



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

Appeal Numbers: HU/15820/2018  
HU/15823/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 June 2019**

**Decision & Reasons Promulgated  
On 11 July 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**MRS N I (1)  
MISS M I B (2)  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr J Sarker, Counsel instructed by Adam Bernard Solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Background**

1. The appellants are citizens of Pakistan, the first appellant being the mother of the second appellant. The first and second appellants originally entered the UK with entry clearance as the spouse and child of the sponsor also a Pakistani national and the husband of the first appellant and father of the second appellant. Further leave to remain was granted on application. However on 15 July 2018 the appellants' application for

indefinite leave to remain was refused. In a decision promulgated on 15 February 2019 Judge of the First-tier Tribunal E B Grant dismissed the appellants' appeals on human rights grounds.

2. The appellants appeal with permission on the grounds that:
  - (1) The judge erred in law in considering whether it was reasonable for the children to return in particular it was argued that the judge erred in his consideration of the best interests of the 4 year old British child of the first appellant and the sponsor.

### **Error of Law**

3. At the outset of the appeal Ms Everett quite properly conceded that although the decision and reasons of Ms Grant were otherwise scrupulous, she had failed to adequately address the issues in relation to the 4 year old British citizen child of the family.
4. The judge was clearly aware that there was a British citizen child as part of the family, including as mentioned at [34] and [36] where the judge identified that that child was a qualifying child in terms of Section 117D. However, whilst the judge undertook arguably a detailed consideration of the best interests of the second appellant, there was no adequate consideration of the best interests of the British citizen child including the relevant considerations considered in case law including **ZH (Tanzania)**. I was reminded of what was said in **MA (Pakistan)**:

“... The concept of a qualifying child also includes a child who is a British citizen. That will be a very important factor for the court to take into account when having regard to the child’s best interest: see **ZH** per Lady Hale paras 30-31, Lord Hope para 40 and Lord Kerr para 47. As Lord Kerr pointed out, it bears both upon at best interest analysis and quite independently of that, will have a bearing on where the child should live.

...”

5. As it was conceded that there was an error in the lack of adequate consideration of both the best interests of the British citizen child and whether it will be reasonable for that child to return with his mother to Pakistan, I am satisfied that there is an error of law. Both parties agreed that no further oral or documentary evidence was required and that the Upper Tribunal could proceed to remake the decision on the basis of the evidence before it albeit that Mr Sarker reminded the court that time had passed and that the British citizen child was now 5 years old and that whilst the judge had stated that the British citizen child was not at school that was incorrect as noted in the letter from the school in the appellant's bundle. Ms Everett accepted that that was the case.

### **Remaking**

6. I have considered in remaking the decision the intrinsic importance of citizenship as is clear from **ZH (Tanzania) v SSHD** [2011] UKSC 4. British

Citizen children who move from the UK would lose their educational opportunities, support and protection of the country of their nationality, amongst other matters. It is settled law that children are not to be blamed for the position of their parents and that there is much more to British citizenship than the status it gives to the children in immigration law. As recognised by Lord Hope, it carries with it a host of other benefits and advantages.

7. Whilst the fact that British citizenship does not trump everything else I have reminded myself what was said in **ZH (Tanzania)** including that it will hardly ever be less than a very significant and weighty factor against moving children who have that status to another country with a parent who has no right to remain here especially if the effect of doing this is that they will inevitably lose those benefits and advantages for the rest of their childhood.
8. I am satisfied that is exactly the case in the appeal before me and that if the decision of the First-tier Tribunal were to stand I accept that the children would return with their mother to Pakistan and that the British citizen child does stand to lose the benefits and practical advantages of British citizenship for the rest of their childhood. I am satisfied that in this case the evidence points strongly to the best interests of the British citizen child, who has also now started at school, being in remaining in the UK with her family.
9. Section 117b(6) of the 2002 Act provides:
  - (6) 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. In considering whether it is reasonable for this family to return to Pakistan I take into consideration all the factors and the submissions of Ms Everett. Whilst she did not specifically concede the appeal, she made no substantive submissions, other than indicating that the Home Office policy position whilst currently under review remained, largely speaking, that it was difficult to argue that a British citizen child should be expected to leave the UK, especially as the actions of the parents could not be taken into consideration (**KO (Nigeria)** [2018] UKSC 53). **KO** found that it was inevitably relevant to consider where the parents, apart from the relevant provision, are expected to be, since it will normally be reasonable for the child to be with them. In this case the appellants' sponsor has indefinite leave to remain whereas the first appellant does not have a right to remain in the UK. **KO** cited, with approval, Lewison LJ in **EV (Philippines) v Secretary of State for the Home Department** [2014] EWCA Civ 874 including, at paragraph 58 that:

"... If one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. ... Thus the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin."

11. I take it into account that it was not Ms Everett's submission that this was a family where it would be reasonable to expect the children, including the British child and three further children who have now lived in the UK for over six years, to follow their mother to the country of origin.
12. In light of Home Office position before me and in light of all the evidence considered in the round, although I accept that the family has ties to Pakistan and have visited there and that reasonableness must be considered in the real world, I am not satisfied that it is reasonable to expect this British citizen child, who I accept is now 5 years old is at school where I accept she speaks English and is developing her life outside the home and who will in effect lose all of the benefits of British citizenship if her mother and sibling were to be removed, to leave the UK. In reaching this finding I have also considered what was said in **AB (Jamaica) and AO (Nigeria)** [2019] EWCA Civ 661 which reminded that the statute asks a single question of whether it is reasonable for the child to leave the UK (and not a two stage consideration of whether the child will in fact leave).

### **Decision**

13. The decision of the First-tier Tribunal contains an error of law. I remake the decision allowing the appellants' appeals.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 28 June 2019

Deputy Upper Tribunal Judge Hutchinson

**TO THE RESPONDENT**  
**FEE AWARD**

No fee was paid or payable so no fee award is made.

Signed

Date: 28 June 2019

Deputy Upper Tribunal Judge Hutchinson