Neutral Citation Number: [2021] EWCA Civ 953

Case No: C5/2020/0350

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
Immigration and Asylum Chamber
Upper Tribunal Judge Stephen Smith

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/06/2021

Before :

LORD JUSTICE UNDERHILL
(Vice-President of the Court of Appeal (Civil Division))
LORD JUSTICE SINGH
and
LORD JUSTICE WARBY

- -

Between :

NA (BANGLADESH)
SB (BANGLADESH)
YS (BANGLADESH)
YA (BANGLADESH) — **Appellants**

- and -

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

- -
- -

Mrs Alison Harvey (instructed by **Capital Solicitors**) for the **Appellants**
Ms Hafsah Masood (instructed by **the Treasury Solicitor**) for the **Respondent**

Hearing date: 23rd February 2021

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Approved Judgment

Lord Justice Underhill :

INTRODUCTION

1. The First Appellant is a Bangladeshi national born on 16 October 1966. He came to this country on 17 April 2005 on a visitor visa and overstayed. The Second Appellant is also a Bangladeshi national, born on 11 November 1984. She came to this country as a student in 2009 and overstayed following the expiry of that leave. She and the First Appellant married in this country: the exact date is not clear from the papers. They have two sons, YS, who was born on 21 July 2010, and YA, who was born on 19 October 2017. Both children have Bangladeshi nationality. (I should note that on 11 November 2020 YS became a British citizen, but it was common ground before us that that fact was immaterial for our purposes since it post-dates the decision which is the subject of the original appeal.)

2. On 5 April 2018 the First Appellant applied, on behalf of himself and his wife and children, for leave to remain on the basis of their private life in the UK. On 16 August 2018 that application was refused. All four appealed to the First-tier Tribunal. By a decision promulgated on 14 May 2019 First-tier Tribunal Judge Bart-Smith dismissed the appeals. The Upper Tribunal subsequently found an error of law in that decision but re-made it by again dismissing the appeal: both decisions were made by Upper Tribunal Judge Stephen Smith and were promulgated on 6 September and 11 November 2019 respectively.

3. This is an appeal against that decision with the permission of Hickinbottom LJ. Mrs Alison Harvey appears for the Appellants and Ms Hafsah Masood appears for the Secretary of State.

4. Hickinbottom LJ gave permission because he regarded the appeal as raising an issue of general importance about the correct approach to paragraph 276ADE (1) (iv) of the Immigration Rules and section 117B (6) of the Nationality, Immigration and Asylum Act 2002 (which falls under Part 5A of the Act). I start by identifying how those two provisions are relevant in the present case.

5. So far as YS is concerned, his claim is based on paragraph 276ADE (1) (iv) of the Rules, under which a person under the age of 18 will be entitled to leave to remain if they have "lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect [them] to leave the UK". YS had at the time of the Secretary of State's decision lived in the UK for more than seven years, and it is the Appellants' case that it would not be reasonable to expect him to leave the UK.

6. As for the parents and YA, it is accepted that none of them are entitled to leave to remain under the Rules. However, they contend that their removal would be a breach of their right to respect for their private and family life under article 8 of the European Convention on Human Rights and accordingly unlawful under section 6 of the Human Rights Act 1998. Their removal would clearly be an interference with that right, but the question is whether it is justified under article 8 (2) by reference to the public interest. By virtue of section 117A (2) of the 2002 Act a court or tribunal considering such a question must have regard to section 117B. The parents rely on section 117B (6), which reads:

> "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."

"Qualifying child" is defined by section 117D (1) as

> "a person who is under the age of 18 and who—
>
> (a) is a British citizen, or
>
> (b) has lived in the United Kingdom for a continuous period of seven years or more".

YS has at all material times been a qualifying child under alternative (b) because he has lived here for more than seven years. There is no dispute that both parents have a genuine and subsisting parental relationship with him, and accordingly that element (a) in subsection (6) is satisfied. Thus the only issue, as regards the parents' claim, is whether, as required by element (b), it was reasonable to expect YS to leave the UK. If it was not, the parents would be entitled to leave to remain, and YA would have to be given leave to remain with them.

