



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/09380/2018  
HU/09382/2018  
HU/09385/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14 January 2019

Decision & Reasons Promulgated  
On 14 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

NURHAN [A] (FIRST APPELLANT)  
[B A] (SECOND APPELLANT)  
[B C A] (THIRD APPELLANT)  
(ANONYMITY DIRECTIONS NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr J Trussler of Counsel, instructed by Messrs Kinas Solicitors  
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants appeal with permission against a decision of Judge of the First-tier Tribunal J W H Law who, in a determination promulgated on 29 June 2018, dismissed their appeals against a decision of the Secretary of State dated 8 February

2017 to refuse their applications for further leave to remain on family and private life grounds.

2. The appellants are citizens of Turkey who were granted entry clearance to enter Britain to join the first appellant's husband and the father of the second and third appellants, a son born in July 2001 and a daughter born in March 2003, in Britain as his dependants. Their father Murat [A] was granted indefinite leave to remain in 2009 and is a British citizen.
3. The appellants were granted leave to remain until 9 February 2017. It is accepted that the first appellant and the sponsor were in a genuine relationship and the other appellants were their children, but it was not accepted that the sponsor had sufficient funds to support the appellants under the provisions of Appendix FM and furthermore that it was not accepted that there were insurmountable obstacles in accordance with paragraph EX2 of Appendix FM to the family living together in Turkey.
4. The respondent considered that there would not be significant obstacles to integration for the first appellant into Turkey which is where she had lived until she was 36 and similarly it was considered that the children would be able to continue their education there. It was pointed out that the children had not lived in Britain for seven years.
5. At the hearing of the appeal before the judge it was accepted that the sponsor's financial situation had worsened since he was joined by the appellants and the family therefore could not meet the financial requirements for settlement as a family.
6. The judge said that he proceeded on the basis that the sponsor was still a refugee but given that he had returned to Turkey in the meantime in both 2013 and 2014 and would go every other year when he could afford to do so the judge went on to find that there were no insurmountable obstacles to his living with his family in Turkey. The judge did consider the issue of the children and their studies here but stated that there was no evidence to show that they could not continue their education in Turkey. On those bases he found that not only could the appellants not meet the terms of Appendix FM but also that the decision to refuse the application was proportionate.
7. At the hearing of the appeal before me Mr Trussler produced a bundle of documents which showed that the income of the sponsor and the appellant together now met the financial requirements of the Rules. It was accepted that when the application was made and at the time of the hearing before the judge, the financial requirements could not be met - their total income at that stage had been together £17,085. However he produced evidence to show that both the sponsor and the principal appellant were now earning £1,050 per month. That being a total of £25,200 a year.

8. He argued, in accordance with the grounds of appeal which had stated that the judge had considered the insurmountable obstacles test in isolation from the second and third appellants, that the judge had been wrong in his consideration of the impact of removal on the second or third appellants, given that the second appellant was now attending college and the third appellant was now beginning her GCSE course. He argued that the judge had not properly considered that issue.
9. Mr Bramble referred to the determination in which the judge has specifically referred to Section 55 of the Borders, Citizenship and Immigration Act 2009 and the judgment in **ZH Tanzania v SSHD [2011] UKSC 4** and argued that the judge was entitled to consider that little weight should be given to the children's private life here since 2014, given that neither were qualifying children. The judge had noted that there was no expert evidence from an independent social worker regarding the impact of removal on the children and said that he had taken into account letters from teachers at their school and from the children on the possible effect on their education.
10. Mr Bramble argued that this was a case where permission should not have been granted – the grant of permission by Judge of the First-tier Tribunal Blundell had said that the judge had failed to make a clear finding on the best interests of the second and third appellants and had failed to undertake a legally adequate assessment of the weight of the public interest in removal of the appellants.
11. Mr Bramble argued that the judge had properly considered the issue of the children and in particular the impact on them of their removal to Turkey and stated in light of the determination it could not be said that the judge had not considered all relevant factors.

### **Discussion**

12. I consider that the judge did properly consider all relevant factors and was entitled to conclude that there would be no insurmountable obstacles to the family continuing their family life in Turkey, given that the three appellants have lived there for practically all their lives and that the sponsor lived there for also the majority of his life. I consider that therefore the judge did consider all relevant factors and that therefore his decision should stand. However I would add that the evidence before me indicated that the financial requirements of Appendix FM could now be met and that being the case the appellants would now all meet the relevant requirements of the Rules.
13. I therefore consider that when a further application is made and evidence is provided of the sponsor's earnings that the decision of the Secretary of State might well be in favour of the appellants. The further earnings are not something that I can take into account now because I have not found an error of law in the determination of the First-tier Judge, but that evidence must be considered by the Secretary of State and indeed the change of circumstances is such that the further application should certainly be considered as a fresh claim.

**Notice of Decision**

The determination of the First-tier Tribunal shall stand.

No anonymity direction is made.

Signed 

Date: 26 January 2019

Deputy Upper Tribunal Judge McGeachy