Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/30048/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 16 March 2017	**On 30 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

SURJEET [S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr B Singh of Counsel
For the Respondent: Mr K Norton, a senior Home Office Presenting Officer

DECISION AND REASONS

1. On 2 April 2017 I found an error of law in the decision of the First-tier Tribunal. I set that decision aside and decided that I could re-make the decision myself on the papers. I invited the appellant to serve relevant further evidence in respect of the appellant's step-children as requested the hearing. I also gave the respondent an opportunity to make any observations on that evidence.

2. On 14th April the appellant filed a letter from the appellant's wife and letters from his 3 stepchildren – [JH], aged 15, [BH] aged 12 and [EH] aged 10. There was no response from the respondent.

3. The background to this case is set out in the error of law decision. As found by the First-tier Tribunal the appellant is in a genuine and subsisting relationship with a British Citizen, a daughter who is a British Citizen and 2 stepchildren who are British Citizens. The judge considered EX.1(b) and found that there were not insurmountable obstacles to the appellant and his partner continuing family life outside the UK. There was no appeal against that finding. The appeal centred around the relationship with the appellant's daughter and stepchildren and the reasonableness of return to make an out of country application as a partner

4. My findings in respect of the error of law were:

> "29. It is clear from the decision that the judge accepted that the appellant had a genuine and subsisting relationship with the appellant's partner's children. Indeed at paragraph 37 the judge implicitly acknowledges that in terms of Section 117B(6) she would be required to consider, in addition to the appellant's daughter, his stepchildren. However, the respondent did not consider the best interests of the appellant's stepchildren and neither did the judge. Having accepted implicitly that the appellant has a subsisting parental relationship with his stepchildren it was incumbent upon the judge to consider their best interests.
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> 30. I find that the failure to consider and make a finding in respect of whether or not it was reasonable to expect the appellant's daughter and stepchildren to leave the UK as required by EX.1(a) and Section 117B(6) amounted to a material error of law. It was also a material error of law not to consider the best interests of the appellant's step children. …"

5. The issues to be considered are, the best interests of the children, whether it would be reasonable for them to be expected to leave the UK and if it is whether or not removal of the appellant would be a disproportionate interference with his Article 8 right to family life.

6. Essentially this case concerns Article 8 outside of the Immigration Rules. The approach to be adopted is as set out in **R v. SSHD (Appellant) ex parte Razgar (FC) (Respondent) [2004] UKHL 27**. It is not is dispute that the first 4 of the tests set out in **Razgar** are satisfied. The issue in this case is proportionality. Consideration of children's' best interests are part of the proportionality assessment. In **MA (Pakistan)** at [57]the court held:

> "... It is vital for the court to have made a full and careful assessment of the best interests of the child before any balancing exercise can be undertaken.

7. The wider public interest and actions of the parents are not relevant to the assessment of a child's best interests.

8. In this case there are four children to consider. The appellant's daughter is now aged almost 3 (she was born in June 2014). There are no specific concerns with regard to her such as health problems. She is very young and is focussed on her parents. She

has a relationship with her grandparents in the UK. She will not have begun to develop any significant ties outside her family. Her best interests are to be brought up by both of her parents.

9. The appellant's step children are [JH], aged 15, [BH] aged 12 and [EH] aged 10. They have each provided a letter setting out their wishes. The evidence before the First-tier Tribunal which was accepted by the judge and has not been challenged was that they all see their step father on a fairly regular basis. Ms [W] in her letter to the Upper Tribunal says that the children speak to their father on the phone regularly and that he has them every other weekend. [BH] in his letter says that he speaks to his father on the phone every other day and that he comes to pick him up sometimes when he is not busy working. All 3 children say that the appellant has been involved in their lives and that he helps and supports them and is part of their family. [BH] and [EH] say that they love the appellant like a dad. Ms [W] says that the appellant is like a father figure to them and that he looks after the children while she goes out to work and undertakes the school runs, activities and cooking etc.