7. Thus for all four Appellants, albeit by formally distinct routes, the question for the Upper Tribunal was whether it was reasonable to expect YS to leave the UK. I will refer to that as "the reasonableness question". I will also for convenience refer to the effect of paragraph 276ADE (1) (iv) and section 117B (6), as regards a qualifying child who qualifies under limb (b) of section 117D (1), as "the seven-year provision"; and to such a child as a "seven-year child".

8. The decision of the Upper Tribunal was that it was reasonable to expect YS to leave the UK with his parents. I need not summarise the Judge's reasoning as regards the facts because the grounds of appeal are limited to specific challenges to the approach which he took as a matter of law. Three grounds are pleaded, although, as will appear, it is the first which is the most substantial. I will take them in turn.

GROUND 1

INTRODUCTION

9. It was the Appellants' case that in considering the reasonableness question the Upper Tribunal should proceed on the basis that it would not be reasonable for a seven-year child to be expected to leave the United Kingdom unless there were "powerful reasons to the contrary" – a proposition that was referred to below (not very aptly) as "the powerful reasons doctrine". It was said that such an approach was required by the decision of this Court in *R (MA (Pakistan)) v Upper Tribunal (Immigration and Asylum Chamber)* [2016] EWCA Civ 705, [2016] 1 WLR 5093.

10. The Upper Tribunal Judge rejected that submission on the basis that the relevant reasoning in *MA (Pakistan)* was inconsistent with the decision of the Supreme Court (in substance on appeal from *MA*) in *KO (Nigeria) v Secretary of State for the Home Department* [2018] UKSC 53, [2018] 1 WLR 5273. The Judge analysed the two decisions with care at paras. 27-35 of his Reasons. I need not set the passage out since I shall have to consider them for myself.

11. Ground 1 is, in substance, that it was an error of law for the Upper Tribunal to hold that "the powerful reasons doctrine" did not survive *KO*. Before I turn to that issue I should make two points by way of preliminary.

12. First, this Court has already had to consider the meaning of section 117B (6) in the light of *KO (Nigeria)* in two cases – *Secretary of State for the Home Department v AB (Jamaica)* [2019] EWCA Civ 661, [2019] 1 WLR 4541, and *Runa v Secretary of State for the Home Department* [2020] EWCA Civ 514, [2020] 1 WLR 3760. Neither was directly concerned with the present issue, but they do clear some of the ground. In short:

    (1) Paras. 40-47 and 54-57 of the judgment of Singh LJ in *AB (Jamaica)* contain a helpful explanation, which is rather fuller than I have found it necessary to give at para. 6 above, of how section 117B (6) fits in to the structure of the law in cases of this kind. Also, both Singh LJ and I explained that the essential question underlying the phrase "reasonable to expect" is simply whether it would be reasonable for the child in question to have to leave the UK: see his judgment at para. 73 and mine at para. 116.

    (2) *Runa* makes clear that section 117B (6) is not an exhaustive statement of the effect of article 8, and that if it is not satisfied it does not follow that a proportionality assessment is not required. Rather, it is "a benevolent provision", which has the effect, in a case where it applies, that the public interest is treated definitively as not requiring the parent's removal: it "can only operate in one way, potentially in favour of an appellant but never adversely to an appellant" – see para. 32 of Singh LJ's judgment. (I make a similar point about section 117C (4) and (5) at para. 60 of my judgment in *HA (Iraq) v Secretary of State for the Home Department* [2020] EWCA Civ 1176, [2021] 1 WLR 1327.)

13. Second, it is of course axiomatic that all immigration decisions affecting a child must treat his or her best interests as a primary consideration. It is, however, well-established that those interests may be outweighed by the public interest in the removal of the child or its parents: the most authoritative summary is that given at para. 10 of the judgment of Lord Hodge in *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74, [2013] 1 WLR 3690. It follows that the best interests of the child are not determinative of the question whether it is reasonable to expect them to leave the United Kingdom. At para. 47 of his judgment in *MA (Pakistan)* Elias LJ said:

> "The concept of 'best interests' is … a well established one. Even where the child's best interests are to stay, it may still be not unreasonable to require the child to leave. That will depend upon a careful analysis of the nature and extent of the links in the UK and in the country where it is proposed he should return."

