



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/18643/2013
IA/22957/2013
IA/22954/2013
IA/22955/2013
IA/22956/2013

THE IMMIGRATION ACTS

Heard at Field House
On 7th August 2014

Determination Promulgated
On 12th Aug 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MRS C P
MR O G S
MISS E G J
MISS A B G J
MASTER L G J

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr R Bennett (Irvine Thanvi Nata Solicitors)
For the Respondent: Mr G Saunders (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Respondent with regard to a determination of the First-tier Tribunal (Judge Canavan) promulgated on 23rd April 2014. In the determination the Judge allowed the appeal on human rights

grounds in relation to four of the Appellants and under the Immigration Rules in relation to the third Appellant, E.

2. Although this appeal to the Upper Tribunal is the Secretary of State's appeal, for the sake of continuity and clarity I will continue to refer to the Secretary of State as the Respondent and the family as the Appellants.
3. The first Appellant is married to the second Appellant and the third, fourth and fifth are their three children, all of whom were born in the UK.
4. Mrs P is aged 33 and her husband 38. The three children were born in the UK in 2006 2007 and 2012 and are therefore now aged 8, 7 and 1.
5. The husband came to the UK first in 2002 as a student with leave until 2004. His wife, the first Appellant came to the UK as a visitor in 2003 and then obtained leave to remain as a student until 2005. Their visas were then extended until April 2010 when they were no longer eligible and after that they overstayed.
6. On 26th April 2013 they applied for leave to remain on Article 8 grounds. It is worth mentioning at this point that at the date of the application the first child, E, who was born in February 2006, had been in the UK for seven years. The Secretary of State refused all five applications in a decision dated 20th May 2013.
7. The Appellants appealed and thus the matter came before Judge Canavan in March 2014. On that occasion the Appellants were represented by counsel.
8. In his determination the Judge set out the history and the nature of the refusals, which as the Judge pointed out, bore little resemblance to the applications. The applications were refused because the Appellants did not meet the requirements of appendix FM or Ex.1 but the Secretary of State failed to consider whether any of the Appellants met paragraph 276ADE. It was the Appellants' argument that the eldest child E, having been born in the UK more than seven years earlier, met the requirements of paragraph 276ADE.
9. The Judge considered, as he was obliged to do, the best interests of the children and concluded in paragraph 12 that it was likely to be in their best interests to remain in the UK.
10. At paragraph 14 the Judge considered E's situation noting that she was by now eight years of age and had spent her entire life in the UK and concluded that it would not be reasonable for her to leave the UK and that she met the requirements therefore of paragraph 276ADE (1) (iv) of the Immigration Rules.
11. The Judge then went on to consider the situation with regard to the remaining four members of the family and in short found that it was unreasonable and

disproportionate for E to be required to leave the UK and given that she is reliant on her parents for all her needs, found it disproportionate to remove the rest of the family also.

12. The Secretary of State appealed that decision on the basis that there had been no consideration by the Judge of the fact that the family would be relocating as a family unit back to Bolivia and gave no consideration to that aspect when considering whether it was reasonable for E to leave the UK and also did not take account of the fact that the remaining four Appellants did not meet the requirements of the Immigration Rules.
13. The matter first came before me on 25th June 2014 for an initial hearing. It was my task then to decide whether the First-tier Tribunal had made an error of law and if so whether and to what extent the determination should be set aside. I found on that occasion that the Judge had erred in concluding, without adequate reasoning, that it would be unreasonable for E to leave the UK when she would be leaving with her entire family, none of whom had any right to be in the UK. As it was that finding which led to the appeal being allowed for E under the Immigration Rules and for the rest of the family on Article 8 grounds, I set aside the determination in its entirety. On that occasion the Home Office, having been obliged to provide a replacement Home Office Presenting Officer at the last minute, was not in a position to proceed with the rehearing and the matter was adjourned to be reheard by me on a later date.
14. Thus the matter came before me on 7th August. In accordance with a direction given in June the Appellants' representatives had filed a composite bundle and I heard evidence from both parents, both of whom had filed new witness statements.
15. I heard first from Mr S. He explained that during his time in the UK he progressed well within his job and become proficient in English. He attended training courses and gained a full UK driving licence. He gained certificates to work with London Underground as a specialist labourer and then took up employment with London Underground, primarily dealing with maintenance work on the tracks and lines. He explains how he was promoted to foreman and was highly respected by his peers and his employers. He continued with that work until his visa expired after which he was unable to work lawfully. He then says that as it became increasingly difficult for him to support his family he resorted to working illegally for cash in hand. When that still did not produce enough money he obtained a fake visa but was caught, convicted and sentenced to 6 months imprisonment.
16. He goes on to confirm that his wife gave birth to their three children in the UK and that the eldest two attend primary school in London, a school that they started in October 2013. He describes his children as outgoing, confident and happy and settled into the British way of life. He says that they speak English most of the time although