10. [JH] is a British Citizen and has lived in the UK all his life. He is 15. He is 12. He has no ties to India and no awareness of Indian culture. He has not been part of a family where any other language is spoken. He is currently revising for his GCSEs which he will take in the next academic year. He plays football for a local team training with them and playing matches. He says he has friends and family that he would not want to leave. At 15 it is clear that [JH] has started to develop significant relationships with friends and interests outside of the family. He is integrated into life in the UK. He is at a critical stage in his education as he is in the middle of his course of GCSEs. His best interest lie in living with and being brought up by his mother the appellant, in having a continuing relationship with his father and in completing his CGSE course. His interests are to remain in the UK in order to finish his course of studies and in order to have a continuing relationship with his father.

11. [BH] is a British Citizen and has lived in the UK all his life. He is 12. He has no ties to India and no awareness of Indian culture. He has not been part of a family where any other language is spoken. He has commenced his secondary education. He also has made lots of friends and plays football for a local football team. He has started to develop some relationships outside of the family. His education is not at a critical stage. His integration into the UK is not as fully developed as [JH]'s is. He speaks to his father very regularly (every other day) and sees him regularly. His best interests lie in living with and being brought up by his mother and the appellant and in having a continuing relationship with his father. His interests are to remain in the UK to have a continuing relationship with his father.

12. [EH] is a British Citizen and has lived in the UK all her life. She is 10. She has no ties to India and no awareness of Indian culture. She has not been part of a family where any other language is spoken. She will be moving to a new school in September (she was successful in getting into the school that she wanted) as she will be starting secondary school. She says she has wonderful friends and would miss them very much is she were to leave the UK. Her development of life outside her family is

starting to develop. Her integration into the UK is not as fully developed as [JH]'s or [BH]'s are. Her best interests lie in living with and being brought up by her mother and the appellant and in having a continuing relationship with her father. Her interests are to remain in the UK to have a continuing relationship with her father.

13. The next issue is to consider, factoring in the best interests of the children, is whether removal of the appellant would interfere disproportionately with his and the children's Article 8 rights. As the decision in Ali v Secretary of State for the Home Department [2016] UKSC 60 makes clear, the task for tribunals in appeals involving recourse to Article 8 of the Convention is to identify the public interest engaged, to correctly measure its strength and, ultimately, to determine whether the private and family life factors advanced by the appellant outweigh the public interest to the extent that the decision is disproportionate. The 2002 Act requires me to have regard to the factors set out in s117B. As it has been accepted that the appellant is in a genuine and subsisting parental relationship with his daughter and his 3 step children who are all qualifying children for the purpose of s117B(6) of the 2002 Act the real issue to be decided is whether or not it would be reasonable to expect the children to leave the UK.

14. In **EV (Phillipines)** the court considered how a tribunal should apply the proportionality test where wider public interest considerations are in play, in circumstances where the best interests of child dictate that he/she should remain in the UK (paras. 34-37):

> "34. In determining whether or not, in a case such as the present, 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.
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> …
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> 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.
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> 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."

15. In **MA (Pakistan)** the court of appeal considered how a court should approach the reasonableness test. The court held:

> "45. However, the approach I favour is inconsistent with the very recent decision of the Court of Appeal in *MM (Uganda)* where the court came down firmly in favour of

> the approach urged upon us by Ms Giovannetti, and I do not think that we ought to depart from it. In my judgment, if **the court should have regard to the conduct of the applicant and any other matters relevant to the public interest** when applying the "unduly harsh" concept under section 117C(5), so should it **when considering the question of reasonableness under section 117B(6)**. I recognise that the provisions in section 117C are directed towards the particular considerations which have to be borne in mind in the case of foreign criminals, and it is true that the court placed some weight on section 117C(2) which states that the more serious the offence, the greater is the interest in deportation of the prisoner. But the critical point is that section 117C(5) is in substance a free-standing provision in the same way as section 117B(6), and even so the court in *MM (Uganda)* held that wider public interest considerations must be taken into account when applying the "unduly harsh" criterion. It seems to me that it must be equally so with respect to the reasonableness criterion in section 117B(6). It would not be appropriate to distinguish that decision simply because I have reservations whether it is correct. Accordingly, in line with the approach in that case, I will analyse the appeals on the basis that the Secretary of State's submission on this point is correct and that the only significance of section 117B(6) is that where the seven year rule is satisfied, it is a factor of some weight leaning in favour of leave to remain being granted." [emphasis added]

16. It is clear that when assessing reasonableness the conduct of the appellant and matters relevant to the public interest should be taken into consideration.