Likewise, at para. 54:

> There is nothing intrinsically illogical in the notion that whilst the child's best interests are for him or her to stay, it is not unreasonable to expect him or her to go."

14. I turn to consider the judgments in *MA (Pakistan)* and *KO (Nigeria)*. Some of the things said in them are liable to be misunderstood without an appreciation of the context, and I will accordingly have to go through the relevant parts in a little detail.

MA (PAKISTAN)

15. The main issue of principle decided in *MA (Pakistan)* was whether, in considering whether it was reasonable to expect a child to leave the UK when he or she had lived here continuously for seven years, the focus should only be on factors relating to the child ("the narrower approach") or should incorporate all matters bearing on the public interest, including the conduct and immigration history of the parents ("the wider approach"). There were in fact six appeals before the Court which raised that issue in various forms.

16. The only substantive judgment in *MA* was given by Elias LJ, with whom King LJ and Sir Stephen Richards agreed. His starting-point was that the approach to the reasonableness question should be the same for the purpose of both paragraph 276ADE (1) (iv) and section 117B (6): to anticipate, that was confirmed by the Supreme Court in *KO*. As regards what that approach should be, his reasoning and conclusions can be sufficiently summarised for our purposes as follows.

17. For reasons which he explains at paras. 36-44 of his judgment Elias LJ concluded that if the issue were free from authority he would favour the narrower approach. I need not set out his reasons since, as will appear, it was confirmed in *KO (Nigeria)* that that approach was correct. I should, however, note that at para. 40 he rejects a potential argument in favour of the wider approach that (to paraphrase) since it is generally in a child's best interests to live as part of the family unit, it will generally be reasonable to expect the child to leave the United Kingdom with the parents if they do not have leave to remain.

18. However, at para. 45 he says that the then very recent decision in *MM (Uganda) v Secretary of State for the Home Department* [2016] EWCA Civ 450 constituted binding authority in favour of the wider approach. That case was concerned with section 117C (5) of the 2002 Act, which applies in the case of the deportation of a parent who has committed an offence of (for short) medium seriousness: it provides that in such a case deportation will not be in the public interest where the impact of deportation on a qualifying child will be "unduly harsh". The Court held in that case that the assessment of undue harshness could not be limited to factors relating to the child but should cover also the conduct and immigration history of the parents. Elias LJ believed that the reasoning in *MM* necessarily applied also to the reasonableness question under section 117B (6) (and thus also paragraph 276ADE (1) (iv)).

19. At paras. 46-49 Elias LJ discusses how, adopting the wider approach, what he refers to as "the reasonableness test" – which was, in effect, a proportionality exercise – should be applied. He starts by observing at para. 46 that the Secretary of State acknowledged

that even on the wider approach "the fact that a child has been here for seven years must be given significant weight when carrying out the proportionality exercise"; and he refers to a passage from the then current Immigration Directorate Instruction ("IDI") saying that once the seven years' residence requirement was satisfied there needed to be "strong reasons" why it was reasonable to expect a child to leave the United Kingdom. He goes on to explain why that is so, saying:

> "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."

At para. 48 he quotes a passage from the judgment of Christopher Clarke LJ in *EV (Philippines) v Secretary of State for the Home Department* [2014] EWCA Civ 874 which explains how a tribunal should approach the exercise of weighing the best interests of the child against the public interest in the removal of parents who have no leave to remain: I need not quote it. He continues, at para. 49:

> "Although this was not in fact a seven year case, on the wider construction of section 117B(6), the same principles would apply in such a case. 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* [emphasis supplied]."

The words which I have italicised are the basis of the Appellant's case on ground 1, but they must be read also with what Elias LJ says at para. 46, including the IDI's reference to "strong reasons".