he and his wife try to speak to them in Spanish but their Spanish is basic and they cannot read or write in Spanish. English is their first language.

17. He goes on to say that he and his wife have made good friends in the UK and have become fully integrated with their church.
18. At paragraph 14 of his statement he says that if his children are sent to Bolivia they will be "horribly impacted on". He also says that it will have a big impact on himself and his wife as they have spent 12 years in the UK and will feel like strangers on return.
19. Mr S was cross-examined and he said that when he first came to the United Kingdom in 2002 the visit was partly funded by his mother and he was originally coming for six months. When asked how long he intended to be in the UK when he first came he said that he had no real intention to stay any longer than a year at first and did not really have any idea how long he would stay. Once he transferred to a student visa he said that he supported himself with a part-time job and with some of the money that he still had left. He said that before he came to the UK he had studied at university in Bolivia and had obtained a degree in Business Administration. When asked how he is supported financially now in the UK he said he was struggling to manage because he is not allowed to work but he sometimes does cash-in-hand work. He said that he earns an average of £800 a month through this work but he also said that his rent is £900 a month. He receives no public funds whatsoever and so when asked where the rest of the money comes from to support the household he said that they get support from friends to the tune of some £300 - £400 per month to cover expenses. He said that he did not know how long these friends would be willing to continue to fund the family.
20. With regard to family in Bolivia, Mr S said that he has a brother in Peru who works as a commercial airline pilot. He is his stepbrother. They have the same mother but different fathers. His brother qualified as a pilot in Bolivia. His step-father has passed away and his mother is now alone. He has no sisters.
21. As to what he means by his children being "horribly impacted on" if sent to Bolivia he said that it was because it was a different country and a different culture. The children do not speak Spanish very well. They understand it but do not speak it very well and they do not read or write Spanish. It was put to him that the children had been speaking Spanish in the corridor of the court to each other and he said that they preferred to speak English but they do speak Spanish sometimes at home. Apart from their inability to speak, read and write Spanish, he was asked whether there were any other problems about going to Bolivia and he said that it is not a secure place; that there is a lot of crime and corruption and also if they wanted to be educated he would have to register them in a school where they speak English which he would not be able to afford. Mr Saunders noted that the background evidence

suggested that the education system in Bolivia was unsatisfactory and Mr S agreed. However, he also agreed that he is a university graduate and when asked if he would be able to get a job he said that there was not really a lot of work and he knows this because he reads the news and checks the Internet looking at the economy in Bolivia.

