*", and that accordingly her discussion with him was "*full and frank*". She opines that he presents "*as a mature and insightful young man*", and quotes him as saying that "*Bangladesh means nothing to me. I have very few memories of being there. My home is in the UK. I have lived half my life here, which has been the part of my life that has been important, educationally and emotionally.*"
29. I do not consider there to be anything surprising or controversial in these comments attributed to R: he has indeed spent a significant period of his time in the UK, had most of his education here, has in a real sense 'grown up' in the UK, and plausibly has little meaningful recollection of his early life in Bangladesh.
30. Ms Deacon also records R as asserting that "*We have nothing in Bangladesh*", and that return would mean losing "*everything that we have worked so hard to achieve*"; he "*cannot comprehend being back there, everything will be lost*".
31. For my own part it seems to me that I should approach these words with caution. In my judgement, absent anything more particular, it is more likely than not that R's understanding of the family's prospects in Bangladesh will inevitably have been shaped by the comments and observations of his parents and are not likely to have been based upon any independent assessment or evaluation of his own. I have already observed above that I do not find aspects of the First Appellant's evidence as to the family's prospects upon relocation to Bangladesh to be sustainable. Indeed, it seems to me that some element of criticism is to be

attached to the report of Ms Deacon in so far as she seems to accept these matters uncritically and without any considered contextual analysis.

32. Be that as it may, I do not doubt that R genuinely considers his prospects to be better served by remaining in the UK. Nor do I doubt that R understandably perceives relocation as being a significant disruption to the private life that he has established in the UK. Notwithstanding his understanding of the precarious nature of his status in the UK - (an understanding which it seems to me is unlikely to have been a consistent feature of his childhood, but to be a matter that he has learnt about relatively recently in the context of these proceedings) - it is reasonable to infer that for much of his childhood - and even now - he has pictured his future as moving through education and into employment in the UK in the same way as his peer group. I accept that he sees a return to Bangladesh as an event that frustrates his aspirations, obliterates the picture of the future he has held in his mind, and presents him with the most profound uncertainties as to the direction his life might take following relocation.
33. I accept as credible R's observations in his witness statement that he feels *"very scared and distressed about the future"*, and I accept that this has impacted on his *"performance on everything I do"*. I accept it is likely that *"it makes [him] cry, but [he does] not show it often"*.
34. Relocation to Bangladesh will also disrupt R's relationship with his friendship group - to which Ms Deacon makes reference in her report. Whilst it is not unusual for children and young adults to relocate with their parents, or for young adults to relocate independently, resulting in fracture of peer relationships, for R the nature of the disruption would be both an exacerbation of, and exacerbated by, the uncertainties referred to in the preceding paragraphs. Ms Deacon refers to studies as to the significance of friendship groups for teenagers and their role in insulating against the potentially negative effect of loss or enforced change, with needs for understanding being met, and support and guidance coming from, friends as much as, if not more than, from family. I accept that there is weight to Ms Deacon's observation that R's friendships from school and college communities *"are pivotal to [his] identity and [his] sense of belonging in the world"*. I also accept that enforced removal may have a psychological impact such as to affect R's motivation and commitment - although in my judgement Ms Deacon overstates the case in referring to a psychological reaction being 'inevitable', and being potentially *"catastrophic"*.
35. R is still a child, and on balance I find it is in his best interests to continue to live with his parents to benefit from their love, support, and guidance, as well as the practical benefits of being 'looked after' in a family home. Whilst I have noted his father's reference to an aspiration to pursue studies in connection with automobile engineering at university, it is less clear to me the extent to which this is realistic, or even intended, as

opposed to pursuit of further vocational training in vehicle maintenance, whether by way of further courses or obtaining an apprenticeship or employment. Ms Deacon's report refers to an intention to follow Level 2 of the current course "*at the same time as gaining experience by way of an apprenticeship*". Either way, it seems to me that R is likely to benefit greatly from remaining within the family unit as he passes through the transitional period between education, vocational study/training, and the world of work.

