



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/16490/2018  
HU/16493/2018  
HU/16491/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On: 2 December 2019

Decision & Reasons Promulgated  
On: 25 February 2020

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

RK  
AS  
RSD

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms C Charlton, counsel instructed by Bhogal Partners Solicitors  
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal against the decision of First-tier Tribunal Judge Easterman, promulgated on 13 May 2019. Permission to appeal was granted by First-tier Tribunal Judge PJM Hollingworth.

### Anonymity

2. An anonymity direction is made owing to the vulnerability of the first appellant and the sensitive nature of parts of the evidence.

### Background

3. The first appellant entered the United Kingdom as a student on 12 October 2004. Her leave was extended until 28 October 2010. An in-time application for leave to remain as a Tier 1 (General) migrant was refused on 2 March 2011 and the appellant's appeal against that decision was dismissed, with her appeal rights being exhausted on 16 June 2011. Thereafter the appellant made a series of further submissions on human rights grounds, all of which were refused with no in-country right of appeal. The second appellant entered the United Kingdom on 2 April 2007 as a dependant of the first appellant, which he has continued to be thereafter. The third appellant was born in the United Kingdom on 18 January 2010.
4. The appellants made a human rights' claim on 19 April 2017 on the basis of their family life in the United Kingdom with particular reference to the fact that the third appellant had resided here for 7 years. In refusing that claim, the Secretary of State decided it was reasonable for the third appellant to return to India with his parents. Nor was it accepted that there were very significant obstacles to the adult appellants returning to India. The respondent considered and rejected the exceptional circumstances advanced. These included that the appellants had integrated into the British way of life; they had lost all ties and connections in India; the relationship between the adult appellants was not accepted by family in India and the appellants would be harassed and victimised; the appellant would be left homeless and destitute; the first appellant donated eggs to help a friend conceive and had a relationship with that child; the third appellant had never left the UK, could not speak any Indian languages and had formed attachments to friends and that the first appellant suffered mental health issues owing to suffering rape and sexual abuse during her teenage years in India.

### The decision of the First-tier Tribunal

5. The First-tier Tribunal judge did not accept that the families of the appellants had fallen out with them or that the abuse the first appellant experienced meant that she would be unable to return to India. He found that it was reasonable to expect the third appellant to go to India with his parents

### The grounds of appeal

6. The grounds of appeal argued that the judge's section 55 assessment was wholly inadequate and that he rejected the report of the expert social worker without reasons. In addition, the judge identified no strong reasons why the third appellant should be removed from the United Kingdom.

7. Permission to appeal was granted on the basis sought.
8. The respondent filed no Rule 24 response.

### The hearing

9. Ms Charlton argued that the best interests of the third appellant were not assessed by the First-tier Tribunal judge. The third appellant was aged 9 at the time of the hearing and a vast amount of evidence had been submitted regarding his circumstances. While the determination was lengthy, the only reference to best interests was the judge's mention of the child growing up in an Indian household and being familiar with Indian traditions. While it was accepted that it was in the third appellant's best interests to remain with his parents, the judge was also required to take into account the age of the child and the time spent in the United Kingdom, applying *MT and ET (child's best interests; ex tempore pilot) Nigeria* [2018] UKUT 88(IAC). Furthermore, no strong reasons had been provided to justify the appellants' removal from the United Kingdom.
10. Ms Charlton further argued that while the judge referred to the report of the social worker, much of the content was ignored including the third appellant's views, that his parents had been in the United Kingdom for many years and the fact that many of his friends were not from an Indian background. There was a further matter, in that the judge took into consideration a matter which the respondent had taken no issue with, namely that there had been deception in a 2011 application. Suitability was not relied upon by the respondent however, the judge's focus on this issue may have affected the judge's overall findings. Referring again to *MT and ET*, Ms Charlton argued that the claimant in the aforementioned case had a criminal record and was unlawfully present in the United Kingdom but that the conclusion was that it was still in the best interests of the child to remain in the United Kingdom. There was a tacit acceptance by the judge that the third appellant did not speak, read or write any Indian languages, however no thought was given to that by the judge or why it was better for him to return to India rather than to remain in the United Kingdom. Furthermore, the judge engaged in speculation in concluding that the third appellant would move away from his friends in any event when he began his secondary education. Ms Charlton pointed to the fact that the appellant had attended the infant and junior school in his area and that it was likely that he retains his circle of friends when he moved to secondary school.
11. Mr Bramble argued that there was no reference to the deception issue in the judge's findings of fact or conclusions. The judge properly considered the best interests of the child in the real world, applying *KO (Nigeria)* [2018] UKSC 53, where the parents had no status nor expectations of remaining in the United Kingdom. The grounds were a disagreement with the decision. The judge appreciated that the third appellant was 9 years old and knew no other country. The social work report was taken account of and the judge was fully aware of the circumstances including the