22. As regards the children's health he said that both girls have asthma; it is allergic asthma and he said that maybe they would not be able to breathe in Bolivia and that in some parts of the country there was not a lot of oxygen.
23. Mr Saunders then referred Mr S to the report from the educational psychologist that had been submitted on their behalf today and asked if he had read it. He said that he had not really read it. He also confirmed that the children had not seen the educational psychologist.
24. Mr S was asked how long it was after they first arrived in the UK that he and his wife decided they wanted to remain and he said that it was after his wife arrived and they were having a good life; maybe a year. He was asked about why he was unable to renew his visa and he indicated that it was when the law changed to the requirement to have funds for 28 days. They could not meet the Rules. He was asked if it was therefore correct that the family decided, in 2010, that they would overstay and become dependent upon other people and he confirmed that it was and that it was while they were dependent upon other people they had their third child.
25. In re- examination he was asked again about work in Bolivia and the fact that he said he did not think he would be able to find work. He was asked what work he had done when he was in Bolivia before and he said that when he was at university some 15 years ago he worked as a cashier in a financial institution but now he is 37 years old. He also confirmed in re-examination that the family are surviving currently by a combination of his working for cash in hand and the generosity of friends.
26. I next heard from Mrs P who gave her evidence through an interpreter. She adopted her recent statement as her evidence in chief. In that statement she set out the history of her time in the UK and her husband's work history. Her statement mirrors that of her husband. With regard to her two daughters she said that when they are together or with friends they speak in English and that their Spanish is not very good and often if she speaks to them in Spanish they will not know the proper words to reply. She said her oldest daughter wants to be a doctor when she grows up and the second daughter wishes to be a teacher. Apart from one holiday when they were very young in 2007 they have never been to Bolivia. They know they have grandparents there but know nothing about the country. They believe themselves to be British. She talks about how hard it was when her husband was in prison and also talks about how the family is integrated into the community and church and how she has helped out at a local nursery and become good friends with the teacher.

27. She was cross-examined and she was asked about her studies. She said she studied through until about 2010. Initially she studied English and then she tried to study business administration but was unable to finish the course because her visa ran out and she had a very young daughter. When she was a student she said she was supported by her husband who was working but since 2010 when their visas run out her parents have been sending money in addition to her husband doing some work. She has also been working doing cleaning and childcare for friends for cash. She said that her parents sent an average of between £1,000 and £1,500 per month. She said her father is a retired doctor and her mother a retired teacher. When she was asked how they were able to send this money notwithstanding the fact that they were retired, she said that they had worked all their lives and have savings. They have been sending that money since 2010. It was put to Mrs P that if the family returned to Bolivia they could continue to help and she said she did not think that would be the case because they are grown-ups and should be reliant upon themselves and not dependent on parents.
28. She had met and married her husband in Bolivia. She was asked what her husband was doing in Bolivia and she said that he had finished his Business Administration degree and had started working for an oil company. She said his parents were a doctor and a housewife. His stepfather worked at the airport.
29. Mrs P was asked about the comment in her statement at paragraph 13 that returning the children to Bolivia would have a "terrible impact" on them. She said that the change would be enormous. She has asked them and they have said that they do not want to go other than perhaps for a holiday. They say that their life is in England; they speak Spanish but they cannot read or write it. She was asked whether there was any other reason why they could not go and she said that it was just that their entire lives are in the UK.
30. Mrs P was asked how long it took her to feel comfortable and wish to remain in the UK after she came and she said that it was from the moment she arrived. She likes the country, its structure, its politics and its culture.
31. She was then asked why, given that she and her husband had been able to adapt so quickly to life in the UK having lived until then in Bolivia, the children would not similarly be able to adapt and she said that it was very different. Bolivia is a very different country with kidnappings and deaths and criminality.
32. I asked Mrs P if it was correct, as reported in the country information that I had been given by her representatives, that teachers were paid between US\$100 and US\$300 per month. She said that was the case if you worked for the State but if you worked in a private school it could be as much as US\$2000 - US\$2500 per month. Her mother had been the director of a private school. I asked if it is fair to say that her parents

were well off and she said it was. She has a brother in Brazil who is a doctor and a sister who is in Bolivia and married to an agricultural engineer.