KO (NIGERIA)

20. Two of the cases which were before the Court in *MA* were *NS (Sri Lanka)* and *AR (Sri Lanka).* NS and AR appealed to the Supreme Court. The relevant provision in their case was section 117B (6): each had qualifying children. Another of the *MA* cases was *Pereira,* in which the appellant was (at the material time) a qualifying child and whose case accordingly raised the reasonableness question in the context of paragraph 276ADE (1) (iv). He also appealed. Those appeals were heard with two others (one of which was *KO (Nigeria)*) which concerned the related issue under section 117C (5). The judgment in all five cases is reported under the name of *KO (Nigeria)*. Lord Carnwath delivered the only judgment. I can summarise the parts which are relevant to the issue in this appeal as follows.

21. Paras. 1-11 are introductory. Among other things, Lord Carnwath explains the history of the rule in paragraph 276ADE (1) (iv). As part of that history he refers to the decision of the Upper Tribunal, comprising the then President, McCloskey J, and Upper Tribunal Judge Bruce, in *PD (Sri Lanka) v Secretary of State for the Home Department* [2016] UKUT 108 (IAC), and says, at para. 10:

> "The President … cited … relevant guidance contained in an Immigration Directorate Instruction ('IDI') of the Home Office entitled 'Family Life (as a partner or parent) and Private Life: Ten Year Routes', published in August 2015, extracts of which were appended to the judgment … . They included a section headed 'Would it be unreasonable to expect a non-British citizen child to leave the UK?', under which were set out a number of 'relevant considerations', such as risk to the child's health, family ties in the UK and the likelihood of integration into life in another country and:
>
> 'b. Whether the child would be leaving the UK with their parent(s)
>
> It is generally the case that it is in a child's best interests to remain with their parent(s). Unless special factors apply, it will generally be reasonable to expect a child to leave the UK with their parent(s), particularly if the parent(s) have no right to remain in the UK.'
>
> There was no reference in the list to the criminality or immigration record of the parents as a relevant factor."

(The IDI from which the Upper Tribunal quotes in that passage is in fact the same as Elias LJ refers to in *MA* though the references are to different passages.)

22. Paras. 12-32 are headed "Interpretation", and paras. 12-15 have the sub-heading "General Approach". At para. 14 of his judgment Lord Carnwath observes how unsatisfactory it is that the provisions of Part 5A have provoked such disagreement both in the Upper Tribunal and in the Court of Appeal. The reference is not only to Elias LJ's disagreement in *MA* with the reasoning in *MM (Uganda)*: there had also been divergences of opinion in the Upper Tribunal and this Court about the meaning of section 117C (5). He continues:

> "Rather than attempt a detailed analysis of all these impressive but conflicting judgments, I hope I will be forgiven for attempting a simpler and more direct approach."

At para. 15 he says that he starts with the presumption that the provisions of Part 5A must be intended to be "consistent with the general principles relating to the 'best interests' of children".

23. Lord Carnwath then turns, at paras. 16-19, to consider the interpretation of paragraph 276ADE (1) (iv) and section 117B (6). I take first paras. 16-17, which read:

> "16. It is natural to begin with the first in time, that is paragraph 276ADE(1)(iv). This paragraph is directed solely to the position of the child. Unlike its predecessor DP5/96 it contains no requirement to

> consider the criminality or misconduct of a parent as a balancing factor. It is impossible in my view to read it as importing such a requirement by implication.
>
> 17. As has been seen, section 117B(6) incorporated the substance of the rule without material change, but this time in the context of the right of the parent to remain. I would infer that it was intended to have the same effect. The question again is what is 'reasonable' for the child. As Elias LJ said in [*MA (Pakistan)*] para 36, there is nothing in the subsection to import a reference to the conduct of the parent. Section 117B sets out a number of factors relating to those seeking leave to enter or remain, but criminality is not one of them. Subsection 117B(6) is on its face free-standing, the only qualification being that the person relying on it is not liable to deportation. The list of relevant factors set out in the IDI guidance (para 10 above) seems to me wholly appropriate and sound in law, in the context of section 117B(6) as of paragraph 276ADE(1)(iv)."

24. What Lord Carnwath holds in those paragraphs is:

(a) that, as already noted, the reasonableness question must be approached in the same way under both paragraph 276ADE (1) (iv) and section 117B (6); and

(2) that, agreeing with Elias LJ's preferred narrower approach in *MA* and over-ruling *MM (Uganda)*, both provisions are concerned only with "what is 'reasonable' for the child", and accordingly that the conduct of the parents is irrelevant.