17. With regard to the best interests assessment the court held:

> "47. … Even where the child's best interests are to stay, it may still be not unreasonable to require the child to leave. That will depend upon a careful analysis of the nature and extent of the links in the UK and in the country where it is proposed he should return. What could not be considered, however, would be the conduct and immigration history of the parents…
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> …
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> … There is nothing intrinsically illogical in the notion that whilst the child's best interests are for him or her to stay, it is not unreasonable to expect him or her to go. …"

18. With regard to the appellant's daughter her best interests are to live with and be brought up by her mother and father. If the appellant were to be removed to India the couple could relocate there with their daughter. At such a young age she could readily integrate into life in India. The appellant had limited leave to remain in the UK when he entered into his relationship with Ms [W] and when they had their daughter. He had no expectation that he would be able to remain permanently in the UK. The appellant is not financially independent. The public interest in the maintenance of effective immigration control is a significant factor weighing against the appellant. In the absence of the fact that she is part of a wider family as she has 3 step siblings I would find that it would be reasonable to expect the appellant's daughter to leave the UK. However, the reasonableness of her leaving the UK must be considered in light of their situation.

19. In respect of [JH], Bradon and [EH] I consider that it would not be reasonable to expect them to leave the UK. They would have considerable difficulties integrating

into a country that they have no awareness of in terms of culture or language. [JH] is at a critical stage in his education. All children have a continuing relationship with their step father who is a British Citizen. They have all started to form relationships outside the family particularly [JH] who at 15 is already considering his next stage in education as he wants to go on to college. All four children enjoy a family life with the appellant and their mother and with each other as minor siblings. I do weigh heavily in the balance the public interest in effective immigration control and weigh against the appellant the limited leave he had at the time he commenced his relationship and his lack of financial independence. However, weighing all the factors for and against I find that it would be unreasonable to expect the children to leave the UK. It would be a disproportionate interference with their Article 8 rights and with the appellant's and his partner's Article 8 rights for the appellant to be removed to India.

20. The appellant's appeal is therefore allowed on human rights grounds.

Notice of Decision

The appellant's appeal is allowed on human rights grounds.

Signed P M Ramshaw Date 9 June 2017

Deputy Upper Tribunal Judge Ramshaw

APPENDIX

Upper Tribunal
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Between

SURJEET [S]
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Appellant

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Respondent

Representation:
For the Appellant: Mr B Singh of Counsel
For the Respondent: Mr K Norton, a senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of India and was born on 4 June 1988. He entered the UK on 15 September 2009 on a student visa. He extended his visa twice. The last visa was valid until 27 March 2015. On 14 November 2014 he made an application for leave to remain in the United Kingdom on the basis of his family and private life. The respondent refused that application on 20 August 2015. The reason for the refusal was that the respondent believed that the appellant had used deception in

obtaining his English language test certificate in support of his student visa application and therefore did not meet the suitability requirements of Appendix FM of the Immigration Rules. Notwithstanding the fact that the appellant did not meet the suitability requirements the respondent also assessed his application in terms of the eligibility requirements under Appendix FM. The respondent did not accept that the appellant had been living with his partner, Ms [W], for at least two years prior to the date of the application and consequently he did not meet the definition of partner as defined in Gen1.2 of Appendix FM. The respondent considered that the appellant did not meet the requirements as a parent because he did not have sole responsibility for his daughter - a requirement under the Rules. The respondent considered the appellant's claim under paragraph 276ADE of the Rules finding that the appellant did not meet the requirements as there were not very significant obstacles to his reintegration in India. The respondent took into account her duties under the Borders Citizenship and Immigration Act 2009 Section 55. The respondent concluded that the appellant had entered into his relationship fully in the knowledge that he had no permanent basis of stay in the United Kingdom and would have been aware that he would be required to leave following the completion of his studies. The respondent considered that the appellant could return to India and make an out of country application to return to the UK whilst his partner and child remained here or alternatively his partner and child could leave the country with the appellant.

2. The appellant appealed against the respondent's decision to the First-tier Tribunal.

The Appeal to the First-tier Tribunal

3. In a decision promulgated on 14 October 2016 First-tier Tribunal Judge A M S Green dismissed the appellant's appeal. The judge found that the appellant had not demonstrated compelling circumstances that would warrant granting him leave to remain in the United Kingdom outside of the Immigration Rules. The judge considered that the only merit at all in going outside the Immigration Rules proceeded only from the impact that the appellant's return to India would have upon his 2½ year old daughter and possibly his stepchildren.

