

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

Appeal Numbers: IA/14712/2013
IA/14725/2013
IA/14731/2013
IA/14757/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 3 September 2014**

**Determination
Promulgated
On 28 October 2014**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

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**P O O
L K A O
B A O
P T O**

(ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Mr S Kandola, Home Office Presenting Officer
For the Respondents: Ms C Record, Counsel instructed by David A Grand,
Non-Practising Barrister

DETERMINATION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the respondents. Breach of this order can be punished as a contempt of court. I make this order because the case is about the welfare of children whose circumstances should be protected from the public gaze. This order does not restrict publishing details about the case so long as the respondents cannot be identified.
2. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing on human rights grounds the appeals of the four respondents against decisions of the Secretary of State to refuse them further leave to remain in the United Kingdom. The first respondent is the mother of the other three respondents. She came to the United

Kingdom in 2005. She has remained in the United Kingdom at all times with permission, her leave being extended on her application when necessary until further leave was refused in the decisions that gave rise to these appeals.

3. The children were born in 2003, 2007 and 2010, so the second respondent, the oldest of the children, was aged about 9 years at the time of the First-tier Tribunal's decision and had lived in the United Kingdom for seven or more years.

4. The First-tier Tribunal allowed the appeals particularly out of concern for the second respondent. The judge said at paragraph 12 of his determination:

"It is my view that it would in the circumstances of this case be inappropriate to disrupt the pattern of life of the 8 year old, L- K-, in the absence of compelling reasons to the contrary. I see no compelling reasons to the contrary in this case, with his father's case far from resolved as well as aforesaid."

5. This is a reference to the state of uncertainty about the immigration status of the husband of the first respondent and father of the other respondents. He has been in the United Kingdom for longer than the present respondents and it seems that for much of that time he has been in the United Kingdom without permission. However the Secretary of State showed no enthusiasm for deciding whether or not he should be removed. I am told by Ms Record, and I accept, that the Secretary of State served a removal decision on the person concerned on the day of the hearing of the appeal before the First-tier Tribunal. Unsurprisingly the decision is being appealed and I am told that the appeal will be heard in the earlier part of next year.

6. Ms Record explained that the respondents in this appeal have never tried to have their cases heard separately from any case concerning the husband and father and on an earlier occasion the First-tier Tribunal expressed concern that there was no decision that related to the family as a whole. These appeals were adjourned for a time in the hope that the Secretary of State would be prompted to make a decision but this was not done until, as I have indicated, the very morning of the hearing of these appeals in the First-tier Tribunal.

7. I have not seen any papers relating to that husband and father. I do not know why there was not a decision on an earlier occasion so I am in no position to criticise the delay but it is a mystery to me that the Secretary of State thinks it appropriate to consider members of the same family separately when they appear to be living together. Certainly one of the reasons that the appeals were allowed was because the family circumstances as a whole could not be considered.

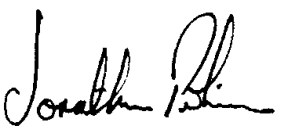
8. It is plain from paragraph 12 of the determination (see above) and elsewhere that there were two elements in the case that gave the First-tier Tribunal Judge considerable concern. The first was the amount of time that the family had spent in the United Kingdom so that the oldest child had established a private and family life that is independent and

significant. The second is that there was no decision about the father, so the judge did not know if he was dealing with a case where the whole family would be removed or whether the children and wife would be removed leaving behind the husband and father. This difficulty could have been avoided if the Secretary of State had acted more promptly in that case.

9. The grounds of appeal are not particularly illuminating. They complain that the First-tier Tribunal Judge referred to the “huge amount of blame” placed on the shoulders of the Secretary of State without really saying why that criticism amounts to an error of law. They say that the Secretary of State’s case is that it would be open to the respondents to apply for entry clearance in the event of the husband or father being allowed to remain, that it is not unreasonable to expect the family to adjust to the life in the country of which they are nationals and that Article 8 is not a general dispensing power and that it is not unjustifiably harsh to return the respondents there to continue their family life. These are almost standard paragraphs these days that although they are not inherently unmeritorious they do not deal with the important facts in this case. The Secretary of State contemplated removing a wife and children that had been in the United Kingdom for many years knowing that it was at least possible that in the future the father would be allowed to stay and the respondent might be able to come back.
10. As I indicated in argument, although it is a trite observation, immigration appeals deal with people with rights and relationships. They are not parcels on a warehouse shelf. The First-tier Tribunal Judge was clearly concerned that it was very undesirable to make a decision that would separate children from their father when it may be the case that the father is allowed to remain in the United Kingdom and they may be able to come back under the Rules.
11. Mr Kandola did all that could reasonably be expected of him but he was struggling to find an identifiable relevant error of law in the grounds, still less to support it by reference to the determination.
12. It is quite plain that the First-tier Tribunal Judge addressed himself about the Rules, addressed himself about making a decision outside the Rules, referred to the authority in **Azimi-Moayed [2013] UKUT 197**, reminded himself that if both parents are being removed from the United Kingdom the starting point would suggest that children forming part of the same household should go with them. He found that this was not such a case because no decision had been made about removing the father until shortly before the hearing of the case. Clearly that decision was open to examination and appeal.
13. I do not see how it can be said that the First-tier Tribunal Judge erred in law. He appears to have considered all that needed to be considered and applied the law appropriately.
14. It follows that I dismiss the Secretary of State’s appeal against this decision.

15. The First-tier Tribunal Judge did not indicate what kind of leave was necessary to give effect to his decision. He is not obliged to do that but it is clear to me that a period of leave settling the position until the outcome of the father's case is finally determined would probably be sufficient. If there has to be a further removal decision all rights can be looked at again. At present I can find no material error in the decision of the First-tier Tribunal Judge and certainly none had been identified in the grounds before me.
16. I dismiss the Secretary of State's appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 23 October 2014