



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

Appeal Number: IA/02980/2015; IA/02986/2015;  
IA/03000/2015; IA/02992/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 4 December 2017

Decision & Reasons Promulgated  
On 18 January 2018

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**AM**

**RM**

**EM**

**TM**

**(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr J Martin, Counsel, instructed by Raj Law Solicitors

For the Respondent: Ms Fijiwala, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is a remade decision following the identification of a material error of law in the decision of Judge of the First-tier Tribunal Haria (FtJ) promulgated on 2 October 2015. The FtJ's decision, which allowed the appeals, was appealed to the Upper Tribunal by the respondent. A Deputy Judge of the Upper Tribunal

found that the FtJ materially erred in law and, having proceeded to remake the appeals, dismissed them. The appellants were granted permission to appeal to the Court of Appeal. By way of a Consent Order it was agreed that the Deputy Judge materially erred in law and the matter was remitted to the Upper Tribunal to determine once again whether the FtJ's decision contained a material legal error. Following an 'error of law' hearing on 19 September 2017 I found that the FtJ did materially err in law. The matter was adjourned to allow further evidence to be provided given the significant length of time since the FtJ's decision.

## Background

2. The underlying decisions giving rise to these appeals are those to remove the appellants, all national of Mauritius, from the UK pursuant to s.10 of the Immigration and Asylum Act 1999, their human rights claims under article 8 ECHR having been refused. Although these decisions are dated 12 January 2014 they appear to have been served on 08 January 2015.
3. The following is a summary of the appellants' immigration history and their human rights claims. The 2<sup>nd</sup> appellant (DOB [ ] 1972) entered the Republic of Ireland on 17 October 2004 as a student. Between this date and 2 November 2004 he travelled to the UK where he applied for leave to remain as a student. On 27 January 2005 his application was refused. Although he had a full right of appeal he did not exercise that right. On 11 May 2005 the 1<sup>st</sup> appellant (DOB [ ] 1981), who is the wife of the 2<sup>nd</sup> appellant, departed from Mauritius and entered the Republic of Ireland with her daughter, EM, the 3<sup>rd</sup> appellant (DOB [ ] 2001). They made their way into the UK on an unknown date. On 30 July 2009 the first three appellants were encountered by immigration officers at their home address. On 11 August 2009 the 2<sup>nd</sup> appellant was convicted of possessing false identity documents and sentenced to 4 months imprisonment. The appellants applied for leave to remain in the United Kingdom on article 8 grounds but the applications were refused without a right of appeal on 17 August 2010. The 4<sup>th</sup> appellant, the youngest daughter of the 1<sup>st</sup> and 2<sup>nd</sup> appellant, was born on [ ] 2010. Following judicial review proceedings the respondent reconsidered the human rights claims but maintained her decisions.
4. The 1<sup>st</sup> appellant, with her husband and 2 minor children as dependents, appealed to the First-tier Tribunal. The FtJ's analysis centred on the position of EM. The FtJ found that she was 3½ years old when she entered United Kingdom, that English was her first language and that she was thoroughly integrated into life in the UK through her school and the wider community, a point supported by reference to letters from members of their extended family, friends and colleagues as well as school reports. At that time she was in Year 9 and was preparing to choose her GCSE subjects. The FtJ found that if EM and her sister were to return to Mauritius it would "... be like going to a foreign country for both of them" as their knowledge of the creole language was basic and there would be difficulties in slotting back into the community and in

entering school. The FtJ found that EM was at a critical period in her development and could ill afford such a setback. The FtJ specifically considered evidence contained in the Country of Origin Information Service (see COIS report dated 24 June 2014) indicating that the Mauritian primary and secondary education system was based on the British model and that primary education was free in principle at state institutions. The FtJ additionally noted that the parents of the 1<sup>st</sup> and 2<sup>nd</sup> appellant lived in Mauritius and that the appellants kept in regular contact with them. The FtJ found that the appellants could live with the 2<sup>nd</sup> appellant's parents, at least initially, if returned to Mauritius.