33. In re-examination she was asked about her parents' situation in Bolivia and in particular if they were quite wealthy whether they could support her to have a comfortable life there and she reiterated that that was not the case because she should not be dependent on her parents as she is an adult. She did agree that they could give the family support initially. When asked why it was that she wanted to stay in the UK she said that it is because she feels that she is a part of this country and that the children were born here and the family feels a part of this country. She said that in Bolivia there is very little work whereas in the UK you can better yourself. She confirmed that the family lives on what her husband earns, what she can earn and money from her parents. She said that they do not receive cash support from friends.
34. I then heard evidence from N L who used to work with Mr S when he was a foreman. He gave a glowing reference about his work and said that their friendship continued. He also suggested that he would get his job back as soon as he got a visa.
35. I then heard evidence from A P who is a teacher and a friend particularly of Mrs P. They first met through their children and have since become firm friends. She expressed the view that the children would not settle in Bolivia and that they read and write and speak English very well. The families also get together with the church. She described the children as being happy and bright, normal little girls. She was asked about the comment by the educational psychologist in her report that the children are introverted and sensitive and said that whilst they are sensitive she would not describe them as introverted. She also ventured her opinion that they should not have to leave the UK.
36. I then heard oral submissions from Mr Saunders on behalf of the Secretary of State. He identified that this case turns on the position of the two older children who were born in the UK more than seven years ago and the question to be answered is whether it is reasonable to expect them to leave. He argued that it was. He said that the parents have not got anything like a claim to remain in the UK and that they should be leaving the United Kingdom and absent any circumstances which would render removal unreasonable, the children's best interests were to go to Bolivia with their parents.
37. He referred to the evidence that had emerged at the hearing that the parents both came from prosperous and professional backgrounds. The husband has a degree and had worked, according to him in a financial institution as a student and according to his wife, after graduation for an oil company. Both were good jobs.

38. He referred to the evidence submitted about the education system in Bolivia and in particular that few people were able to complete their education; yet this family has done so and their families are in an equally privileged position, all having professional jobs. The family are clearly prosperous to the extent that Mrs P's parents could fund them to the extent of £1000 - £1500 a month. He added there is no reason why that arrangement should not continue in Bolivia. He submitted that taking the position of the family as a whole there is no hardship in return.
39. He referred to Mr S's reference to jobs being difficult to obtain in Bolivia but that clearly did not apply to those from a privileged and professional background such as this family came from. He pointed out that the family is there to support and assist them to re-establish themselves and once they have done so there is no reason why they should not be able to pay for their children's education in the same way that their own was paid for.
40. With regard to the children's situation he asked that I give little weight to the comments of the educational psychologists who has not even seen the children.
41. He referred to Mr S's claim that both girls have asthma and yet despite being asked whether there was any other reason why they could not return to Bolivia the mother failed to mention it and there was also an absence of any medical evidence that they suffer from this condition. He referred to the fact that the children speak the language and are intelligent, outgoing children and thus there is no reason why they would be unable to adapt to life in Bolivia as easily as their parents adapted to life in the UK, particularly given that they would be returning to a privileged and comfortable family situation.
42. He then referred me to the Immigration Act 2014 and in particular section 117B and submitted that it was in the public interest that this family be removed.
43. I then heard submissions from Mr Bennett. He confirmed that the main reason why it is unreasonable for this family to be removed is the long residence of the two eldest children. He said the seven-year threshold is a long established principle and that unless there are strong countervailing reasons; children who have been in the UK for that length of time should not be removed. He said that the law has introduced a "reasonableness" test but he still submitted that where children have been in the UK for more than seven years their removal is unreasonable unless there is a strong reason to do so. He submitted that in this case there are two such children which makes the presumption even stronger.
44. He referred to the children's performance at school submitting that it is clear they are at a crucial stage in their development which is apparent in the school reports and in particular in the letter from the head teacher. That letter is contained at page 95 of the bundle and confirms that the children joined the school in October 2013. They are

said to attend school regularly and to have settled in very successfully. They are said to be quiet and helpful girls who are now established into the school and have integrated positively with other children having finally made a small circle of friends. She reports that their self-confidence is increasing and they are starting to make progress and beginning to make more of a contribution to the life of the school. However, she says that this improvement was not achieved easily as both girls are very quiet and uncertain. She referred to both girls having social difficulties at their previous school and experiencing bullying which had a distressing effect on their self-esteem and progress. The head teacher said she was pleased to see that they are recovering from those problems and beginning to make progress normally as to be expected for their ages. However they both require and receive emotional and psychological support sessions from the in-house therapeutic service.