4. The appellant applied for permission to appeal to the Upper Tribunal. On 1 February 2017 First-tier Tribunal Judge Adio granted the appellant permission to appeal.

5. The grounds of appeal assert that the judge's finding on Article 8 was perverse. It is submitted that at paragraph 36 of the First-tier Tribunal decision it is stated that the only merit to go outside the Rules is in relation to the child's best interests. Accordingly the Tribunal has embarked upon a proportionality exercise by finding compelling reasons to consider the claim outside of the Immigration Rules but nevertheless at paragraph 39 the Tribunal makes a contradictory finding by stating that there are no compelling reasons. It is asserted that by finding that Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') is met it was not in the public interest for the appellant to be removed. The satisfaction of Section 117B(6) is a complete proportionality exercise - reliance is placed on the case

of **Treebhawan and Others (Section 117B(6)) [2015] UKUT 00674 (IAC)**. It is also submitted that the judge's conclusion that the appellant should return to India to make a fresh application is perverse and is in conflict with both statute and established case law. Reliance is placed on the case of **R (On the application of Chen) v Secretary of State for the Home Department (Appendix FM-Chikwamba-temporary separation-proportionality) [2015] UKUT 00189 (IAC).** In cases involving children where removal would interfere with the child's enjoyment of family life with one or other of his parents whilst entry clearance is obtained, the balance of proportionality falls in favour of the claimant. Reliance is placed on the case of **Zoumbas (Appellant) v Secretary of State for the Home Department [2013] UKSC 74** and it is argued that such a decision is rarely proportionate.

6. It is asserted that the judge's conclusion that the appellant's partner would in the future support an application by increasing her hours is both speculative and contradictory and that the appellant 's partner would not be able to work if the appellant were removed as she has no childcare.

7. It is also asserted that the Tribunal has failed to take into consideration material evidence. It is asserted that the Tribunal indicates that the only consideration outside of the Immigration Rules would be in relation to the children. It is submitted that the Tribunal erred in placing no weight on the evidence that the appellant wished to visit the grave of his deceased daughter. It is incumbent upon the Tribunal to make a finding which would affect a further assessment under Section 117B(6). It is submitted that by failing to make a finding on the parental relationship the best interests of the three children have not been adequately factored into the assessment.

8. Mr Singh submitted that the judge placed too much weight on the respondent's evidence of the timescale for processing applications for leave to enter the UK. The judge did not take into consideration that the appellant's partner would need to get a second job and she would need to have that job for six months before she would meet the financial requirements of the Immigration Rules. He submitted that the appellant's partner would be unable to work at all if the appellant left as her mother was not available to provide childcare. This would amount to an indefinite period of separation. It was not in the best interests of the child to be separated from her father for what would be a fairly lengthy period of time. Not only is there is disproportionate interference but the whole case was made more difficult because there are three stepchildren. The appellant's stepchildren do not have regular contact with their father; he sees them at weekends intermittently. He submitted that the evidence was that the appellant was a father figure and a role model. Given the ages of the children it would have a devastating affect on them if he were to leave the United Kingdom. Mr Singh confirmed that the challenge to the First-tier Tribunal decision was an irrationality challenge. He submitted that the whole family were between a rock and a hard place as taking away the primary carer to enable the appellant's partner to do her job will lead to the result that she would have to leave her job and the appellant would therefore not be able to obtain entry clearance as a partner as she would be unable to meet the financial requirements.

9. I invited Mr Singh to address me on the ground of appeal that the judge had failed to make findings on key evidence. He indicated that he was unable to address me on that ground. With regard to the other grounds of appeal Mr Singh simply adopted submissions made in the grounds.