5. The FtJ provided extensive extracts from a number of cases considering the proper approach when assessing the best interests of children (such as *EA (Article 8 – best interests of child) Nigeria* [2011] UKUT 00315 (IAC); *MK (best interests of child)* [2011] UKUT 00475 (IAC), *EV (Philippines) and Others v SSHD* [2014] EWCA Civ 874, and *Azimi-Moayed and Others (decisions affecting children; onward appeals)* [2013] UKUT 197 (IAC). At [53], having indicated that he had assessed the evidence as a whole and applied the principles established by those cases, the FtJ concluded that it would not be reasonable for EM to go back to Mauritius, that it was in her best interest to remain in the UK, and accordingly, that she met the requirements of paragraph 276ADE(1)(iv).
6. The FtJ proceeded to consider the remaining appeals pursuant to article 8. She found that the 1<sup>st</sup> and 2<sup>nd</sup> appellants had established private lives in the UK and that their removal would constitute an interference with those private lives of sufficient gravity to engage article 8. In assessing the proportionality of such removal, the FtJ referred herself to sections 117A and 117B of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act). At [61] she considered the “somewhat chequered” immigration history of the 1<sup>st</sup> and 2<sup>nd</sup> appellants. The FtJ noted that they had been in the UK illegally for the duration of their residence, that they were both arrested for using fraudulently obtained documents and that the 2<sup>nd</sup> appellant was sentenced to 4 months imprisonment in August 2009. Both the 1<sup>st</sup> and 2<sup>nd</sup> appellants admitted using false documents to access employment and health care under the NHS. The 2<sup>nd</sup> appellant undertook 3 years of study, completed a plumbing course and worked as a plumber. Both the 1<sup>st</sup> and 2<sup>nd</sup> appellant worked in the UK despite having no permission. The 1<sup>st</sup> appellant gave birth on the NHS at “huge cost” and the 3<sup>rd</sup> and 4<sup>th</sup> appellants had the benefit of state funded education. The FtJ found that there was huge damage to the UK economy as a result of the 1<sup>st</sup> and 2<sup>nd</sup> appellants' illegal employment. At [65] the FtJ reiterated her finding that EM was at a critical stage in her education and shared family life with her parents and sister. For these reasons, and having regard to the age of the children and their length of residence in the UK and their best interests, balanced against the public interest factors so identified, the FtJ concluded that the removal of the remaining appellants would constitute a disproportionate interference with their article 8 rights.

7. The respondent sought permission to appeal this decision to the Upper Tribunal. The respondent contended that the FtJ failed to adequately identify why EM's education was sufficient to render her removal unreasonable, and that the FtJ failed to give adequate weight to the public interest factors highlighted in section 117B.
8. The matter came before Deputy Judge of the Upper Tribunal I A M Murry on 7 March 2016. The Deputy Judge uncovered a material error of law in the First-tier decision and re-made the decision dismissing the appeals. It is not necessary for me to consider in any detail the Deputy Judge's decision. This is because the appellants were granted permission to appeal to the Court of Appeal by the Rt. Hon. Sir Stephen Richards in a decision sealed on 31 January 2017. In a consent order sealed on 14 July 2017 it was ordered that the appeal against the Deputy Judge's decision be allowed and that the appeal be remitted to a freshly constituted Upper Tribunal for reconsideration. A statement of reasons accompanying the consent order indicated that the Deputy Judge may have erred in his reasoning in relation to the 3<sup>rd</sup> appellant and that the appeal should be allowed to the extent that the matter should be remitted to the Upper Tribunal for a de novo hearing.
9. It was agreed by both representatives at the remitted Upper Tribunal hearing on 19 September 2017 that I was still at the "error of law" stage. Since the decisions of both the First-tier Tribunal Judge and the Deputy Upper Tribunal the law relating to the meaning of "reasonable" in both paragraph 276ADE(1)(iv) and s.117B(6) has been clarified by the Court of Appeal in *MA (Pakistan)* [2016] EWCA Civ 705. Despite Mr Martin's submissions to the contrary I was satisfied that the FtJ failed to consider the public interest factors when assessing the issue of reasonableness.
10. In *MA (Pakistan)* Lord Justice Elias held, albeit with some reluctance, that an assessment of the term "reasonable" in both paragraph 276ADE(1)(iv) and s.117B(6) has to take into account all relevant public interest considerations (see in particular [43] to [45]). In other words, in assessing whether it is reasonable to expect EM to return to Mauritius one must take account of all relevant public interest matters including those identified in s.117B and the conduct of her parents. Although the First-tier Judge did give careful consideration to most of these public interest factors at [61] this assessment occurred after she had already concluded that it was not reasonable for EM to return to Mauritius (see [53]). This strongly suggests that her assessment of what was reasonable in relation to EM failed to take into account the relevant public interest considerations.
11. Having satisfied myself that the determination contained a material error of law I adjourned the appeal to enable further up-to-date evidence to be provided given the very significant length of time since the First-tier Tribunal's decision.

