



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/39104/2013  
IA/42228/2013  
IA/39105/2013  
IA/42295/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 15 December 2015

Decision & Reasons Promulgated  
On 1 June 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

J R M

U J

M A J

M J

(ANONYMITY DIRECTION MADE)

Respondents

**Representation:**

For the Appellant: Mr S Walker, Home Office Presenting Officer  
For the Respondents: No Representation

**DECISION AND REASONS**

1. This is an appeal brought by the Secretary of State for the Home Department against the decision of First-tier Judge Lobo dated 13 October 2014 in which he allowed an appeal brought by the above named applicants against the decisions of the Secretary

of State dated 10 September 2013 to refuse to vary their leave to remain and to make decisions under Section 47 Immigration, Asylum and Nationality Act 2006 to remove them. In this decision I shall refer to the parties as they were before the First tier, that is that the applicants are the Appellants, and the Secretary of State for the Home Department is the Respondent.

2. The members of the family are Mr Malik, presently aged 46, Mrs Javaid, presently aged 40, Moez Javaid, date of birth 15 August 2002, presently aged 13 and Mooaz Javaid, date of birth 2 March 2007, presently aged 8.
3. The first Appellant has been present in the United Kingdom with valid leave to remain as a student since 21 January 2004 (the Respondent's decision letter suggests that this was 21 June 2004 but the first Appellant's entry clearance valid from 22 December 2003 to 28 February 2005 is within the Respondent's bundle at Annex H and has an entry stamp on it dated 21 January 2004). The second and third Appellants have been present since 14 June 2005 (see her entry clearance, Annex H; page 3 of the original grounds of appeal from the Respondent's decision to the FtT; and the findings of the judge at [13]). The fourth Appellant was born in the United Kingdom.
4. The Appellants obtained successive grants of leave to remain, up to 30 August 2012. On 28 August 2012 they applied for a variation of their leave to remain on the basis of their private and family lives in the UK, relying upon Immigration Rule 276ADE and Article 8 outside of the Rules. At the time of that application, the third Appellant had therefore been present in the United Kingdom for more than 7 years.
5. A relevant consideration in this matter is that the fourth Appellant has been diagnosed as having autistic spectrum disorder ('ASD'), having been diagnosed with that from the age of 3. He receives help from the Speech and Language Therapy Service of Kent. There is a statement of special educational needs in accordance with Section 324 of the Education Act 1996. He attends a special school.
6. In her decision of 10 September 2013 (more than a year after the application) the Respondent refused to vary leave to remain, on the ground that the Appellants did not in the Respondent's view meet any relevant Immigration Rule, whether under 276ADE or Appendix FM. Considering the matter outside the Immigration Rules the Respondent was of the view that the application did not contain any exceptional circumstances that might warrant consideration by the Respondent for a grant of leave to remain outside the Rules.
7. The Appellants appealed against that decision, their appeal coming before the judge at Taylor House on 30 September 2014. The judge had before him a range of documentary evidence, particularly relating to the fourth Appellant. The evidence set out the matters mentioned at [5] above. Further, there have been problems with his public behaviour although these were said to have improved. He can understand

only a little Urdu and he only responds to English [13]. In the judge's findings at [16] he finds that the fourth Appellant's 'effective' language was English [16(d)]; his prognosis was that he 'will always be challenged' but if supported in the correct way, at the appropriate time, he will be able to live a fulfilling and semi-independent life [16(e)].

8. In relation to the third Appellant, the judge noted that he had arrived in the UK in 2005 aged 2 and was aged 12 at date of hearing. He had been educated in the United Kingdom, was involved socially with friends, follows football, speaks English and is totally integrated. He lives in Tunbridge Wells, which is not an area normally associated with persons originally from Pakistan.

9. In his conclusions at [17] the judge held as follows:

"As a consequence of the decided facts the third and fourth Appellants have persuaded me to the necessary standard that they meet the requirements of the Immigration Rules and in particular paragraph 276ADE(ii)\*. I am satisfied that it would not be reasonable to expect the applicants to leave the United Kingdom."

