



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

Appeal Numbers: IA/29444/2014
IA/29445/2014
IA/29447/2014
IA/29448/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 21 April 2015**

**Decision & Reasons
Promulgated
On 23 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MR R M (FIRST APPELLANT)
MRS F D S (SECOND APPELLANT)
MISS S M R D S (THIRD APPELLANT)
MASTER S R M (FOURTH APPELLANT)**

(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms J Victor-Mazeli (Counsel instructed by Nasim & Co Solicitors)

For the Respondent: Mr C Avery (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellants appeal a decision made by the respondent on 1st July 2014. That decision was made following a decision on 29 November 2013 refusing their application for leave to remain on the grounds of family and private life. As there was no right of appeal against the initial decision, the respondent (in response to a pre-action Protocol letter of 11 December 2013) agreed to review the case and consider a removal direction. The appellants submitted further grounds to clarify the basis of their request

for leave to remain. In a letter dated 1 July 2014 the respondent considered Article 8 ECHR under paragraph 276ADE and Appendix FM together with Section 55 of the Borders, Citizenship and Immigration Act 2009. Removal directions were issued under Section 10 of the Immigration and Asylum Act 1999 on 7 July 2014.

2. The appeal was heard by the First-tier Tribunal (Judge Kempton), who dismissed the appeal against refusal of leave to remain in the UK on the basis of private and family life and in respect of removal directions under Section 10 of the 1999 Act.
3. In grounds of application it was asserted by the appellants that the Tribunal failed to consider the specific circumstances of the third appellant, whose date of birth was 14 October 2005, under paragraph 276(iv) of the Immigration Rules, on the grounds that the child lived in the UK for over seven years and was under 18 years. Further it was contented that the Tribunal failed to properly consider the best interests of the child following **EV (Philippines) [2014] EWCA Civ 874**. The third appellant's length of residence in the UK was not taken into account in assessing her best interests or in consideration of return to India. There was also a failure to consider Section 117B(6) of the Nationality, Immigration and Asylum Act 2002.

Permission to Appeal

4. Permission to appeal was granted by First-tier Tribunal Judge Levin on 7 January 2015.

Rule 24 Response

5. The Secretary of State opposed the appeal in a Rule 24 response dated 20 January 2015. Her position was that the Tribunal took into account the fact that the eldest child had lived in the UK for over seven years [25] and [26]. The Tribunal had also considered Section 117B and public interest considerations under Article 8 at [28] - [30] of the determination, together with the best interests of the children as set out at [25] - [26].

Error of Law Hearing

6. This matter came before me for consideration of whether or not there was a material error of law in the First-tier Tribunal's decision.
7. I heard submissions from Ms Victor-Mazeli and Mr Avery, the details of which are set out in the Record of Proceedings and which I have taken into account. In essence Ms Victor-Mazeli expanded on the grounds of application submitting that the Tribunal failed to properly consider the applicability of paragraph 276ADE, Section 117B(6) and Section 55 best interests of the children, specifically with regard to the third appellant, who had lived in the UK for in excess of seven years and was a "qualifying child". She submitted that the third appellant would have been aged 8

years old at the time of the hearing and that the Tribunal should have specifically considered her position and circumstances. There had been an overemphasis by the Tribunal on the circumstances of the parents including the fact that they had no leave and had claimed benefits. Her second argument was that the Tribunal failed to consider all of the factors raised in guidance as to the assessment of the best interest of children in **EV (Philippines)** (cited above).

8. Mr Avery's initial submission was that the Tribunal had not been required to consider paragraph 276ADE as the appeal related to a removal decision. He conceded, however, having referred to the most recent refusal letter, that the respondent had in fact considered private and family life under paragraph 276ADE and that issue was properly dealt with at [29] of the determination. Furthermore he argued that the Tribunal had considered the best interests of the children by reference to most of the factors raised in **EV (Philippines)**; it was not necessary for the Tribunal to cover all issues. The determination amounted to a thorough and comprehensive assessment, in particular as regards the best interests of the children. The Tribunal had specifically covered Section 117B(6) of the 2004 Act at [29].
9. At the end of the hearing I reserved my decision which I now give with my reasons.

Discussion and Decision

10. I find no material error of law in the determination of the appeal. I am satisfied that the Tribunal had regard to the third and fourth appellants, who were born in the UK and whose respective dates of birth were 14 October 2005 and 22 November 2008.
11. The Tribunal found that the family had lived in the UK unlawfully for thirteen years and took into account that the children were not British citizens. The Tribunal found that the children understood the dialect spoken in Kerala, although it accepted that they were not fluent and that the language spoken at home was English. The Tribunal found no evidence of any real connection by the children in the UK other than their attendance at school and at church. The Tribunal found no evidence to show why it would be unreasonable for the children to return to India. The Tribunal had regard to the fact that there were wider family members living in India.
12. I find that the Tribunal did consider where the best interests of the children lie, having regard to the available evidence. Its findings are set out at [26] and the Tribunal specifically considered the interests of young children with reference to relevant case law including **Azimi-Moayed**, **Zoumbas**, **Osawemwenze** and **EV (Philippines)**. It considered that in general terms the interests of younger children were met by remaining with their parents in the family unit. It acknowledged that the eldest child was at school but she had only attended school at a very elementary level

and there would be little disruption to her education if she were to leave the UK. The Tribunal also placed weight on the fact that the period of seven years residence from the age of 4 years was of greater significance than earlier years. The Tribunal was aware that the third appellant was aged 8 years and considered her needs in the context of her parents' circumstances. The Tribunal found an absence of any evidence to establish any real ties and connection on the part of the third appellant within the UK other than her family.

13. I am satisfied that the Tribunal did properly consider paragraph 276ADE(iv) with regard to the length of residence of the child and more particularly found that there was no evidence why it was not reasonable for the child to leave the UK. To that end the Tribunal further considered public interest factors and specifically made reference to Section 117B(6) at [9]. I find no substance in the argument that the Tribunal focused in the main on the public interest factors applying to the parents. Whilst accepting that the third appellant was a "qualifying child" in terms of length of residence, the section also provides that it must be reasonable to expect the child to leave the UK. The Tribunal's assessment reasonably found that the child's interests lay in remaining with her parents/family and that her own private life could be established in India notwithstanding that she had never lived in that country. It took into account that neither she nor her younger brother were British citizens and therefore had no entitlement to education in the UK. There was no evidence before the Tribunal to support an argument that the interests of the third child could outweigh the public interest in removal of the family as a whole.

Notice of Decision

14. I find no material error of law in the determination.

15. The determination shall stand.

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. Two of the appellants are children.

Signed

Date 22.4.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT **FEE AWARD**

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

Signed

Date 22.4.2015

Deputy Upper Tribunal Judge G A Black