## Resumed hearing

12. The original First-tier Tribunal bundle contained, *inter alia*, witness statements from the 1<sup>st</sup> and 2<sup>nd</sup> appellants, a witness statement from the EM, and various school reports and certificates of achievement relating to EM and her sister. The school reports and documents indicate that EM is a polite and conscientious pupil who is popular and considerate of others' feelings and who enjoys school immensely. The bundle additionally contained manuscript letters and statements from EM's friends attesting to the strength of their relationships, and from the 1<sup>st</sup> and 2<sup>nd</sup> appellants' extended family members and friends describing the strength of the family and their social bonds. Also contained in the bundle are various photographs showing the family at various places and functions at various times. The statements from the appellants indicated that EM had established strong bonds with friends at school and in the local community, and that she dreams of becoming a designer and hopes to eventually attend university. She has a thriving social life doing the activities that teenagers enjoy such as going out frequently to shop and eat and going to each other's houses for sleepovers. EM has known some of her friends since nursery. EM and her friends always look out for each other and she feels she can rely on them, as can they on her, when they are happy and sad alike. She considers that she has a special bond with her friends. While EM and her sister understand some Creole they are unable to put one sentence together and always switch back to English. EM believes she would struggle to cope in a school environment in Mauritius given her very limited Creole. In her statement EM states that she has embraced British values, the language and the lifestyle. EM worries that she will be unable to continue her studies as planned and is distraught at the thought of being unable to complete her education in the UK and having to start from scratch in Mauritius.
13. At the hearing I was provided with an additional statement from the 1<sup>st</sup> appellant signed and dated on 15 November 2017, and additional school documents relating to EM and her sister confirming that EM is in Year 11 and outlining her predicted grades, a letter from Sutton Court Care Centre confirming that EM was allocated to undertake work experience at a care home for elderly people and that the residents found her delightful to have around, and a further manuscript letter from EM in which she indicates that she really wants to be able to do the things that teenagers of her age are doing (all her friends had already applied for jobs and had started working part-time). She states that whatever happens she wants to stay in England because her life has evolved here and she doesn't feel she will be able to adapt if moved elsewhere. The Presenting Officer provided confirmation of the 2<sup>nd</sup> appellant's convictions which included driving a motor vehicle with excess alcohol in 2005 (12 months disqualification), the offence relating to the use of identity documents for which he was imprisoned in 2009, and a further driving a motor vehicle with excess alcohol in February 2014 for which he was fined and disqualified from driving for 3 years).