10. \* I have marked the subparagraph of 276ADE for the following reason. It seems that at [17] and indeed at [5] the judge slightly misquotes the Rule in 276ADE. The relevant subparagraph relating to children is 276ADE(1)(iv), which provides "... is under the age of 18 years and has lived continuously in the UK for at least seven years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK". I do not find that the slight misquote of 276ADE is material.

11. Continuing in his decision at [18-19], the judge held that the best interests of both children was a primary consideration and that an overall assessment is that it would not be reasonable to expect them to live in another country, because the third Appellant has lived here nine years and is fully integrated and the fourth Appellant because of his ASD and the better treatment that is available in the United Kingdom. Furthermore that both the third and fourth Appellants are more at ease speaking English and the fourth Appellant has little understanding of Urdu.

12. Without setting out any remaining parts of the decision it suffices to say that the judge allowed the appeal of the third and fourth Appellants under the Immigration Rules and of the first and second Appellants on human rights grounds on the basis that if the children could not reasonably be expected to leave the United Kingdom nor could their parents.

13. In Grounds of Appeal dated 17 October 2014 the Respondent appeals against that decision arguing that the Immigration Judge had materially erred in law by "failing to take into account the findings of EV Philippines [2014] EWCA Civ 874 when

considering the reasonableness of the 4<sup>th</sup> Appellant to leave the UK". The Respondent quoted from paragraphs 58 to 60 of EV Philippines:

"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?

59. On the facts of ZH it was not reasonable to expect the children to follow their mother to Tanzania, not least because the family would be separated and the children would be deprived of the right to grow up in the country of which they were citizens.

60. That is a long way from the facts of our case. In our case none of the family is a British citizen. None has the right to remain in this country. If the mother is removed, the father has no independent right to remain. If the parents are removed, then it is entirely reasonable to expect the children to go with them. As the immigration judge found it is obviously in their best interests to remain with their parents. Although it is, of course a question of fact for the tribunal, I cannot see that the desirability of being educated at public expense in the UK can outweigh the benefit to the children of remaining with their parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world."

14. The grounds submitted that the fourth Appellant's needs were educational in nature and as a result the findings of EV Philippines applied to his continuing special educational needs. It was further submitted that the judge had materially erred in law by failing to take into account the requirements of Section 117B of the Nationality, Immigration and Asylum Act 2002 ('NIAA 2002'), in particular that no consideration of the public interest considerations outlined in Section 117B of the Act had been given and as a result the judge had materially erred in law in finding that the decision to remove the Appellants was disproportionate.
15. Permission to appeal was granted by Judge P J M Hollingworth on 7 September 2015 in brief terms: "An arguable error of law has occurred. The Judge has failed to set out the application of the criteria of Section 117 to the facts".
16. In a notice of hearing dated 23 November 2015 the Upper Tribunal gave notice of today's hearing date, 15 December at Field House. In correspondence to the Tribunal dated 8 December 2015, S & S Immigration Law requested an adjournment of the present appeal on the basis that the Appellants had only recently instructed their firm and that the notice of hearing did not give sufficient notice of the hearing prior to 15 December to enable them to prepare their case or to instruct Counsel. That

application to adjourn was refused by Upper Tribunal Judge McGeachy in a notice communicated to the Appellants on 10 December on the grounds that it was not possible at this stage to adjourn the appeal and the judge saw no reason why another Counsel could not be instructed as the issues in the appeal were not unduly complicated. It was also pointed out that there was an error of law hearing and should the judge find an error of law the Appellants' Counsel could apply for an adjournment to a further substantive hearing.

17. In correspondence from S & S Immigration Law dated 11 December 2015 they stated that they had received the Tribunal's letter informing them that their request for an adjournment had been refused. They state:

"The hearing is now just two working days away. As we explained in our request for adjournment it has not been possible to instruct Counsel for this Upper Tribunal hearing at such short notice. In the circumstances the Appellant or his representatives will not be attending the hearing but we wish to rely upon the written submissions attached herewith. Kindly place these for the attention of the judge."