25. That much is not controversial. I turn to paras. 18-19, which read:

> "18. On the other hand, as the IDI guidance acknowledges, it seems to me inevitably relevant in both contexts 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. To that extent the record of the parents may become indirectly material, if it leads to their ceasing to have a right to remain here, and having to leave. It is only if, even on that hypothesis, it would not be reasonable for the child to leave that the provision may give the parents a right to remain. The point was well-expressed by Lord Boyd in *SA (Bangladesh) v Secretary of State for the Home Department* 2017 SLT 1245, [2017] ScotCS CSOH 117:
>
> > '22. In my opinion before one embarks on an assessment of whether it is reasonable to expect the child to leave the UK one has to address the question, "Why would the child be expected to leave the United Kingdom?" In a case such as this there can only be one answer: "because the parents have no right to remain in the UK". To approach the question in any other way strips away the context in which the assessment of reasonableness is being made …'
>
> 19. He noted (para 21) that Lewison LJ had made a similar point in considering the 'best interests' of children in the context of section 55 of the Borders, Citizenship and Immigration Act 2009 in *EV*

> *(Philippines) v Secretary of State for the Home Department* [2014] EWCA Civ 874, para 58:
>
> > '58. In my judgment, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then 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?'
>
> To the extent that Elias LJ may have suggested otherwise in *MA (Pakistan)* para 40, I would respectfully disagree. There is nothing in the section to suggest that 'reasonableness' is to be considered otherwise than in the real world in which the children find themselves."

The reference at the start of para. 18 to "the IDI guidance" is evidently to the passage quoted at para. 10 of the judgment (see para. 21 above).

26. So far as the structure of the judgment is concerned, paras. 18-19 are a qualification to paras. 16-17: that is why they start "on the other hand". At the risk of spelling it out over-laboriously, Lord Carnwath's point is that, notwithstanding his conclusion that the parents' conduct is not material as such, to the extent that it has led to their not having leave to remain it will still have been "indirectly" material to the reasonableness question because:

(a) the reasonableness question has to be considered on the "hypothesis" that the parents will have to leave (that is the so-called "real world" point supported by the citation of *SA (Bangladesh)* and *EV (Philippines)*), and

(b) "it will normally be reasonable for a child to be with [their parents]".

27. For the purpose of the specific point that Lord Carnwath was making in para. 18 it was only necessary for him to establish that the fact that the parents had no leave to remain *could* affect the outcome, not that it normally would; and I note that "element (b)" in his reasoning is expressed in terms of it normally being reasonable for a child to *be* with their parents, not of it normally being reasonable for him or her to *leave* with them. However I do not think that it would be right to read his judgment in so limited a sense. It is important to see also how Lord Carnwath expressed his conclusion in *NS* and *AR*, which were the two cases that involved section 117B (6). At para. 51 of his judgment he says:

> "[The Judge] correctly directed himself as to the wording of the subsection. The parents' conduct was relevant in that it meant that they had to leave the country. As I have explained (para 18 above), it was in that context that it had to be considered whether it was reasonable for the children to leave with them. Their best interests would have been for the whole family to remain here. But *in a context where the parents had to leave, the natural expectation would be that the*

> *children would go with them,* and there was nothing in the evidence reviewed by the judge to suggest that that would be other than reasonable [emphasis supplied]."

The italicised words show that Lord Carnwath was taking as his starting-point the "natural expectation" that a child would go with the parents, subject of course to evidence showing that it would not be reasonable for him or her to be expected to do so. His reference to the IDI (see the start of para. 18) is to broadly the same effect, since that says that "it will generally be reasonable to expect a child to leave the UK with their parent(s)".

28. The upshot is that the effect of Lord Carnwath's reasoning in *KO (Nigeria)* is that, even on the narrower approach, in a case falling under the seven-year provision where neither parent has leave to remain the starting-point for a decision-maker is the common-sense proposition that it will be reasonable to expect the qualifying child to leave the UK with their parents. That is necessarily inconsistent with the so-called "powerful reasons doctrine" apparently endorsed by Elias LJ in *MA (Pakistan).* Although Lord Carnwath does not specifically spell that out, that is unsurprising since he had in para. 14 of his judgment made it clear that he was going to side-step detailed commentary on the earlier case-law and propose a more straightforward approach.

