



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

Appeal Numbers: HU/02923/2016
HU/02922/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 21 December 2017**

**Decision & Reasons
Promulgated
On 30 January 2018**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**YURIY [S]
and
NATALIYA [P]
(Anonymity Orders not made)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Norman
For the Respondent: Mr Wilding

DECISION AND REASONS

1. The appellants are citizens of Ukraine both born in 1980. They are partners. They entered the UK with leave in 2002 and 2004 respectively.

Both overstayed, the first appellant from 2002, the second appellant from 2005.

2. They have two children born in 2007 and 2009. Both were born in the UK.
3. On 22 October 2015 the appellants sought leave to remain on the basis of their private and family life under paragraph 276ADE and Appendix FM of the Immigration Rules.
4. The applications were refused on 26 January 2016.
5. It was considered that there would not be very significant obstacles to the integration of the appellants to their home country. It was also considered that it would not be unreasonable for the children to leave the UK with their parents and live in Ukraine.
6. They appealed.

First-Tier Hearing

7. Following a hearing at Taylor House on 23 March 2017 Judge of the First-Tier Lucas dismissed the appeals. His findings are at paragraph 29ff. In summary, he found that there would not be very significant obstacles to the parents' reintegration to life in Ukraine.
8. As for the children, whilst they may face difficulties in adapting to the life, language and education in Ukraine they would have the support of their parents, both Ukrainian, and their grandparents in adjusting to life there. Their best interests were catered for by their remaining in the care of their parents and going to Ukraine as a family unit.
9. The appellants sought permission to appeal which was granted on 11 October 2017. The crux of the application was that in coming to his conclusions as to the reasonableness or otherwise of the appellants returning to Ukraine with their children, the judge did not take note of the respondent's guidance and case law, in particular, **MA and Ors v SSHD** [2016] EWCA Civ 705. There was no engagement with s117B(6) of the Nationality, Immigration and Asylum Act 2002.

Error of Law Hearing

10. At the error of law hearing before me Mr Wilding agreed with the submission that the decision showed material error of law for failing to pay heed to the guidance and case law. By consent the decision was set aside to be remade.
11. We were able to proceed to do so immediately. Mr Wilding intimated that the appellants' elder child born in 2007 was registered as a British citizen on 2 November 2017. In light of that development the respondent's position was that it would not be reasonable to expect the children and

their parents to go to Ukraine. He asked that the appeals be allowed. I agreed.

Notice of Decision

The making of the decisions of the First-Tier Tribunal shows material error of law.

The decisions are set aside to be remade as follows:-

The appeals are allowed.

No anonymity orders made.

Signed

Date

Upper Tribunal Judge Conway