18. There is then attached a set of representations of some five pages which in summary argue that the First-tier Judge appropriately directed himself in law and did not commit any material error of law in allowing the appeal.
19. In fact that letter had not come to my attention by the time the appeal was called on at 2 o'clock this afternoon and so I caused enquiries to be made to S & S Immigration Law as to their attendance. They re-sent the representations of 11 December and again invited the court to take those representations into account and indicated that they would not be attending the hearing.
20. As the meaning and effect of both EV Philippines and Treebhawon and others [2015] UKUT 674 (IAC) (see below) was likely to be relevant to the discussion in the present appeal, I provided Mr Walker with the opportunity to review those authorities before making submissions.
21. I then heard submissions from Mr Walker on behalf of the Respondent. He relied principally in the Grounds of Appeal, referring to the Court of Appeal authority of EV Philippines, the passages of which I have quoted above.
22. However, Mr Walker accepted that the immigration history of the present Appellants was not adverse. The present Appellants have at all material times possessed leave to remain, and the youngest child had developed a disabling condition after birth in the United Kingdom. These were matters which Mr Walker accepted could potentially distinguish the present Appellants' position from the position of the Appellants in the case of EV Philippines. Ultimately the Respondent does not forcefully submit to me today that there was a clear error of law in the First-tier decision.

## Discussion

23. It seems to me that a party's reference to certain passages within a reported judgement does not of itself advance a particular proposition in law, or demonstrate that a decision under appeal contains a material error of law. In EV Philippines, Christopher Clarke LJ gave the first, and longest judgement, with which Lewison LJ agreed, adding 'a few observations' of his own. Jackson LJ agreed with both judgments.
24. In terms of what the ratio of EV Philippines is, I believe it is as follows:
- (i) The Court rejected the proposition advanced at [21] by the appellants that where it was established that the best interests of children lay in their continuing their education in the UK, that only 'the most cogent countervailing considerations' could justify the removal of the family; insofar as Lord Kerr's judgment in ZH Tanzania v SSHD [2011] UKSC 4 appeared to advance the proposition that the best interests of a child 'must rank higher' than any other factor, the Court noted that he was there dealing with British children, that he had agreed with Lady Hale, and the Court should be guided by the formulation which she adopted which was that the best interests of a child was a primary consideration which could be outweighed by others provided that no other consideration was treated as inherently more significant (see Christopher Clarke LJ at [32]).
  - (ii) The best interests of the child are to be determined by reference to the child alone without reference to the immigration history or status of either parent (Christopher Clarke LJ at [33]).
  - (iii) "34 In determining whether or not, in a case (*where none of the family are British and they are relying on private and family life grounds to remain in the UK*), the need for immigration control outweighs the best interests of the children, it is necessary to determine the relative strength of the factors which make it in their best interests to remain here; and also to take account of any factors that point the other way.
35. A decision as to what is in the best interests of children will depend on a number of factors such as (a) their age; (b) the length of time that they have been here; (c) how long they have been in education; (c) what stage their education has reached; (d) to what extent they have become distanced from the country to which it is proposed that they return; (e) how renewable their connection with it may be; (f) to what extent they will have linguistic, medical or other difficulties in adapting to life in that country; and (g) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens.

36. In a sense the tribunal is concerned with how emphatic an answer falls to be given to the question: is it in the best interests of the child to remain? The longer the child has been here, the more advanced (or critical) the stage of his education, the looser his ties with the country in question, and the more deleterious the consequences of his return, the greater the weight that falls into one side of the scales. If it is overwhelmingly in the child's best interests that he should not return, the need to maintain immigration control may well not tip the balance. By contrast if it is in the child's best interests to remain, but only on balance (with some factors pointing the other way), the result may be the opposite.