CONCLUSION

29. It follows from that analysis that the Upper Tribunal Judge was right to reject the submission that "the powerful reasons doctrine" remained good law: to put it more plainly, the seven-year provision does not create a presumption in favour of a seven-year child, and thus their parents, being granted leave to remain. Accordingly, ground 1 of the appeal must fail.

30. It is important, however, to emphasise that the approach approved by Lord Carnwath in *KO (Nigeria)* does not provide for a presumption in the opposite direction. It represents no more than a common-sense starting-point, adopted for the reasons given at paras. 18-19 of his judgment. It remains necessary in every case to evaluate all the circumstances in order to establish whether it would be reasonable to expect the child to leave the UK, with his or her parents. If the conclusion of the evaluation is that this would not be reasonable, then the "hypothesis" that the parents will be leaving has to be abandoned and the family as a whole will be entitled to leave to remain. (To spell it out: in the case of a qualifying child that will be under paragraph 276ADE (1); in the case of the parents it will be under article 8, applying section 117B (6); and in the case of any non-qualifying child it will derive from the fact that the parents have leave.) Ms Masood made it clear that the Secretary of State acknowledged that in that evaluation the fact that the child had been in the UK for more than seven years would be a material consideration.

31. Mrs Harvey asked what, if this approach was correct, the seven-year provision added to the proportionality exercise which would in any case be necessary: if the effect of passing the seven-year milestone is not to create some kind of presumption against removal what is its significance? I was initially troubled by this question; but Ms Masood submitted that it fails to take into account the fact that the seven-year provision is, as it is put in *Runa* (see para. 12 (2) above), a one-way provision which, if it is satisfied, definitively answers the public interest question in favour of the child (and his

or her parents) without the need to undertake a general proportionality exercise. That means that other considerations weighing in favour of removal (such as the conduct of the parents) are excluded, as the endorsement in *KO (Nigeria)* of the "narrower approach" confirms. It is true that that benefit may be rather watered down by Lord Carnwath's further observations as discussed at paras. 25-28 above, but it is certainly not eliminated.

GROUND 2

32. Ground 2 is not in truth separate from ground 1, being in substance that on the facts of the case if the Upper Tribunal Judge had applied the "powerful reasons doctrine" he would have had to allow the appeal. My conclusion that there is no such doctrine means that that question does not arise.

33. I should make clear, so that the Appellants do not think that I am unaware of the point, that it was their case in the First-tier Tribunal that the return of the family to Bangladesh would cause difficulties and disruption for the children, and particularly for YS, who has some medical problems. But the conclusion of both tribunals was that those difficulties were not such that it would be unreasonable to expect YS to return or to render his removal otherwise disproportionate. Those conclusions are not challenged except on the specific basis of ground 1 and I need say nothing more about them.

GROUND 3

34. Ground 3 is expressed as being that the Upper Tribunal Judge in his evaluation "double-counted" the fact that YS's parents had no leave to remain because he deploys it at two stages – at para. 21 of his Reasons, where he is considering what is in the best interests of the children, and at para. 25 where he identifies "the real world context".

35. Mrs Harvey did not develop the point in her oral submissions beyond what appeared in her skeleton argument, and I do not believe there is anything in it. I can see no objectionable element of double-counting in the Judge's reasoning. There is nothing wrong in principle in the same factor being taken into account at more than one stage of the analysis if it is relevant to both, and in truth the fact that the parents have no leave to remain in one way or another underlies the whole of the decision that the Judge had to take.

DISPOSAL

36. For those reasons I would dismiss the appeal. It has not been necessary for me to examine the Judge's reasoning in detail, and there are some points in it on which I am not sure that I would have expressed myself quite as he does. But in substance I believe that he made no error of law in his decision.

Singh LJ:

37. I agree.

Warby LJ:

38. I also agree.