14. The 1<sup>st</sup> appellant adopted her statements. In cross examination she said her parents and parents-in-law remained in Mauritius and that they maintained telephone contact. When her children spoke on the phone the 1<sup>st</sup> appellant had to translate. Her parents-in-law were retired and lived in a small house. The 1<sup>st</sup> appellant had never worked in Mauritius. She had some school qualifications obtained when she was 15 years old. She confirmed her previous employment in the UK. In response to questions from me appellant explained that EM had an important mock GCSE examination the following day. After her GCSEs she wanted to go to 6<sup>th</sup> form college. The 1<sup>st</sup> appellant confirmed that lessons in Mauritius were not taught in English and that EM and her sister spoke only broken French and Creole and were unable to construct sentences. EM went out weekly with her friends to places like McDonald's and the cinema. She like to interact with people and was an ambitious girl. The family went to a few Mauritian cultural programs. EM would have difficulty making new friendships in Mauritius because she only speak in broken French and Creole and because the culture in Mauritius is different. In re-examination the 1<sup>st</sup> appellant confirmed that EM had never attended school in Mauritius and that none of EM's friends were from Mauritius. She claimed that society is more open in the UK.
15. The 2<sup>nd</sup> appellant confirmed his brief statement and underwent cross examination. He claimed he had sold everything to come to the UK for a better life. He had previously worked in a sugarcane factory which was not a good job and the family were struggling in 2004. He confirmed that he had worked for about 3 or 4 years in the UK doing mainly building jobs. He confirmed the telephone contact with family in Mauritius and that his daughters could only speak a little Creole and French and that he often had to translate. The only schools in Mauritius that taught lessons in English were private schools.
16. I heard submissions from both representatives who agreed that the principal issue for the determination was whether it was reasonable to expect EM to return to Mauritius. Ms Fijiwala contended that there were strong public interest factors at play such as the 2<sup>nd</sup> appellants criminality and the fact that the 1<sup>st</sup> and 2<sup>nd</sup> appellant worked and remained unlawfully in the UK, that they always intended to remain in this country and had not voluntarily departed. I was reminded that they had accessed NHS treatment and that there would be a burden on the public purse by reason of the 3<sup>rd</sup> and 4<sup>th</sup> appellants' education. It was submitted that the children would be able to learn to speak French and Creole and that EM was already studying French at GCSE. The family would be supported by other family members in Mauritius. Although it was accepted that EM had resided in the UK for 12 ½ years and had developed a private life, and that there would be a significant impact on her private life if removed, on the particular facts of this case the strong public interest was sufficient to render her removal reasonable. Mr Martin adopted his skeleton argument and submitted that EM had only fleeting memories of Mauritius and that none of her close groups of friends was from Mauritius. She had her final exams in May/June 2018 and had already started earning points towards her final

grades. It was submitted that the respondent failed to provide strong and powerful reasons why a 16-year-old girl who had lived in the UK for most of her life could reasonably be expected to relocate.

## Findings and assessment

17. I will first consider the appeal of the 3<sup>rd</sup> appellant. Paragraph 276ADE(iv) of the immigration rules seeks to incorporate and give effect to article 8 private life considerations with respect to children in the UK.
18. Paragraph 276ADE reads, in material part

*276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:*

*(i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and*

...

*(iv) 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*
19. There is no suggestion that EM falls foul of any of the Suitability requirements in Appendix FM. The appellants have consistently maintained that the 1<sup>st</sup> and EM entered the UK in May 2005. This assertion does not appear to have been challenged by the respondent in the First-tier Tribunal, and the FtJ's finding in this regard was not subject to the respondent's appeal. The Presenting Officer at the resumed Upper Tribunal hearing did not seek to challenge this assertion and accepted that EM had lived in the UK for 12½ years. In the absence of any reason to doubt the accuracy of this aspect of the appellants' evidence, I find that the 1<sup>st</sup> and 3<sup>rd</sup> appellant have resided in the UK since May 2005. EM, who is 16 years old, has continuously resided in the UK for 12 years and 6 months. The human rights claim was made by letter dated 1 December 2014 which led to the refusal of that claim and the decision to remove dated 8 January 2015. I find, and it was not disputed, that EM had lived continuously in the UK for at least 7 years at the date of her application.
20. I must ascertain EM's best interests pursuant to s.55 of the Borders, Citizenship and Immigration Act 2009. I remind myself that, while her best interests are a primary consideration, they are not a paramount consideration and that even though it may be in her best interests to remain in the UK this can be outweighed by opposing public interest factors.
21. In *EV (Philippines) & Ors v Secretary of State for the Home Department* [2014] EWCA Civ 874 (at [35]) the Court of Appeal explained that 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.

