Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/34793/2015
IA/34795/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 29th November 2017	**On 17th January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

K-RL
S-RL
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J Plowright, Counsel
For the Respondent: Ms N Willocks-Briscoe, Senior Presenting Officer

DECISION AND REASONS

1. The Appellants appeal against the decision of First-tier Tribunal Judge Devittie dismissing their appeals against the Secretary of State's decision to refuse their applications for leave to remain on human rights grounds.

The decision of Judge Devittie was promulgated on 14th March 2017. The Appellants appealed against that decision and were granted permission to appeal by First-tier Tribunal Judge Boyes. The grounds upon which permission was granted may be summarised as follows:

> "The grounds assert that the judge made numerous errors in the assessment of both the legal and factual position.
>
> The grounds are arguable and permission to appeal is granted."

2. I was provided with a Rule 24 response from the Respondent which was considered by all parties before the hearing commenced.

Error of Law

3. At the close of submissions, I indicated I found an error of law such that the decision should be set aside, but that my reasons would follow, which I shall now give.

4. The parties accepted before me that Ground 1 of the Grounds of Appeal challenging the decision of Judge Devittie was correct. That ground states that the judge arguably factored irrelevant matters into his consideration which were incorrect, namely that:

   (1) Appellant 1 did not meet the suitability criteria on the basis that she had failed to pay charges in accordance with NHS Regulations applicable to overseas visitors, and

   (2) Appellant 1 had not provided any maintenance and undertaking requirement that had been requested under the Rules.

5. Given that acceptance it is clear that the decision contains mistakes of fact which taken with the other grounds, which I shall discuss shortly, point towards a material error of law in the decision.

6. In terms of Ground 2 the ground alleges that the judge failed to take into account any of the evidence that was contained in the Appellant's bundle and the skeleton argument. These documents included *inter alia* letters from the second Appellant's school confirming her attendance since 26th September 2005 as well as letters from the second Appellant's academy which she currently attends since 4th September 2012 including a letter from her teacher and the principal, as well as school reports and her educational certificates. It is true that the decision of Judge Devittie unfortunately does not make mention of these documents on its face in terms of his findings of fact. As such I do find that the ground is made out and that the judge has failed to take into account the evidence referred to in the Appellant's bundle and also in counsel's skeleton argument.

7. In respect of Ground 3, this ground argues that the judge found that the first Appellant did not have sole responsibility for the second Appellant, which contradicted the face of the evidence that the second Appellant's

father had last attended the second Appellant's school in 2007, a decade ago. The ground also argues that the judge failed to take into account the letter of Dr Hughes, which confirmed that the first Appellant was indeed a single parent and as such had sole responsibility.

8. Paragraph 5 does make mention of the father of the second Appellant last attending the school in 2007. As such the complaint in respect of the contact between the father and the second Appellant is not one that the judge was necessarily precluded from reaching. However, it is difficult to see any evidence on which the finding that the father is still involved could be based. More importantly in respect of the letter from Dr Hughes, that letter does not find mention in the judge's findings from paragraphs 5 through to 11 and as such is a material omission to the consideration of the issue of sole responsibility which the letter purports to confirm.

9. In terms of Ground 3 there is a nuance to the argument raised by Mr Plowright which I covered with the parties and is touched upon in the conclusion of the Grounds of Appeal, namely that even if the first Appellant did not have sole responsibility for the second Appellant, that did not preclude the judge from considering the "parental responsibility" which the first Appellant may or may not enjoy in respect of Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 that being an obvious basis upon which a person can have "parental responsibility", even in the absence of "*sole* responsibility". Although that subsection is mentioned at paragraph 11 of the decision there is no consideration as to whether the first Appellant enjoys parental responsibility for the second Appellant, which is a material omission in my view.

10. Turning to Ground 4, the ground in essence argues that the judge failed to take into account the binding authority of the Court of Appeal's judgment in *MA (Pakistan)* [2016] EWCA Civ 705 wherein at [46], in considering the reasonableness test for a child who had resided in the United Kingdom for seven years continuously, Lord Justice Elias stated this involved consideration of whether there were "strong reasons" for refusing leave. The ground also argues that there is no consideration of the IDI governing family migration, namely Appendix FM Section 1.0b, published in August 2015, which remains in force, which states at paragraph 11.2.4 that "strong reasons will be required in order to refuse a case with continuous UK residence of more than seven years". It is true that neither the authority of *MA (Pakistan)* nor the IDI find any mention in the judge's consideration of the reasonableness of refusing leave to the child in respect of his consideration under the Rules or outside the Rules.

11. Given that the starting point in the Respondent's guidance is that there need to be strong reasons for refusing leave to a child who has attained seven years' continuous residence, it is in my view a material error to fail to commence from that starting point and enquire as to whether strong reasons have been put forward by the Respondent or not, in accordance and harmony with her IDI.

12. The fourth ground further argued that the judge failed to take into account the fact that the second Appellant will be returning to Nigeria with the first Appellant, who was a single mother and was suffering from an aggressive illness. This last submission is one that only carries moderate weight whereas the complaints concerning the omission to consider *MA (Pakistan)* and the IDI do carry great weight and I find reveal a material error of law in the decision.

13. In respect of Ground 5 the parties agreed that if I was persuaded that errors of law were revealed in Grounds 1 to 4 I did not need to go on to consider Ground 5, which, given my findings above, I shall not do.

14. In light of the above findings, I set aside the decision and findings of the judge entirely.

Notice of Decision

15. The appeal to the Upper Tribunal is allowed.

16. The making of the previous decision involved the making of an error on a point of law and is set aside.

17. The appeal is to be remitted to the First-tier Tribunal to be heard by a differently constituted bench.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

18. Unless and until a Tribunal or court directs otherwise, the Appellants 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 Date: 17 January 2018

Deputy Upper Tribunal Judge Saini