45. The head teacher goes on to say that she is concerned that if the family is returned to Bolivia the children will be damaged educationally and emotionally. She says she is aware that they have little family there because their parents have been living in the UK for 12 years. She states that neither child has ever lived in Bolivia and would have to become used to a school system very different from the one they are used to. She said she is concerned for their psychological and emotional welfare.
46. The head teacher goes on to say that in the case of a forced return she believes that both E and AB would be at a serious disadvantage both in their learning and mental health. They need support and encouragement to continue to make progress. They are both more settled, happy and have friends around them and she fears that their emotional well-being would also be compromised should they have to leave the UK.
47. This Mr Bennett indicated confirms the girls are at a crucial stage in their development and the negative impact of removal. The other documents from the school confirms that the children are kind and gentle, making good progress, growing in confidence which he pointed out contrasts with previous reports when they were not doing so well. Mr Bennett submitted it is clear from the evidence that they have made good progress and are at a crucial stage.
48. With regard to the educational psychologist's report he argued that some weight should be given to it because it is from a child psychologist and that in any event it is common sense that removing the children will have a prejudicial impact on their academic, social and emotional well-being thereby making removal unreasonable and not in their best interests. He relied in particular to paragraphs 36 of EZ (Philippines) [2014] EWCA Civ 874.
49. That paragraph states:-

“In a sense the Tribunal is concerned with how emphatic an answer falls to be given to the question: is it in the best interests of the child to remain? The longer

the child has been here, the more advanced (or critical) the stage of his education, the looser his ties with the country in question, and the more deleterious consequences of his return, the greater the weight falls into one side of the scales. If it is overwhelmingly in the child's best interests that he should not return, the need to maintain immigration control may well not tip the balance. By contrast if it is in the child's best interest to remain, but only on balance (with some factors pointing the other way); the results may be the opposite”.

50. Mr Bennett submitted that there was a very emphatic yes in this case in answer to the question of whether it is in the children's best interests to remain.
51. He accepted that there were some countervailing factors such as the fact that the parents are overstayers and father has a conviction but I should offset those against the positive contributions they have made and the father's work history of five years earning good money and the respect of his colleagues as indicated by the glowing reference letters and the evidence of his colleague. He is an honest, hard-working person who can provide for his family if allowed to remain. He also referred to how the family has integrated so well into the community and the church, again as confirmed by the letters of support and the other witness's evidence. All the supporting letters suggest that this is a decent hard-working and honest family which is held in high esteem by all who know them. The wife has undertaken voluntary work at a nursery. Overall, he said, this is a model migrant family and the scales should be tipped in their favour.

Decision

52. This case turns on one single issue and that is whether it is unreasonable for the two eldest children of this family to be expected to leave the UK. The provisions of paragraph 276ADE of the Immigration Rules is now included in the Immigration Act 2014. Section 19 of that Act inserts sections 117A to D into the Nationality, Immigration and Asylum Act 2002. It thus gives paragraph 276ADE of the Immigration Rules statutory force.
53. Section 117A requires a Tribunal which is determining whether a decision made under the Immigration Acts breaches a person's right to respect for private and family life and thus would be unlawful under section 6 of the Human Rights Act 1998 to have regard to the considerations listed in 117D (in non deport cases)
54. In this case, although the father has been convicted and served a prison sentence this is not a deportation appeal.
55. Section 117B sets out the public interest considerations applicable in all cases as being:-

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, as persons who can speak English-
 - (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons-
 - (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (4) little weight should be given to -
 - (a) a private life, or
 - (b) a relationship formed with a qualified partner,that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (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.

56. Paragraph 117D provides interpretation and in particular defines a "qualifying child" as a person under the age of 18 and who is a British citizen, or has lived in the United Kingdom for a continuous period of seven years or more.