36. I find that R's best interests are protected and promoted by remaining in the UK. Whilst in my judgement there are more likely than not opportunities to pursue training and/or employment in vehicle maintenance in Bangladesh, it would be too simplistic and too reductionist to conclude that such opportunities would be determinative of the issue of 'best interests'. In my judgement the potential psychological impact - or in layman's terms the sheer scale of disappointment that would likely be experienced - in finding his imagined future radically altered for reasons beyond his control, (and for reasons which may in time cause him to come to resent his parents), coupled with the significant fracture of peer relationships, is such that it would be significantly detrimental to R's best interests if he were now required to relocate to Bangladesh, even with the support of his parents.
37. For the avoidance of any doubt I have given consideration to the issue of language. The First Appellant asserts in his witness statement that none of his children "*speak any of the local languages in Bangladesh, namely Bengali*" (paragraph 38). In respect of his own language skills he states that he and his wife "*understand English and can speak basic English*" (paragraph 44). R was nearly 8 years old when he came to the UK which would suggest that his first language is Bengali. Moreover, in circumstances where his parents admit to only having basic English (and that after over 17 and 9 years in the UK respectively), I infer that it is more likely than not that the language in the home, even whilst in the UK, has primarily been Bengali. In such circumstances I also infer that the other children of the family will understand and speak Bengali. In all such circumstances, on the facts of this particular case I do not perceive language differences to be of any particular significance in determining 'best interests' of any of the children.

'W'

38. W was born in the UK, has entered the education system, and at the date of hearing was in Year 3 of her primary school. Various supporting documents in respect of her education are on file, including, most recently, her annual school report for 2018/2019. The report shows that W is 'Working at Expectation' in all her subjects, and has scored either 'Very Good' or 'Good' for effort (on a scale of 'Very Good', 'Good', and 'Requires

Improvement'). She is described as *"a pleasure to teach"*, and as having *"a good attitude to learning"*, and being *"always keen to join in with lessons and take part in class discussions"*. This school report, together with the various other certificates of achievement and participation, depict W as having an essentially 'normal' engagement with the UK education system.

39. In preparation for her report Ms Deacon spoke with W, and also with W's school. Ms Deacon records that she was informed that W was unaware of the *"complexities surrounding the family's immigration status due to her parents wish to protect her from the uncertainty"*, and accordingly her discussions with W were *"generic in nature"*. Ms Deacon describes W as *"a quiet, polite child who happily engaged in our discussions"*. In the circumstances it is perhaps not surprising that the discussion, so far as it is referenced in the report, was limited in its scope, W referred to not having visited Bangladesh and stated *"that the UK is her home"*; she listed her favourite foods as fish fingers, burgers and chips, and said that she found Bangladeshi food *"too spicy"*; she spoke enthusiastically about watching television; she said that she loved school and that it was better than last year; she like to learn about science, was interested in rocks, and wanted to be an archaeologist.
40. Ms Deacon spoke with the 'Family Worker and Safeguarding Lead' ('FWSL') at W's primary school. The FWSL made comments in respect of educational achievements that are essentially consistent with the school report referred to above. It was additionally stated that W *"has a good group of friends, is an active member of the school singing group and is a bright and happy child"*.
41. Ms Deacon's report then states:

"On asking for the school's view on the likely impact on [W]'s education if she were to leave the school, [the FWSL] states - 'W is a secure and happy child who is achieving. She needs a little help in her maths but she has every potential to catch up and make good progress. For her to be removed from the UK's education system would be very undermining for her study, confidence and her self-esteem and could have disastrous consequences.'"

42. This is then immediately followed by this passage:

"Should [the children] be removed to Bangladesh, there are two options for them educationally; for them to attend a public or government run education provision."

Thereafter reference is made to an Article of the Constitution of Bangladesh, followed by references and quotations in respect of the

educational system in Bangladesh. These passages are followed by this expression of opinion:

"It is unlikely the private education could be accessed by R and W, [the First Appellant], having been in the UK for 13 years, would have limited capacity to earn the required salary commensurate with private education fees due to his lack of context, is perished understanding of the Bangladesh infrastructure and his age. Due to securing government employment in Bangladesh been restricted to those under 30 years of age, [the First Appellant] being older, is likely to enter any employment at the lowest level. Such restrictions have been verified as part of this assessment by accessing job vacancies within Bangladesh Airline Limited, Power Grid and the Bangladeshi Civil Service."