22. The first head note of *Azimi-Moayed and others (decisions affecting children; onward appeals)* [2013] UKUT 00197 reads, “As a starting point it is in the best interests of children to be with both their parents and if both parents are being removed from the United Kingdom then the starting point suggests that so should dependent children who form part of their household unless there are reasons to the contrary.” Headnote (ii) reads, “Lengthy residence in a country other than the state of origin can lead to development of social cultural and educational ties that it would be inappropriate to disrupt, in the absence of compelling reason to the contrary. What amounts to lengthy residence is not clear cut but past and present policies have identified seven years as a relevant period.” Headnote (iv) of the same case indicates, “Apart from the terms of published policies and rules, the Tribunal notes that seven years from age four is likely to be more significant to a child than the first seven years of life.”
23. I consider and apply the principles enunciated in the above decisions in assessing EM’s best interests. EM has lived in the UK since she was 3 years old and is now 16 years old. She has spent the formative years of her life in the UK. The uncontested evidence, as detailed in the various witness statements before me and supported by reference to the documents issued by EM’s school, indicate that she is currently studying at GCSE level, has already undertaken assessments that will count towards her final grades, and will be completing her exams in May/June of this year. It is apparent from the various school reports that she is a committed student who has worked hard to achieve good grades and is very firmly integrated within the school community. I note that the 4<sup>th</sup> appellant, who is now 7 years old, has also made good progress at school although she is not at a critical stage of her education and is still in primary education.
24. The statements from EM and her friends, supported by the school documents, indicate that she has formed strong social networks with peers outside her family at a time when she had no control over her immigration status. Her statements indicate that she wishes to remain in the UK and is fearful of the losing her established life, of the impact on her education, of the difficulties she believes she will face in Mauritius, and of jeopardising her future aspirations. I note that although EM has grandparents in Mauritius and that the family do attend Mauritian cultural gatherings in the UK, and she would therefore not be unfamiliar with aspects of Mauritian culture, none of EM’s friends are Mauritian and she firmly identifies herself as someone who has adopted a British lifestyle. EM is neither independent nor self-sufficient, and remains reliant on her family, with whom she lives. There was no suggestion by the



Presenting Officer that she did not have strong bonds of love, affection and dependency with her family. Although the starting point in considering EM's best interest is that she should remain with her parents and return with them, in light of her age, her establishment of relationships outside her immediate family, her adoption of a British outlook on life and her level of education I find, pursuant to my duty under s.55, that her best interests are to remain in the UK with her family.

25. Having identified EM's best interests, I must now consider whether it would be reasonable for her to leave the UK. I proceed on the basis that she would be accompanied by her immediate family and that the nuclear family unit will remain intact. In assessing the issue of reasonableness I have to take into account all relevant public interest considerations, including those relating to the conduct of her parents (*MA (Pakistan)*). In assessing the relevant public interest factors I take account of those identified in s.117B of the 2002 Act. I note that the public interest in the maintenance of effective immigration controls. I note, pursuant to s.117B(2) and (3) that the appellants are all proficient in English, and that the 1<sup>st</sup> and 2<sup>nd</sup> appellant have previously worked in the UK and that the 2<sup>nd</sup> appellant has a plumbing qualification indicating that they are both capable of financial self-sufficiency. Pursuant to *Rhuppiah v Secretary of State for the Home Department* [2016] EWCA Civ 803 and *AM (S 117B) Malawi* [2015] UKUT 0260 (IAC) I regard both as neutral factors. I take into account as a relevant public interest factor the fact that the appellants have resided in the UK without lawful leave and that their private lives have been established when their immigration status was precarious. This is of greater relevance to the 1<sup>st</sup> and 2<sup>nd</sup> appellants as the 3<sup>rd</sup> and 4<sup>th</sup> appellants have always been minors and have no control or influence over their immigration status or the unlawful nature of their residence. I attach little weight to the private lives established by the 1<sup>st</sup> and 2<sup>nd</sup> appellants in the UK. I note in particular that the 1<sup>st</sup> and 2<sup>nd</sup> appellants entered the UK with the intention of settling and that they never had any intention of leaving the UK, which demonstrates a significant disregard for immigration control and the laws of this country. The family lives had already been established when the 1<sup>st</sup> to 3<sup>rd</sup> appellants entered the UK although they maintained their relationships when unlawfully present.
26. I additionally take account, as another significant public interest consideration, of the 2<sup>nd</sup> appellant's criminality and his and the 1<sup>st</sup> appellant's use of false documents. Although the 2<sup>nd</sup> appellant received a sentence of relatively short duration, and he does not meet the definition of 'foreign criminal' contained in the 2002 Act, he has nevertheless transgressed the laws of this country and, through his drink/driving convictions, placed members of the public in potential serious danger. I take account of the public interests relating to the protection of the public, the need to ensure public confidence in the removal of those who commit criminal offences, the deterrence effect of removing the same, and the public revulsion at such offences. I note however that the 2<sup>nd</sup> appellant has only one sentence of imprisonment and the absence of any submission on behalf of the respondent that he poses a danger to the public or

is likely to commit any further offences. In identifying and considering the relevant public interest factors I additionally take into account the use of NHS resources and the drain on the public purse of educating the 3<sup>rd</sup> and 4<sup>th</sup> appellants.