57. It is now trite law that the best interests of a child are the primary consideration and are to be considered first. It is also trite law that a period of seven years is taken as a threshold point when longevity of residence may render removal of a child

disproportionate. However, that has been tempered both by the contents of the Immigration Rules and the 2014 Act to impose a reasonableness test and also by case law. It is not the case that seven years continuous residence is of itself the answer.

58. In terms of the seven year period itself, what is very relevant is when in the child's life the seven years occurred. It has been said that from birth to age 7 is perhaps less critical than from age 7 to 14. That is because for the first approximately four years of life a child's life centres around his family and he does not establish any meaningful life away from his immediate carers and siblings. The child only starts to acquire those with the onset of education at the age of rising five. On the other hand a child who comes to the UK at the age of seven will complete its primary education here and seven years later at the age of 14 be at a fairly critical stage of their secondary education having embarked upon courses that lead to GCSEs and thus important qualifications.
59. In this case we are talking about the first eight and seven years respectively of the children's lives and they have for the last four and three years respectively attended school and would have formed relationships beyond their immediate family both at school and church during that time. The fact that that is four years and three years respectively means they have a less established UK based private life than a child who is older.
60. The children are clearly happy and settled in their current school, although it must be said that is a recent development as they had been clearly unhappy and unsettled in their earlier school as a result of being bullied. They have therefore for the past 12 months been in a good educational environment and made some friends. That however is only of one year's duration.
61. I am told that the children have expressed a wish to remain in the UK. Given their ages, that is hardly surprising. They are not mature enough to make such a decision for themselves and are making it from a position of knowing only life in the UK and nothing about Bolivia. Their wishes and feelings therefore, while relevant, given their youth cannot be determinative. Children the world over, particularly when young go with their parents wherever their parents decide to go to work and live whether in another part of the same country or in another.
62. I note that the head teacher's comments would seem to suggest that the girls would be equally distressed if they had to move elsewhere in the UK - indeed anywhere which means a change of school.
63. The best interests of children of tender years as all three children in this case are, unless there are countervailing circumstances lie in living with their immediate family. That is the case here. It is in the best interests of all three children to live together with each other and with their parents wherever that may be. If the parents

are to be removed to Bolivia it is in the children's best interests to go with them. If the parents are in the UK then it is clearly in the children's best interests to live with them. Removing the parents from the equation altogether I find that the children's best interests would be served by preserving the status quo and remaining in the UK.

64. The best interests of the children however are not the end of the matter. Baroness Hale in ZH (Tanzania) [2011] UKSC 4 and Judges since have made clear that the best interests of children are a very important factor and are a primary consideration but they can be outweighed by other considerations. They are not, as they are in the family courts the first and paramount consideration. In the family courts the best interests of children are the determinative factor. That is not the case in this jurisdiction. It is also relevant that the children in this case are not British. British children have an entitlement to live in and enjoy the benefits of living in the country of their nationality.
65. I now turn to the countervailing factors.
66. The parents in this case have now been in the UK for a considerable period of time. On their own evidence they settled within 12 months and reached a conclusion that they wanted to stay. They started their family in the UK with all three children born here. When they could no longer extend their leave they made a quite deliberate decision to break the law and stay unlawfully. Not only did they make that decision but they have continued to take work unlawfully. Worse than that, Mr S has a criminal conviction for which he has served a six-month prison sentence. Whilst it is true that both the working illegally and criminal conviction arise out of a wish to support themselves in the UK, that only became necessary because they remained in the UK unlawfully. Had they met the Immigration Rules they would have been able to work. It is they who are responsible for the situation that they find themselves in.
67. Mr S clearly speaks good English and has been able to take up employment. I am less able to make that finding in relation to Mrs P as she gave her evidence through an interpreter and so I have no evidence of her English ability save that she says she studied English. However her ability is clearly not enough for her to feel comfortable giving evidence in it.
68. I find it is also significant that having made a deliberate decision to overstay in 2010, in 2013 a matter of weeks after the eldest child achieved the "magic age" of seven years they lodged their application to remain.
69. I am required to take into account that it is in the public interest for a person settling in the UK to be financially independent. Whilst I have some evidence that if given leave to remain Mr S would be able to work, I do not have any confirmation from the company to that effect nor do I have any confirmation of his potential earnings or whether they would exceed the amount required by the Immigration Rules for a

couple with three children. Furthermore, whilst it is true that they have not thus far claimed any public funds in terms of benefits, they are nevertheless enjoying the benefits of the NHS and the British education system to which they are not contributing.