43. Ms Deacon's report was the focus of the 'error of law' hearing (see Annex hereto). The Appellants have now filed a copy of Ms Deacon's curriculum vitae. I do not propose to repeat its full contents here. In summary, Ms Deacon began work as a social worker for Leeds Social Care in 1994, and appears to have been consistently employed in social and/or care work until June 2018. Her positions and responsibilities have included working with children in the context of care proceedings, juvenile justice, child protection enquiries, family intervention projects, and fostering. Since about May 2015 her work has been sessional and or freelance, and she includes in her CV that since May 2014 she has been a Best Interest Assessor for Immigration Matters - which, together with the representatives before me, I took to be a reference to preparing reports of the sort that is presently before the Tribunal. The CV suggests a working practical knowledge of issues in relation to children's welfare over a period of approximately 25 years. I was also provided with extracts from the Health & Care Professions Council register which confirmed Ms Deacon's current registration.
44. In the circumstances Ms Cunha did not seek to contest that Ms Deacon had relevant experience such that she could hold herself out as an expert.
45. Of course, the fact that Ms Deacon is duly qualified to hold herself out as an expert in children's safeguarding and welfare, does not mean that I have to accept her opinion in all - or indeed any - aspects. I have noted above that I am unable to follow any specific reasoning in respect of Ms Deacon's conclusions on the 'best interests' of N and the twins. I also find the following aspects of the report unsatisfactory:
 - (i) I can identify nothing in Ms Deacon's qualifications or experience that suggests any expertise in respect of the educational system in Bangladesh. Nonetheless she essays an exploration of such system.

In my judgement this was a matter beyond her expertise, should not have been included, and should not have informed her assessment.

(ii) Ms Deacon also made an evaluation of the employment prospects of the First Appellant in Bangladesh. Again, in my judgement, this was not a matter within her expertise, should not found its way into the report, and should not have informed her assessment.

(iii) These latter two matters are significantly material to her overall evaluation which is essentially based on a comparison between the circumstances of the children in the UK, and the circumstances that they might face in Bangladesh. It means that her concluding opinions are based substantially on matters in respect of which she is not an expert, and on findings in respect of employment prospects that were not hers to make.

(iv) I have quoted above the passages from the report in which Ms Deacon cites the comments of W's school's FWSL. The key phrase upon which reliance is placed – both in Ms Deacon's report and in the context of the Appellants' submissions to the Tribunal – is *"For [W] to be removed from the UK's education system would be very undermining for her study, her confidence and her self-esteem and could have disastrous consequences"*. It seems to me that Ms Deacon accepts that statement without any evaluative process. It is wholly unclear from the report what, if anything, the FWSL thought would be put in place of the UK education system. I do not accept that the FWSL could possibly have meant in absolute terms that being removed from the UK education system in itself was detrimental, but rather that it would be detrimental if it were in the context of an absence of any continuing education, or in the context of being placed thereafter in a significantly inferior educational system. If, which is not clear, the FWSL meant that being removed from the U.K.'s education system and being placed in the Bangladesh education system would be undermining etc., it is not explained by the FWSL on what basis she was able to make such a comparative analysis.

46. In all the circumstances I am not satisfied that I have any reliable expert evidence, or any pertinent country information, as to the education system in Bangladesh. Further, I am not satisfied that the First Appellant's evidence as to the family's prospects in Bangladesh – which in my judgement tends to 'catastrophising' – is reliable. Accordingly, I find that the Appellants have not shown that there will be any significant detriment to the educational opportunities of W in the event of the family's relocation to Bangladesh.

47. Nonetheless, I accept that the disruption inherent in the process of relocation will - at least in the short term - be of some detriment to W, both educationally and emotionally. I also accept that W will experience disappointment and upset by being relocated away from her current friendship group, her extracurricular activities such as the school singing group, and her extended family members in the UK. However, she is at an early stage of her education, and at a relatively early stage of the process of establishing a private life beyond the immediate family unit. I do not accept that the short term disruptions and upsets cannot adequately be managed in the same way as any international relocation for a child - including the relocation of R from Bangladesh to the UK, he having arrived in the UK at a similar age to W's current age.
48. I accept that it would be better for W if she did not have to go through such short-term disruptions. Accordingly, on balance, I find that W's best interests not only lie in remaining in the care of her parents, but - marginally - are best protected and promoted by remaining in the UK.