37. In the balance on the other side there falls to be taken into account the strong weight to be given to the need to maintain immigration control in pursuit of the economic well-being of the country and the fact that, *ex hypothesi*, the applicants have no entitlement to remain. The immigration history of the parents may also be relevant e.g. if they are overstayers, or have acted deceitfully." (Christopher Clarke LJ at [34-37])

- (iv) The approach to the assessment of best interests set out in paragraphs 23-24 of MK India (Best interests of the child) [2011] UKUT 00475 (IAC) was approved, which emphasises a fact sensitive, 'overall' balancing of factors (Christopher Clarke LJ at [39]).
- (v) In answering the question whether one has to assess the best interest of the children without regard to the immigration status of the parent, the assessment of the best interests of the children must be decided on the basis that the facts are as they are in the real world; the ultimate question will be: is it reasonable to expect the child to follow the parents with no right to remain to the country of origin? (Lewison LJ, [50] and [58]).

25. I specifically find that the most often quoted passage of EV Philippines "Just as we cannot provide medical treatment for the world, so we cannot educate the world" (Lewison LJ at [60]) does not form part of the ratio of the case; it does not seek to approve or disapprove a proposition in law; it is something of an overall observation but which should not be treated by the Respondent as some indefeasible mantra.

26. On the facts of EV, the Court of Appeal held that the FtT judge in that case had not erred in law in finding that the importance of maintaining immigration control outweighed the best interests of the children of that particular family, on the facts of the case. The Court noted, at [44] that the parents would be employable in the Philippines, the family would not be homeless, there was an extended family to which they would have access, the family had been in the UK for only a limited time - 3 years and 9 months at the date of the FtT decision, and the children would not be without education in the Philippines. Further, it was reasonable to expect the children to live in another country [45]; if the parents were to be removed, it was obviously in the children's best interests to remain with their parents. Although it a

question of fact for the tribunal, the desirability of being educated at public expense in the UK could not outweigh the benefit to the children of remaining with their parents [60].

27. Since the Court of Appeal gave judgment in EV Philippines, Part 5A has been inserted into NIAA 2002:

“s.117A

Application of this Part

- (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts –
  - (a) breaches a person’s right to respect for private and family life under Article 8, and
  - (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
- (2) In considering the public interest question, the court or tribunal must (in particular) have regard –
  - (a) in all cases, to the considerations listed in section 117B, and
  - (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.
- (3) In subsection (2), “the public interest question” means the question of whether an interference with a person’s right to respect for private and family life is justified under Article 8(2).

117B Article 8: public interest considerations applicable in all cases

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –
  - (a) are less of a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –
  - (a) are not a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (4) Little weight should be given to –
  - (a) a private life, or
  - (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.



- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
  - (b) it would not be reasonable to expect the child to leave the United Kingdom."

#### 117D Interpretation of this Part

(1) In this Part—

"Article 8" means Article 8 of the European Convention on Human Rights;

"qualifying child" means a person who is under the age of 18 and who—

(a) is a British citizen, or

(b) has lived in the United Kingdom for a continuous period of seven years or more ..."

28. A number of reported cases have considered the meaning of the provisions within Section 117B. A recent example is Treebhawon which provides in its head note as follows:

"Section 117B(6) is a reflection of the distinction which Parliament has chosen to make between persons who are, and who are not, liable to deportation. In any case where the conditions enshrined in Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 are satisfied, the Section 117B(6) public interest prevails over the public interests identified in Section 117B(1) - (3)."

29. In the body of the decision, which is given by the President of the Upper Tribunal, Mr Justice McCloskey, and Upper Tribunal Judge Frances, the Tribunal further considers the meaning of Section 117B(6). At paragraph 14 the Tribunal formulate an issue before them in the following terms:

"In a case where a court or Tribunal decides that a person who is not liable to deportation has a genuine and subsisting parental relationship with a qualifying child, as defined in Part 5A of the Nationality, Immigration and Asylum Act 2002, as amended, and it would not be reasonable to expect such child to leave the United Kingdom, with the result that the two conditions enshrined in Section 117B(6) are satisfied, is this determinative of the 'public interest question', namely the issue of proportionality under Article 8(2) ECHR?"

30. The Tribunal then consider the recent case of Deelah and others and stated as follows at [20-22]:

“20. In section 117B(6), Parliament has prescribed three conditions, namely:

- (a) the person concerned is not liable to deportation;
- (b) such person has a genuine and subsisting parental relationship with a qualifying child, namely a person who is under the age of 18 and is a British citizen or has lived in the United Kingdom for a continuous period of seven years or more; and
- (c) it would not be reasonable to expect the qualifying child to leave the United Kingdom.