27. In *MA (Pakistan)* Lord Justice Elias stated, at [46],

“Even on the approach of the Secretary of State, the fact that a child has been here for seven years must be given significant weight when carrying out the proportionality exercise. Indeed, the Secretary of State published guidance in August 2015 in the form of Immigration Directorate Instructions entitled "Family Life (as a partner or parent) and Private Life: 10 Year Routes" in which it is expressly stated that once the seven years' residence requirement is satisfied, there need to be "strong reasons" for refusing leave (para. 11.2.4). These instructions were not in force when the cases now subject to appeal were determined, but in my view they merely confirm what is implicit in adopting a policy of this nature. After such a period of time the child will have put down roots and developed social, cultural and educational links in the UK such that it is likely to be highly disruptive if the child is required to leave the UK. That may be less so when the children are very young because the focus of their lives will be on their families, but the disruption becomes more serious as they get older. Moreover, in these cases there must be a very strong expectation that the child's best interests will be to remain in the UK with his parents as part of a family unit, and that must rank as a primary consideration in the proportionality assessment.”

28. At [47] of *MA (Pakistan)* Lord Justice Elias stated,

“However, the fact that the child has been in the UK for seven years would need to be given significant weight in the proportionality exercise for two related reasons: first, because of its relevance to determining the nature and strength of the child's best interests; and second, because it establishes as a starting point that leave should be granted unless there are powerful reasons to the contrary.”

29. EM's removal would undoubtedly have a deleterious impact on the life she has established in the UK. Although established when she had no lawful right to remain she cannot be held accountable for the behaviour of her parents and her private life was rooted through no fault of her own. I find that she has fully adopted English values, culture and lifestyle and is fully integrated into her local community and British society. The evidence before me, unchallenged, indicates that, having resided in the UK throughout the formative years of her life, EM has enveloped herself in a British way of life, and that it is the only life she has ever known. She has no memories or experience of life in Mauritius. I have no reason to doubt the assertion made by EM herself as well as her parents that she can only understand and speak very basic Creole and French. While she is studying French at GCSE her predicted grade is a 6 (the equivalent to what used to be grade B), indicating that she is clearly not fluent in the language. Her removal would effectively sever the friendships, relationships

and social activities that form the core of her private life and, while she may be able to retain some contact with her friends through remote means, the impact on her cultural and social integration and her adoption of a British lifestyle is likely to be devastating.

30. She has commenced her GCSEs and is consequently at a key stage of her education. The most recent school report indicates that EM is doing well at school with some high predicted grades. I find that the disruption caused to her education by her proposed removal, at a critical stage of her studies when she is undertaking important examinations that could determine her future prospects, especially when considering the language difficulties she would encounter at schools in Mauritius given her lack of proficiency in Creole and French, is likely to be very significant (while I do not proceed on the basis that English is not a language of instruction in Mauritius, there being no evidence to support this contention, the fact remains that, even if lessons are taught in English, EM's lack of proficiency in Creole and French is likely to disrupt her ability to integrate into the school community).
31. In assessing whether it would be reasonable to expect EM to leave the UK I draw together the strong public interest factors identified above, and weight them against the impact of removal on EM and the degree of disruption to her private life. I note once again that her best interests are a primary but not a paramount consideration, and that her parents do not meet the requirements of the immigration rules. The evidence that I have carefully considered indicates that the daily social and cultural experience and expectations of this 16-year-old girl, who has lived in the UK since she was 3 years old, have been moulded by her residence to such an extent that she would encounter considerable difficulty integrating to life in Mauritius, despite have the support of her parents and extended family members. I find also that her removal would cause significant upheaval to her education which is at a critical stage. The extent of her integration and the solidity of EM's relationships, links and associations established in the UK are such that to uproot her from all that she has known and grown up with over 12 ½ years would render her removal disproportionate, despite the serious behaviour of her parents. I consequently find that EM does meet the requirements of paragraph 276ADE(iv).
32. I turn to the appeals of the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> appellants. They cannot succeed under the immigration rules. TM, the 4<sup>th</sup> appellant, is only 7 years old and has not established any significant relationships outside her family unit, and is not at a critical stage of her education. I find it would not be unreasonable to expect her to relocate to Mauritius with her parents. I note again that EM is not independent or self-sufficient and remains living with her parents and sibling. She clearly has a close and loving relationship with her parents and sibling and any separation would have a very significant detrimental impact on the parental/child/sibling relationship. I must consider the position of the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> appellants outside the immigration rules and determine whether there are compelling or exceptional reasons for allowing their appeals on article 8