impact of return. There was nothing wrong in the judge's reasoning that it was in the best interest of the third appellant to accompany his parents to India. He urged me to uphold the decision.

12. In response, Ms Charlton took me to [65] of the decision, where the judge referred to the deception issue in his findings of fact and conclusions. In addition, she emphasised the opinion of the social worker as to the impact a shift in stability could have on the third appellant; the issue of the mental health of the first appellant and the closeness between the appellants and their immediate family in the United Kingdom.
13. At the end of the hearing, I announced that there was a material error of law in the decision of the First-tier Tribunal.

#### Decision on error of law

14. At [73], the First-tier Tribunal concluded that it was in the best interest of the third appellant to remain with his parents and that it was reasonable for him to return, with them, to India. The judge's findings and facts and conclusions are set out between [58] and [74] of the decision. At no point did the judge assess whether it was in the third appellant's best interests to remain in the United Kingdom, which was the crux of the case presented. There was extensive evidence before the judge including a detailed report from a social worker, school records as well as witness statements from the adult appellants. The judge's dismissal of the social worker's report as mere "advocacy" at [62] was also inadequately reasoned. Furthermore, the conclusion that it was in the third appellant's best interests to return to India went unexplained and did not engage with the third appellant's circumstances. By contrast, the judge took into consideration that "*the first appellant was found to have used deception in 2011 in order to remain in the United Kingdom.*" Yet, the decision appealed against raised no issues of suitability and the decision did not expand upon the nature of the deception allegation.
15. The following passages from ME and ET are instructive in this case:

31. "A much younger child, who has not started school or who has only recently done so will have difficulty in establishing that her Article 8 private and family life has a material element, which lies outside her need to live with her parent or parents, wherever that may be. This position, however, changes over time, with the result that an assessment of best interests must adopt a correspondingly wider focus, examining the child's position in the wider world, of which school will usually be an important part.

32. This is why both the age of the child and the amount of time spent by the child in the United Kingdom will be relevant in determining, for the purposes of section 55/ Article 8, where the best interests of the child lie.

33. On the present state of the law, as set out in MA, we need to look for "powerful reasons" why a child who has been in the United Kingdom for over ten years should be removed, notwithstanding that her best interests lie in remaining. "
16. There was no wider focus on third appellant's best interests on remaining in the United Kingdom, with particular emphasis on his schooling and his position in the wider world. Having failed to adequately identify or consider the third appellant's best interests, the judge consequently failed to afford significant weight to those interests in conducting the balancing exercise. This amounts to a material error of law, without which the outcome of the appeal might have been different.
17. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellants have yet to have an adequate consideration of their human rights' appeal at the First-tier Tribunal and it would be unfair to deprive them of such consideration.

### Decision

**The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.**

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Hatton Cross, with a time estimate of 2 hours by any judge except First-tier Tribunal Judge Easterman.**

Signed:

Date 25 February 2020

Upper Tribunal Judge Kamara