



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

**Appeal Numbers:
HU/05777/2016
HU/05783/2016
HU/05791/2016
HU/05796/2016**

THE IMMIGRATION ACTS

**Heard at Field House
On 28th March 2018**

**Decision and Reasons Promulgated
On 4th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**DASILVA WIGOR
APARECIDA VENTURA RODRIGUES CARRILHO
CARRILHO VENTURA EDUARDO
CARRILHO EMANUELLY
(ANONYMITY DIRECTION NOT MADE)**

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Karbari (Counsel, instructed by Western Solicitors)
For the Respondent: Mr S Kandola (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellants applied for leave to remain in the UK on the basis of their private and family life. The applications were refused for the reasons given in the Refusal Letters. The appeals were heard by Judge Devettie at Taylor House on the 11th of July 2017 and dismissed in the decision promulgated on the 11th of July 2017.

2. The Appellants sought permission to appeal to the Upper Tribunal in grounds of the 15th of August 2017. The grounds, at some length, argue that the Judge erred in the assessment of the children's best interests and the weight to be given the immigration history of the adults under section 117B. It is argued that the Judge's findings were contradictory and had not considered article 8 properly.
3. Permission to appeal was granted by Judge Foudy on the 8th of February 2018. In paragraph 4 of that decision it was stated that the Judge had found that the children's best interests demanded that they remain in the UK and that their best interests did not require them to remain. The grounds were arguable.
4. At the hearing it was argued that the findings were contradictory, that the Judge had not applied section 117B(6) and had not considered paragraph 276ADE(iv) of the Immigration Rules, Eduardo had been in the UK for over 7 years. This was relevant because if paragraph 276ADE was met then that would increase the weight to be given in the article 8 assessment. For the Home Office it was argued that the points raised were matters of form and not substance and not material. The Judge had had regard to all the circumstances and all relevant factors had been considered.
5. At the hearing I indicated that I found that the decision of the First-tier Tribunal contained no error of law and that my decision was reserved. The reasons for finding that the First-tier Tribunal decision contained no material error of law are set out below.
6. In the course of the decision the Judge set out the adult's immigration history, the evidence that was relied on and evidence relating to the children themselves. In paragraph 9 it was stated that "It is common ground that the Appellant's appeal cannot succeed under the Immigration Rules. It therefore falls to be considered outside the Immigration Rules." Section 117B was then set out. There is no challenge in the grounds to the contents of paragraph 9 of the decision, the inability of the Appellants to meet the Immigration Rules is relevant in a number of ways.
7. Where the Immigration Rules are not met compelling evidence is required to justify a grant of leave outside the rules under article 8 as that provision is not freestanding. Section 117B(1) mandates that immigration control is in the public interest and so the Immigration Rules form the basis for that assessment.
8. As it was common ground that the Immigration Rules were not met, that unchallenged finding could only mean that paragraph 276ADE(iv) could not be met. That allows for a grant of leave to remain to an applicant who "*is under the age of 18 years and has lived continuously in the UK for at least 7 years ... and it would not be reasonable to expect the applicant to leave the UK.*"
9. That provision is in identical terms to section 117B(6) of the 2002 Act which states that "*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.*"
10. The test in relation to a child who has been in the UK for over 7 years is the same in the Immigration Rules as in section 117B(6) and there is no difference between them. An analysis on one provision will entail the same approach as on the other. The concession that the

Appellants could not meet the Immigration Rules would appear to answer the question that the Judge had to address under section 117B(6).

11. The fact that the Judge did not refer to paragraph 276ADE in terms is a matter of form only and not relevant to the substance of the decision. In observing that it had been accepted the Immigration Rules were not met it appeared to have been accepted that it would be reasonable to expect Eduardo to leave the UK.
12. In any event the Judge did an assessment of the reasonableness of Eduardo leaving the UK. The assessment of the children's best interests had to precede any proportionality assessment and that is a stand alone exercise. That is found at paragraph 10 of the decision. contrary to the observations in the grant of permission the Judge did not find that their best interests "demanded" that they remain in the UK simply that their best interests are for them to remain. That is not an unusual finding where children appear to be settled and doing well in school but that does not answer the question that the judge had to decide.
13. In paragraph 11 the Judge went on to address the question of reasonableness. In that regard the overall immigration history is clearly relevant as indicated in MA (Pakistan)2016] EWCA Civ 705 but there is ample other authority for the point including for example EV (Philippines) [2014] 874 and Zoumbas [201] UKSC 74. An adverse immigration history on the part of the adults is a relevant consideration in assessing the reasonableness of children being expected to leave the UK to go and live in the country of their nationality.
14. The Judge found in paragraph 14 that the adults entered the UK as visitors with the intention of settling here, clearly a finding of an intention to evade immigration control. That finding is not challenged and nor could it be. In those circumstances the Judge found that it was reasonable to expect the children to leave the UK. In doing so the Judge acknowledged that there would be a degree of dislocation but that with appropriate parental support that could be overcome. The Judge might have added that children move between countries with all that that can entail on a daily basis and there is nothing inherently in the fact of relocation itself that would make a move undesirable in principle. Besides the children will be going to the country of their nationality which is a country where they can live lawfully, unlike their position in the UK.
15. The grounds rely heavily on legal submissions and quotations from various authorities but they do not engage with the decision itself or point to evidence that required a different decision. There is nothing in the grounds that points to any unusual circumstances that could be said to be compelling in the family's situation that it is said that the Judge had overlooked or had placed insufficient weight on.
16. As was made clear in the ECtHR in Jeunesse [2014] ECHR 1309 states are entitled to expect those subject to immigration control to abide by and comply with the rules that apply to them and that family life created when in a signatory state illegally carries very little weight. In the language of the ECtHR exceptional circumstances would be needed to justify a grant of leave under article 8, even applying the UK term of compelling circumstances, the Appellants had not provided such evidence to the First-tier Tribunal to justify a finding in their case. Given the conduct of the adults it is hardly surprising that the Judge found against them.
17. The grounds do not show that there is any error in the decision of the First-tier Tribunal. The Judge made a proper assessment of the children's best interests as a stand-alone exercise as was required. The Judge did not find that those interests were so strong that the children had to be

permitted to remain. There then followed an assessment of the reasonableness issue which, in the context of the evasion of immigration control, was found against the Appellants. That was a finding open to the Judge for the reasons given. The grounds are no more than a lengthy disagreement with the decision and disclose no error of law raising issues of form and not substance.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing this appeal, I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 28th March 2018