grounds (*SSHD v SS (Congo) & Ors* [2015] EWCA Civ 387; *MF (Nigeria) v Secretary of State for the Home Department* [2013] EWCA Civ 1192, at [42]).

33. I am satisfied that the 1<sup>st</sup> and 2<sup>nd</sup> appellants have established private lives in the UK given that they have resided here for over 12 years and by reference to the statements from friends and family attesting to their integration and the relationships they have established, although, pursuant to s.117B(4) I must attach little weight to that private life. The 4<sup>th</sup> appellant has lived in the UK for all her life and, although she primarily looks to her parents, she attends school and had made friends. Given the relatively low threshold for establishing a breach of article 8 I am satisfied that article 8 is triggered in respect of the remaining appellants. I find that their proposed removal is in accordance with the law and in pursuit of a legitimate aim.
34. In assessing the proportionality of the proposed removals, I consider and apply the factors identified in s.117B of the 2002 Act. I adopt my assessment carried out in paragraphs 25 and 26 above with reference to s.117B (1) to (5) and to the 2<sup>nd</sup> appellant's criminality and the 1<sup>st</sup> and 2<sup>nd</sup> appellant's disregard and breaches of immigration laws of the UK. Section 117B(6) states,
- 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.
35. In *MA(Pakistan)* the Court held, at [17],
- “Subsection (6) falls into a different category again. It does not simply identify factors which bear upon the public interest question. It resolves that question in the context of article 8 applications which satisfy the conditions in paragraphs (a) and (b). It does so by stipulating that once those conditions are satisfied, the public interest will not require the applicant's removal. Since the interference with the right to private or family life under article 8(1) can only be justified where there is a sufficiently strong countervailing public interest falling within article 8(2), if the public interest does not require removal, there is no other basis on which removal could be justified. It follows, in my judgment, that there can be no doubt that section 117B(6) must be read as a self-contained provision in the sense that Parliament has stipulated that where the conditions specified in the sub-section are satisfied, the public interest will not justify removal.”
36. The 1<sup>st</sup> and 2<sup>nd</sup> appellants have a genuine and subsisting parental relationship with EM, and I have already concluded, at paragraph 31 of this decision, that it would be unreasonable to expect EM to leave the UK. I consequently find that the public interest does not require their removal even having regard to the elements of criminality and the various public interests considered in

paragraphs 25 and 26 above. Having regard to the assessment conducted outside the immigration rules in *PD and Others (Article 8 – conjoined family claims) Sri Lanka* [2016] UKUT 00108 (IAC), at [43], I am satisfied that the effect of dismissing the 1<sup>st</sup> and 2<sup>nd</sup> appellants' appeals would be to stultify my decision that EM qualifies for leave to remain in the United Kingdom under the rules. undertaking the s.117B(6) balancing exercise, and in light of my previous analysis and findings, I am satisfied that the test of compelling or exceptional circumstances is satisfied.

37. I need deal only briefly with the position of the 4<sup>th</sup> appellant. She is 7 years old and an integral part of her family. Having found that the 3<sup>rd</sup> appellant meets the requirements of the immigration rules, and that there are exceptional circumstances rendering it disproportionate to remove the 1<sup>st</sup> and 2<sup>nd</sup> appellants, it follows that there are also exceptional circumstances rendering removal of the 7-year-old child disproportionate. The appeals of the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> appellants are allowed outside the immigration rules in accordance with article 8.

### **Notice of Decision**

**As these appeals fall to be determined under the appeal structure in place prior to the amendments made by the Immigration Act 2014, the 3<sup>rd</sup> appellant's appeal is allowed under the immigration rules, and the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> appellants appeals are allowed on human rights grounds.**

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellants in this appeal 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.



Signed

17 January 2018

Date

Upper Tribunal Judge Blum