'Reasonableness'

49. In light of the decisions in **KO (Nigeria) [2018] UKSC 53, JG (s.117B(6): "reasonable to leave" UK) Turkey [2019] UKUT 00072 (IAC)**, and **AB (Jamaica) and AO (Nigeria) [2019] EWCA Civ 661**, it was common ground before me that if I were to find that it would not be reasonable to expect either R or W to leave the United Kingdom then, pursuant to section 117B(6) of the Nationality, Immigration and Asylum Act 2002, the public interest would not require the removal of either the First Appellant or the Second Appellant - each being acknowledged to be persons with a genuine and subsisting parental relationship with both R and W who are qualifying children within the meaning of section 117D(1).
50. The question of whether it would not be reasonable to expect R and/or W to leave the UK posed by section 117B(6) is to be evaluated absent a consideration of the immigration history of the parents. As such, there is no element of balancing the precarious immigration position of the children, or the unsatisfactory immigration history of the First and Second Appellants.
51. The issue of 'reasonableness' is not congruent with 'best interests'. However, the evaluation of best interests, being a primary consideration, must necessarily inform an evaluation of reasonableness. Further, the matters traversed in the discussion in respect of best interests set out above are essentially the same matters that form the factual matrix for a consideration of the issue of reasonableness.
52. Further to the matters discussed above in respect of R, I find that it would not be reasonable to expect him to leave the UK at the present time. He

has spent the most significant years of his young life in the UK and is embarked on an achievable trajectory that would be significantly disrupted in the event that he were to leave the UK. He is at a critical stage of his vocational education, possibly about to transition into work. There would be a significant frustration in such ambitions in the event of removal. He would also lose the support and guidance of his peer group which, the reports referred to by the expert witness suggest are particularly significant for someone of his age. Further, for the reasons given above, I am satisfied that this would likely have a significant adverse psychological impact.

53. I am not so persuaded in respect of W. I am not satisfied that it has been shown that there would be any significant long-term impact on her educational prospects, and any short-term detriment inherent in relocation can likely be managed by her parents.

Consequently...

54. In consequence of my finding in respect of R, the public interest does not require the removal of either the First Appellant or the Second Appellant. Accordingly I conclude that the appeals of the parents succeed on human rights grounds.
55. Further, because I have found that it would not be reasonable to expect R to leave the UK, I also conclude that R satisfies the requirements of paragraph 276ADE(1)(iv). There being nothing else to his detriment, the fact that he satisfies the requirements of the Immigration Rules is, in my judgement, determinatively indicative that his removal from the UK in consequence of the Respondent's decision would constitute a disproportionate interference with his private life such that it would amount to a breach of Article 8 of the ECHR. His appeal succeeds accordingly.
56. I pause to note that in any event on the date of his forthcoming 18th birthday if R were still in the UK - which given the family's reluctance to leave voluntarily, and the Respondent's failure to enforce removal notwithstanding refusals of earlier applications, seems more likely than not - he would satisfy the age and duration requirements of paragraph 276ADE(1)(v) which does not involve an evaluation of reasonableness.
57. In circumstances where the parents of the family and the oldest child succeed in their appeals, it would be a disproportionate interference in the mutual Article 8 family/private lives of the family members if the remaining minor Appellants were not also granted leave to remain in the UK. Accordingly the appeals of W and N are also allowed.

58. The Respondent may also wish to consider granting leave to the twins in line with their parents and siblings - although this is not a matter within my jurisdiction.

Notice of Decision

59. The appeals are allowed on human rights grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: **10 July 2019**

Deputy Upper Tribunal Judge I A Lewis

To the Respondent

Fee Award *(This is not part of the determination)*

I do not consider it appropriate to make a fee award, notwithstanding that the Appellants have succeeded in their appeals. The Appellants have benefitted from recent developments in case law that could not have availed them at the time of their application or the Respondent's decision.

Signed:

Date: **10 July 2019**

Deputy Upper Tribunal Judge I A Lewis

ANNEX

TEXT OF 'ERROR OF LAW' DECISION AND DIRECTIONS PUSUANT TO HEARING ON 28 MARCH 2019

1. This is an appeal against the decisions of First-tier Tribunal Judge James promulgated on 23 January 2019 dismissing each of the linked appeals on human rights grounds.
2. I am grateful to both representatives for the helpful discussion it was possible to have in respect of the issues in the appeal. After careful consideration of the submissions and materials I have decided that the First-tier Tribunal Judge's decisions do contain a material error of law, and that it is appropriate that the decisions be set aside. I have also concluded that the decisions in the linked appeals be remade before the Upper Tribunal - it is necessary or appropriate to remit the case to the First-tier Tribunal.
3. It is not necessary for present purposes to set out herein the full personal details of the respective Appellants all of which are a matter of record on file. Similarly the respective immigration histories are a matter of record and do not require to be rehearsed here: suffice to say - as *per* paragraph 8 of Judge James' Decision - the appeals were pursued before the First-tier Tribunal on "*the principal basis ... that the Third and Fourth Appellants were qualifying children*".
4. The First-tier Tribunal Judge rejected that 'principal' argument, and otherwise dismissed the appeals for the reasons set out in his Decision.
5. Before the Upper Tribunal the primary basis of challenge relates to the First-tier Tribunal Judge's approach to a social work report.
6. A report dated 2 December 2018 prepared by Sally Anne Deacon was filed before the First-tier Tribunal (Appellant's supplementary appeal bundle under cover of letter dated 5 December 2018). In the introduction to the report Ms Deacon sets out a single paragraph in which she refers to her qualification and experience; this is followed by a further paragraph where she makes reference to the bases upon which the report has been compiled.

7. There are two aspects to the Appellants' challenge to the Judge's approach to this report.
8. First, criticism is made of the Judge's characterisation of Ms Deacon as not being an expert. Paragraphs 20 and 21 of the Decision are pertinent

"20. Ms Deacon sets out her qualifications in the Introduction to her report. She states that she qualified with a BA Hons in Applied Social Studies and the Certificate and Qualification in Social Work in 1994. She claims that since then she has worked exclusively in the area of children's safeguarding, fostering and adoption within local authorities and the voluntary sectors. She claims to have extensive experience of undertaking and advising care planning for children. She claims she is 'deemed' to be an expert witness within the family courts.

21. Ms Deacon has provided remarkably little detail of her experience. There is no information as to which local authorities or voluntary organisations she has worked for. There is no information to indicate that her knowledge and experience rises above that of her initial qualifications. She claims to be 'deemed' to be an expert witness within the family courts without providing any basis for that claim. Importantly she provides no information as to membership of or registration with any professional body, an issue I raised with the Appellants' representative. Overall I am not satisfied that she has provided sufficient information to be considered as an expert witness. I have noted that she was instructed to prepare the report on 28 August 2018 and the report was dated 2 December 2018. It cannot be said that the lack of information has arisen due to the urgent preparation of the report. As a result I do not consider Ms Deacon to be an expert and will give her report limited weight as one prepared by a non-expert social worker."

9. The second aspect of the challenge relates to a passage in the Decision to be found at paragraph 23:

"Ms Deacon states that [W] enjoys and succeeds in education. Ms Deacon tells me that the school takes the view that removal from the UK education system would undermine W's study, confidence and self-esteem but she has not attributed this comment to anyone so it is difficult to know the value of that assertion."

10. In this latter regard it is clear from Ms Deacon's report that she did attribute the school's view to a specific officer at the school. This may be seen at paragraph 11 of the report. Ms Deacon details that she had spoken with the "*family worker and safeguarding lead*" for the primary school that W attended. Specific quotations pursuant to that discussion are set out in the body of the report which includes the following:

"[W] is a secure and happy child who is achieving. She needs a little help in her maths but has every potential to catch up and make good progress. For her to be removed from the UK's education system would be very undermining for her study, her confidence and her self-esteem and could have disastrous consequences."

11. This quotation is expressly attributed to the family worker and safeguarding lead. Indeed Ms Cunha on behalf of the Secretary of State fully acknowledges that the Judge's observation at paragraph 23 is factually incorrect.
12. As regards the first basis of challenge - that the Judge was in error in characterising Ms Deacon not to be an expert - I accept the Judge had no adequate factual basis to so conclude. In my judgement the details provided in the Introduction to the report (paraphrased at paragraph 20 of the Decision) are sufficient to establish a relevant qualification and a degree of experience in social work. I accept as valid the Judge's observations at paragraph 21 critical of the detail provided by Ms Deacon. Nonetheless, the Judge did not indicate that he found he was not satisfied as to what was stated in respect of experience. As such on its face Ms Deacon presented as duly professionally qualified, and with 20 years' experience working in an approved capacity with children for agencies familiar with the concept of 'best interests'. In such circumstances, whilst I entirely accept that it would have been open to the Judge to approach Ms Deacon's report on the basis that the weight to be given to the opinions expressed required to be evaluated in a context where only limited detail had been given of the author's experience, there was no factual foundation - and it was not appropriate - to conclude that Ms Deacon was not an expert witness. I find that the Judge's finding in this regard was unsustainable and erroneous.
13. I observe that Ms Cunha acknowledged that rather than describing Ms Deacon as a "*non-expert social worker*" - the meaning of which is in any event obscure - the Judge might better have characterised the Appellant [*sic.: this should read as 'witness'*] as an expert whose opinion was to be

accorded less weight than a witness who had better particularised her experience.