Within this discrete regime, the statute proclaims unequivocally that where these three conditions are satisfied the public interest does not require the removal of the parent from the United Kingdom. Ambiguity there is none.

21. Giving effect to the analysis above, in our judgment the underlying Parliamentary intention is that where the three aforementioned conditions are satisfied the public interests identified in section 117B(1) - (3) do not apply.

22. It would further appear that the "*little weight*" provisions of section 117B(4) - (5) are of no application. If Parliament had been desirous of qualifying, or diluting, section 117B(6) by reference to either section 117B(4) or (5), it could have done so with ease. It has not done so. Fundamentally, there is no indication in the structure or language of Part 5A that in cases where, on the facts, section 117B(4) and/or (5) is engaged, the unambiguous proclamation in Section 117B(6) is in some way weakened or demoted. To this may be added the analysis in [18] - [21] above. Clearly, there is much to favour this construction. However, conscious of the limits of the judicial function, we decline to provide a definitive answer to this discrete question, for two reasons. First, we received no argument upon it. Second, it does not clearly fall within the grant of permission to appeal.”

31. Therefore whilst the Tribunal appear to hold that the Section 117B(6) has an absolute and unambiguous meaning, it did not, it seems, ultimately rule on that point at paragraph 22 for the twofold reasons that the Tribunal had received no argument upon the meaning of that provision and that the construction of that provision had not clearly fallen within the grant of permission to appeal.
32. However, the President has given what is so far the clearest assistance in understanding the meaning and effect of Section 117B(6). It seems to me that if it has been held that a qualifying child cannot reasonably be expected to leave the United Kingdom and the parent of that child has a genuine and subsisting parental relationship with the child, then the public interest simply does not require the removal of the parent, and any such proposed removal would be disproportionate.

33. As the Respondent's grounds of appeal are not very particular in identifying how the judge failed to 'take into account the findings of EV Philippines', I take the Respondent's challenge to be that the judge's findings are in some way contrary to the ratio of EV, as I understand it to be.
34. I disagree. In assessing the best interests of the children, the judge directs himself in law by reference to relevant authorities at [18]. There is no misdirection in law, for example by requiring there to be 'the most cogent countervailing considerations' present to outweigh the best interests of the children. The judge assessed the best interests of the children in isolation to the immigration position of their parents; he considered whether it was reasonable for the children to be required to leave the UK, and only then did he start to consider the immigration position of the parents at [20].
35. In assessing that it was not reasonable for the children to leave the UK, the judge took into account, in relation to the fourth Appellant in particular, that if supported in the correct way (as he is being in the UK) he will be able to live a fulfilling and semi-independent life [16(e)] in a country where a person diagnosed with ASD and the family enjoy and benefit from a generosity of spirit and a concern from the public in general and society as a whole [16(h)]. This appears to be in very sharp contrast to judge's assessment (which is not challenged by the Respondent) of the fourth Appellant's likely future life in Pakistan; ASD is rarely identified or diagnosed in Pakistan and persons afflicted with it are placed in institutions for the mentally retarded [16(f)]; ASD is viewed or regarded as reflecting the sins of the parents [16(h)]; there is a lack of awareness, a dearth of professional medical expertise, almost non-existent health care and most of all, social stigma associated with persons diagnosed with autism [16(i)(i)]. The judge also took into account that the fourth Appellant's (apparently limited) communication skills were in English, not Urdu [13] and [16(d)]. This is clearly not a child who may be presumed to be able to easily pick up a language merely by being immersed into it.
36. The assessment of the fourth Appellant's best interests does not involve simply a comparison of educational opportunities for him in the UK and Pakistan (as I think is suggested by the Respondent's grounds of appeal); rather it involves an assessment of the quality of life he is likely to have overall. In summary, the contrast identified by the judge is that in the UK the fourth Appellant has an opportunity of having a future fulfilling life in, whereas in Pakistan, he does not. There can be nothing more central to the assessment of the best interests of a child with a disabling condition than to determine whether its future life will or will not be fulfilling.
37. Other factors that the judge took into account, and which according to the ratio of EV he was entitled to take into account, was the period of time that the children had been in the United Kingdom; at the date of the FtT hearing, this had been 9 years for the third Appellant, and the whole of the fourth Appellant's life, who was then 7 ½. The judge performed an 'overall assessment' [19] as was required of him (EV para