70. The private life now relied upon by this family has been acquired in large part when they should not have been here. Indeed the youngest child was born while they were unlawfully here.
71. Without the fact of the ages of the two older children therefore the parents' application to remain on Article 8 grounds would be a hopeless case. What might tip the balance in their favour are those two daughters. As I have already indicated above they have been in the UK for 8 and 7 years respectively from birth and thus I find it is less disruptive for them to leave than to an older child who has spent 7 years here. Much has been made by both parents of the children's inability to speak Spanish. I find that the children can speak Spanish. They have been speaking Spanish in the court precincts. The mother required an interpreter and Spanish is the first language for both parents. I do not accept that as the children would have learned speech from their parents that they do not speak Spanish and indeed I find that their language of choice at home with their parents is Spanish. They have had to learn English for school in the UK and have clearly done so without difficulty. There is no reason to suppose they could not equally adapt to an education in Spanish. They are intelligent children and with the help and support of their parents could adapt quickly to a life conducted in Spanish, including learning to read and write in that language. They are still very young.
72. I attach no weight to the father's claim that the girls suffer from allergic asthma and will be unable to breathe in Bolivia. If the children did indeed suffer from this potentially life-threatening illness then I would have expected the mother to mention it. I would also expect medical evidence to confirm it.
73. I refer to the head teacher's letter and her belief of the catastrophic effect on these children if they were to be removed to Bolivia. Whilst I of course respect and accept the head teacher's expertise in her field, she is not an expert on Bolivia. It is also clear from the content of her letter that the damage to these children's psychological and emotional health was caused by the bullying they experienced at their previous school. There is no reason to suppose that will occur in a Bolivian school. It is furthermore, not the case of two children being wrested from their family to an alien environment. They will be travelling with their family to a country where they speak the language and where they have prosperous, professional and close family who can offer them help and support.
74. The educational psychologist's report I treat with utmost caution. Whilst of course I accept the author is an expert as she is an educational psychologist, not having even

met the children concerned renders her report virtually worthless, particularly as her comments on what these girls are like differ so much from both the comments of the schools, their parents and the witness who know them well.

75. I cannot accept Mr Bennett's assertion that the answer to the question referred to at paragraph 36 of EZ is an emphatic yes. These children fall a long way short of the scenario referred to therein by being at an *"advanced (or critical) the stage of his education, the looser his ties with the country in question, and the more deleterious consequences of his return"*. It cannot be said in this case that it is *"overwhelmingly in the children's' best interests that they should not return."*
76. I also cannot accept Mr Bennett's assertion that this is a *"model migrant family"*. They are in the UK illegally, have worked illegally, extended their family at a time when they have no leave and are dependant on others, Mr S has a criminal conviction sufficiently serious to warrant a term of imprisonment. Notwithstanding that they receive no benefits they are a burden on the tax payer. The adult Appellants have sought to deceive the Secretary of State and the Tribunal as to how they are supported in the UK, the circumstances that await them in Bolivia and about their children's state of health and ability to speak Spanish.
77. I therefore conclude in this case that it would not be unreasonable to expect these children to leave the UK as part of the family to a country where they have considerable family ties, where they speak the language and where both emotionally and financially they will have support from their extended family.
78. The Secretary of State's appeal to the Upper Tribunal is allowed with the result that the Appellants' appeals against the decision to remove them are dismissed.

Signed

Date 11th August 2014

Upper Tribunal Judge Martin