10. Mr Norton submitted that at paragraph 36 the judge referred to **MA Pakistan (R on the application of MA (Pakistan) and Others) [2016] EWCA Civ 705**. He submitted that the judge correctly set out that Section 117B(6) is not a full stop once it is met. The grounds of appeal refer to the case of **Treebhawan and Others (Section 117B(6)) [2015] UKUT 674 (IAC)**. However, as is clear from **MA (Pakistan)** the position set out in **Treebhawan** is not correct. The appellant cannot meet the financial requirements. In both in country and out of country cases it is clear from Section 117B(3) that there is a significant public interest in the economic wellbeing of the country that applicants should be able to financially support themselves. This has been confirmed recently by the Supreme Court. It cannot be the case that where somebody is unable to meet the financial requirements and therefore unlikely to succeed in an application for entry clearance that that must amount to compelling circumstances to grant leave to remain outside of the Rules. If that were the case there would be a complete undermining of the requirement to be able to meet the financial requirements or to be financially independent. In answer to my query concerning the judge's consideration of whether or not it would be reasonable for the appellant's daughter to leave the United Kingdom he submitted that in finding that the appellant's daughter and stepchildren would not be required to leave the United Kingdom the judge had in essence found that it would be unreasonable for them to leave the United Kingdom. It was inherent in the judge's decision, in finding that the witnesses were credible, that the appellant was one of several persons who exercises parental control over his stepchildren. He submitted that the judge had taken into consideration that there would be an upheaval if the appellant were to be removed to India and that the judge had taken into consideration both the appellant's daughter and stepchildren as is set out in paragraph 38 of the decision. Mr Norton agreed that only the appellant's daughter's best interests had been considered by the Secretary of State and not those of his stepchildren. However, he submitted that the lack of any evidence regarding the appellant's daughter or stepchildren being adversely affected by the appellant returning to India effectively rendered any failure to consider the interests as not material to the decision overall.

11. I reserved my decision. I invited submissions on remaking the decision if I were to found an error of law. Both parties agreed I could remake the decision. Mr Singh requested that he be permitted to file and serve letters from the appellant's stepchildren and for a short statement from the appellant's partner regarding the effect on the stepchildren if the appellant were to be returned.

Discussion

12. With regard to the TOEIC certificate the judge found that the respondent had not discharged the burden of proof to substantiate the allegation that the appellant had

obtained his test certificate fraudulently. There was no cross appeal by the respondent against that finding.

13. At paragraph 29 of the decision the judge sets out:

> "29. Could the appellant have benefited from the provision of EX 1 and Appendix FM of the Immigration Rules? In terms of EX 1 (a) I accept that the appellant has a genuine and subsisting parental relationship with his daughter. She is under 18 years old and is a British citizen. The question that I must determine is whether it would be unreasonable to expect her to leave the United Kingdom with the appellant. Ms Bhachu deals with this at some length in her skeleton argument. She argues that it would be in the child's best interest to remain in the United Kingdom and the impact that would be felt with the appellant leaving this country. There is nothing to suggest that the appellant's daughter would be required to leave the United Kingdom. Her mother is British and she and the child's grandparents can care for her …"

14. Although the judge sets out that the question that she must determine is whether it would be not be reasonable to expect the appellant's daughter to leave the United Kingdom she has failed to undertake any analysis. The judge merely finds that the child will not be required to leave the United Kingdom. This is not an assessment of the reasonableness of her leaving the UK. EX 1 (a) requires an assessment as to whether or not it would be reasonable for the child to leave the United Kingdom. Mr Norton argued that the judge must have considered that it would be unreasonable to her to leave the UK because the judge proceeded on the basis that the child would not leave the United Kingdom. The judge when considering s117B(6) set out at paragraph 37:

> "37. The wording in section 117B(6) of the 2002 Act essentially requires me to consider whether it is reasonable to expect the appellant's daughter to go to India with him which is what I have already considered in terms of EX1(b) of the Immigration Rules and my position is no different under the statutory provisions. There is nothing in the evidence that I believe suggest that the appellant's daughter or his stepchildren will be required or expected to leave the United Kingdom if he returns to India."

15. The judge has again simply referred to the fact that the children cannot be required to leave the United Kingdom. The provisions in EX.1(a) and in 117B(6) have two aspects. The first is that the child is either a British citizen or qualifying child and secondly that it must be not be reasonable to expect the child to leave the United Kingdom. If it was simply a matter that a child could not be required to leave the United Kingdom because they were a British citizen then that reasonableness additional requirement would be otiose as a British citizen child cannot be required to leave the United Kingdom. The judge has failed to make a finding on whether it or not it would be reasonable to expect the children to leave the UK.