[39]). The outcome of his assessment was clearly based on the particular facts of the case as he found them to be (and the Court of Appeal in EV acknowledged that these assessments are fact-sensitive). There were no adverse elements from the parents' immigration history to take into account in the proportionality balancing exercise (such as overstaying or acting deceitfully; EV para [37]).

38. In relation to Respondent's submission that the judge erred in law in failing to take into account the public interest consideration in s.117B NIAA 2002, I find that this is, subject to what I say at [41]below, not the case; the judge balanced the interests of the Appellants against the public interest in maintaining immigration control, at [22], the beginning of [23] and at [24]. Even if the judge did not refer to Part 5A in terms, this is not an error of law if the judge has applied the test he or she was supposed to apply according to its terms (which he did); what matters is substance, not form; Dube (ss.117A-117D) [2015] UKUT 90 (IAC).
39. However, there are two ways in which I find that the judge has erred in law. These issues are not raised in the application for permission by the Respondent (or indeed the Appellant) but are Robinson obvious.
40. The first is that in allowing the fourth Appellant's appeal under the Immigration Rules, seemingly under rule 276ADE(1)(iv), he erred in law. The first line of 276ADE requires that an applicant must have satisfied the conditions set out in the Rule *at the date of application*. The fourth Appellant, born on 2 March 2007, had lived in the United Kingdom for seven or more years at the date of the appeal before the FtT on 30 September 2014, but had not done so prior to the date of application made on 28 August 2012. In that respect, and Mr Walker agrees with me, the appeal of the fourth Appellant did not stand to be allowed by reference to paragraph 276ADE(1)(iv). However, on the grounds that his removal is not reasonable, I find that the fourth Appellant's removal would amount to a disproportionate and therefore unlawful interference with his private life, and would be contrary to s.6 Human Rights Act 1998.
41. The judge also erred in law in failing to have regard to s.117B(6) NIAA 2002. At the date of hearing, both children were 'qualifying children' as defined under s.117D NIAA 2002, on the grounds that they had both lived in the United Kingdom for a continuous period of seven years or more. In contrast with para 276ADE, there is no requirement in Part 5A NIAA 2002 for that seven year requirement to have been met at the date of application. Further, on the judge's finding (which is sustainable), that it is not reasonable to expect the children to leave the UK, and there being no question but that the first and second Appellants have genuine and subsisting relationships with the children, then s.117B(6) provides that the public interest does not require the removal of the first and second Appellants. Applying Trebbhowan, that outcome is 'unambiguous', and is it not necessary to consider, in any event, s 117B(1-3) (Trebbhowan, paras [21-22]).

## Decision

42. I find as follows.

(i) The making of the First-tier decision involved the making of material error of law, that being that the fourth Appellant's appeal did not stand to be allowed under paragraph 276ADE(1)(iv) of the Immigration Rules because he had not been present in the United Kingdom for seven or more years at the date of application. I set aside the decision in respect of the fourth Appellant, but I remake the decision in relation to the fourth Appellant by allowing his appeal under Article 8 ECHR.

(ii) I find that the decision of the judge in relation to the third Appellant allowing his appeal under the Immigration Rules does not disclose any material error of law.

(iii) The making of the First tier decision in relation to the first and second Appellants involved the making of an error of law, in failing to find that the public interest did not require their removal, in accordance with s.117B(6) NIAA 2002. However, that error was not material to the outcome of their appeals, which were allowed on human rights grounds, and which still stand to be allowed to human rights grounds. I do not set aside the decision in relation to the first and second Appellants.

Signed

Date: 28.1.16



Deputy Upper Tribunal Judge O'Ryan

### **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