14. However, Ms Cunha argued that the errors of approach by the Judge were ultimately not material.
15. I acknowledge that it is entirely possible that the Judge would have reached the same overall conclusion in the appeals even if he had taken a different approach to the report. Indeed, it is clear that the Judge had careful regard to certain elements of the contents of the report. Necessarily in part Ms Deacon simply sets out facts (such as what was stated to her by an officer of W's school), although in other parts she expresses her opinion. However, whilst it might be said that the Judge has had regard to the factual content of the report – although as noted above in this regard has erred in one aspect – his characterisation of Ms Deacon as a 'non-expert' denotes he has not accorded any weight to her opinion.
16. I remind myself that the best interests of a child, or children, are to be considered as a primary consideration in the context of immigration.
17. The Judge refers to best interests in this way:

"I have considered s.55 of the 2004 Act and I am satisfied that the best interests of the Third, Fourth and Fifth Appellants are to remain with their parents in the culture of their family" (paragraph 26).
18. The Judge is silent on the geographical location that would best support and/or promote the best interests of the children. It seems to me that this is particularly pertinent in circumstances where the Judge mischaracterised the reference in Ms Deacon's report to removal from the UK education system as undermining W's study, confidence, and self-esteem as being without attribution.
19. Further, the Judge marginalised or disregarded entirely Ms Deacon's opinion on best interests – an opinion informed both by the observations of the school officer and all other evidence available to her. In so doing he disregarded relevant evidence on an erroneous foundation.
20. In light of the foregoing – and given the significance of a consideration of best interests in the disposal of the appeal – I do not accept Ms Cunha's

submission that the errors are not material. The possibility that the same decisions might yet have sustainably been made in the appeals not in – on the facts here – determinative of the issue of materiality.

21. For the reasons given I conclude that the decision of the First-tier Tribunal Judge requires to be set aside for error of law.
22. For completeness I note that there was a further matter of discussion at the hearing in respect of the grant of permission to appeal. In part the grant of permission to appeal states:

“It is arguable that the failure in such circumstances to permit the Appellant time to secure a more detailed CV from the independent social worker was procedurally unfair”.

23. I have been unable to identify – and Ms Turnbull accepted it is not possible to identify – anything either in the decision of the First-tier Tribunal or the grounds of appeal to the Upper Tribunal that gives a factual foundation for a submission based on procedural unfairness of the sort referred to in the above quotation from the grant of permission to appeal.
24. The issue of Ms Deacon’s expertise was raised by the Judge at the hearing, and Counsel before the First-tier Tribunal addressed the issue: see paragraph 17. There is nothing to suggest that Counsel invited the Judge to permit time for a CV to be sent to the Tribunal after the hearing. Counsel that appeared before the First-tier Tribunal also settled the grounds of appeal. Nowhere in those grounds does Counsel suggest that she had made such an application, or that there was any procedural unfairness in such an application being rejected. Nor was it pleaded that the Judge should have permitted such time of his own motion.
25. In such circumstances it seems to me that the issue of procedural unfairness referenced in the grant of permission to appeal was no part of the Appellant’s case in seeking to challenge the decision of the First-tier Tribunal. In the circumstances it is unnecessary for me to say anything beyond this: the point was not pleaded; had it been pleaded, it was without merit.

Remaking the decisions

26. The appeals are retained by the Upper Tribunal. The decisions in the appeal will be remade pursuant to a resumed hearing and further to the following Directions.

Directions

- (i) Within 14 days of the date shown as the promulgation date of this decision, the Appellants are to file and serve details of Ms Deacon's curriculum vitae and any other materials relevant to her expertise, together with any updating information in particular in respect of the children in the appeal.
 - (ii) The appeal will be relisted, reserved to me, on the first available date thereafter.
27. It is not anticipated it will be necessary to hear oral evidence to remake the decisions in the appeals: the hearing will likely proceed by way of submissions only. I am not making any express direction for written submissions - but of course it may be helpful, and even prudent, for the Appellants' representatives to provide written submissions together with the supporting evidence.

>>>>> END <<<<<