



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/21671/2016  
HU/22512/2016  
HU/22496/2016  
HU/22506/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 5 September 2018

Decision & Reasons Promulgated  
On 11 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

OUAFIA [I] (FIRST APPELLANT)  
HACHEMI [M] (SECOND APPELLANT)  
[L Z] (THIRD APPELLANT)  
[M Z] (FOURTH APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Smith of Counsel, Danielle Cohen Immigration Law  
Solicitors  
For the Respondent: Ms A Everett, Home Office Presenting Officer

## DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Chana promulgated on 15 March 2018. There are four appellants, who together comprise a family unit of mother, father and two children. The focus of the matter in the First-tier Tribunal and again before me has been the daughter who is a qualifying child for the purposes of paragraph 276ADE of Appendix FM to the Immigration Rules.
2. The factual background can be shortly stated. The adult appellants entered the United Kingdom on 17 April 2007 with visitor visas valid until 16 July 2007. After their leave to remain had expired they both remained in the country unlawfully. Their children were born in the United Kingdom on 5 February 2009 and on 7 December 2012 respectively. All four appellants are Algerian nationals.
3. The thrust of the decision was to reject the claim in relation to the qualifying child under paragraph 276ADE on the basis that it would not be unreasonable for her to be removed to Algeria, and further to reject the claim under Article 8 outside the Rules on the basis of a careful consideration of the principles in **Razgar** and, in particular, the evaluation of proportionality.
4. The qualifying child's best interests are discussed in a full and carefully nuanced section of the decision beginning at paragraph 26. The judge concluded at paragraph 33 that taking into account all the evidence in the appeal, it would not be unreasonable for the qualifying child and her sibling to return to Algeria with their parents to continue their family and private life in the country of their nationality. Giving weight to the children's best interests, and the need to maintain immigration control, the judge further concluded at paragraph 36 that the decision taken the Secretary of State was proportionate to the extent that it constituted an interference in the private and family lives of the appellants.
5. Although there were formally two grounds of appeal, it was the first which was pursued most fully both in the written grounds and in oral submissions. It is submitted that the judge gave no indication in the course of her decision that regard had been given to a letter from the assistant headteacher of the [~] Primary School attended by the qualifying child. The letter is dated 17 January 2018, and for completeness, I reproduce its content.

"I am writing to reemphasise the importance of the Zani family staying in the UK because of the importance of continuity of education for [LZ] (05.02.09) and [MZ] (07.12.12).

[LZ] has been at [~] since 20.09.12 and has emotional needs made worse by stress. It has taken a long time for [LZ] to settle at school and she has finally started to feel comfortable here and her anxious behaviour has been lessening. She receives a great deal of support from our school. I am extremely worried that if [LZ] were to change schools and made to leave the country, the quality of support she receives would decline significantly. In addition to this, any move would

also end the strong working relationships she has built with her class teachers. Even when a supply teacher or [LZ] moves table groups [LZ] becomes extremely distressed.

As a result of the above paragraph our concerns around the destruction to [LZ]'s emotional and educational development if forced to leave the UK at this stage are:

- Her academic attainment is likely to decrease.
- Her academic progress is likely to decrease.
- A loss of friendships and stable relationships with her peers and teachers.
- Increase in [LZ]'s anxiety.

For all these reasons, it is essential that the family are not forced to leave the UK at this stage if their wellbeing and education are not to suffer.

Yours Sincerely,"

6. Ms Smith, for the appellants, points out that there is no express reference to the letter or its content in the course of the decision. Paragraph 21, however, reads as follows:

"I have considered all the evidence in this appeal, including evidence to which I have not specifically referred. I have considered the bundle of 279 pages."

The letter occupies a prominent position at page 3 of this extensive bundle. A detailed skeleton argument from Ms Smith was before the First-tier Tribunal. It includes clear reference at paragraph 24 to the letter from which it quotes extensively.

7. Looking at this decision as a whole, the content of the letter must have been prominently within the mind of the judge when the decision was made. Criticism is made that the judge does not expressly reject the content. But the natural inference from silence is that the evidence has not been rejected but has been accepted and considered in the balance. Having regard to the totality of the evidence, the judge's decisions on reasonableness and on the application of Article 8 were perfectly open to her and are sufficiently justified in her reasoning.
8. Where evidence is not specifically rejected, it can safely be assumed that it has been accepted and properly been taken into account. I consider that to have been the case here. Were I to set aside the decision on the basis that the letter was not expressly referred to and then remake the decision, I would reach exactly the same conclusions as did the judge. There is nothing in the letter to suggest that the outcome would be anything other than how it was resolved in the First-tier Tribunal. The countervailing features are significant.
9. The second ground is that there was no express reference in the course of the decision to a country expert report from David Seddon. Even though this is not an asylum claim, it is said that the report is supportive of the suggestion that the mother's fear of family reprisal or honour violence is genuine and subjectively well founded. I do not consider that the lack of express reference to the report by David Seddon amounts to an error of law. The conclusions which the judge reached were open to her on the

evidence. At best the expert evidence was peripheral and from the tenor of the overall decision, it is apparent that it was properly taken onto account by the judge.

10. Ms Smith says that in this case the “catch all” recital of the evidence at paragraph 21 of the decision is insufficient because of the centrality and importance of the letter of the assistant headteacher. I consider that this overstates the position. Whilst it might have been more prudent for the judge expressly to have made reference to the letter, and arguably also David Seddon’s report, it would not have resulted in a different outcome. It is implicit from the decision that there has been a careful evaluation and weighing of the evidence. The reasoning is sufficient and clear.
11. It all the circumstances, not least the inevitable outcome were the decision to be remade, it would not be appropriate to set aside the First-tier Tribunal’s decision. For these reasons, this appeal is dismissed.

**Notice of Decision**

- (1) Appeal dismissed.
- (2) No anonymity direction is made.

Signed: *Mark Hill*  
Deputy Upper Tribunal Judge Hill QC

Date: 7 September 2018