16. I do not accept the appellant's submission that 117B(6) is a complete proportionality exercise. For the reasons given above if that were the case then the requirement to make a finding that it is not reasonable that the child should be expected to leave the UK would be otiose. Both 117B(6) and EX.1(a) require a finding to be made. I also do not accept the appellant's argument that other factors are not to be taken into account if 117B(6) is satisfied. As made clear in **MA Pakistan** in conducting the

proportionality exercise factors such as immigration status are relevant to the assessment of the proportionality of removal.

17. I do not accept the appellant's submission that the judge's conclusions with regard to the proportionality of the appellant returning to India to make an out of country application for entry clearance was perverse and in conflict with statute in established case law. The judge set out at paragraph 35:

> "35. In effect, the respondent believes that the appellant should not be allowed to jump the queue by being granted leave to remain outside the Immigration Rules. He should not be treated differently from other people who would be required to make out of country applications. I am reminded that in **Chikwamba (FC) v Secretary of State for the Home Department [2008] UKHL 40** the House of Lords said that in deciding whether a general policy of requiring people such as the appellant to return to apply for entry in accordance with the Rules of this country was legitimate and proportionate in a particular case, it was necessary to consider what the benefits of the policy were. Whilst acknowledging the deterrent effect of the policy the House of Lords queried the underlying basis of the policy in other respects and made it clear that the policy should not be applied in a rigid, Kafkaesque manner. The House of Lords went on to say that it would be comparatively rarely, certainly in family cases involving children that an Article 8 case should be dismissed on the basis that it would be proportionate and more appropriate for the appellant to apply for leave from abroad. In **R (On the application of Chen) v the Secretary of State for the Home Department (Appendix FM – Chikwamba – temporary separation – proportionality) IJR [2015] UKUT 00189 (IAC)** it was held that:
>
> (i) Appendix FM does not include consideration of the question whether it would be disproportionate to expect an individual to return to his home country to make an entry clearance application to rejoin family members in the United Kingdom there may be cases in which there are no insurmountable obstacles to family life being enjoyed outside the United Kingdom but where temporary separation to enable an individual to make an application for entry clearance may be disproportionate. In all cases, it will be for the individual to place before the Secretary of State evidence that such temporary separation will interfere disproportionately with protected rights."

18. It is clear that the judge correctly considered that what was necessary was for the appellant to demonstrate that temporary separation would interfere disproportionately with protected rights. The judge correctly applied the case law. It was for the appellant to demonstrate that the interference would be disproportionate. The judge noted at paragraph 38, *'I have not seen any supporting expert evidence (e.g. medical or psychiatric) that would indicate that the Appellant's daughter and stepchildren will be significantly and adversely affected by his returning to India.'* The appellant's submission is a disagreement with the conclusion that the judge reached.

19. I do not accept the submission that the judge placed too much weight on the respondent's evidence of the timescale for processing applications for leave to enter the UK. The judge at paragraph 34 specifically rejected the respondent's argument that weight should be given to the short processing times.

20. It is clear from the decision that the judge accepted that the appellant had a genuine and subsisting relationship with the appellant's partner's children. Indeed at paragraph 37 the judge implicitly acknowledges that in terms of Section 117B(6) she would be required to consider, in addition to the appellant's daughter, his stepchildren. However, the respondent did not consider the best interests of the appellant's stepchildren and neither did the judge. Having accepted implicitly that the appellant has a subsisting parental relationship with his stepchildren it was incumbent upon the judge to consider their best interests.

21. I find that the failure to consider and make a finding in respect of whether or not it was reasonable to expect the appellant's daughter and stepchildren to leave the UK as required by EX.1(a) and Section 117B(6) amounted to a material error of law. It was also a material error of law not to consider the best interests of the appellant's step children. I set aside the decision.

22. I consider that I can remake the decision on the basis of the papers before me. I will permit the appellant to serve relevant further evidence in respect of the appellant's step-children as requested the hearing.

23. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

Notice of Decision

The decision of the First-tier Tribunal involved the making of a material error of law. I set aside that decision pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.

Directions

The appellant will file at the usual Upper Tribunal address and [email] any further relevant evidence within fourteen days of receipt of this decision and will serve the same on the respondent. The respondent will file and serve on the appellant within fourteen days of receipt of that evidence any observations on that evidence.

Signed P M Ramshaw Date 2 April 2017

Deputy Upper Tribunal Judge Ramshaw