Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/20839/2014
IA/20809/2014
IA/20820/2014
IA/20824/2014
IA/20828/2014
IA/20832/2014
IA/20835/2014

THE IMMIGRATION ACTS

Heard at Phoenix House, Bradford	**Determination Promulgated**
On 6th November 2014	**On 13th November 2014**

Before

UPPER TRIBUNAL JUDGE COKER

Between

JAMAL ALI DAW ELFORJANI
TAHA JAMAL ELFORJANI
TASNEEM ELFORJANI
TAGWA ELFORJANI
ADIM ELFORJANI
GHAFRAN ELFORJANI
AISHA ABDULRAHMAN A MAKRM

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Marshall of NBS solicitors
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants appeal a decision of the First-tier Tribunal which dismissed their appeals against a decision by the Secretary of State refusing to grant them leave to remain in the UK on the grounds of Article 8, their length of residence and against a decision to remove them pursuant to s47 Immigration Asylum and Nationality Act 2006.

2. Permission to appeal had been sought, and permission granted, on the basis that the First-tier Tribunal judge had

   (a) failed to direct himself properly as regards paragraph 276ADE in relation to the children who had been in the UK for a period in excess of 7 years;
   (b) failed adequately to consider the situation in Libya, restricting himself to whether there was an Article 3 risk rather than as a part of the consideration under Article 8;
   (c) had failed to consider whether there were arguably good grounds for considering the appeal "outside the Rules" whereas he had considered whether there were insurmountable obstacles to the appellants' family life continuing outside the UK.
   (d) That the First-tier Tribunal judge should have considered the appeal though the prism of the Rules including EX.1. and then considered whether there existed good grounds to go outside these rules.

3. The appellants submit that when applying the law the judge should first of all have considered the reasonableness of the children's return to Libya bearing in mind the importance of the decision to the welfare of the children; that the children are the key issue (as acknowledged by the judge) and proper consideration should have been given both inside and outside the Rules.

4. In a Rule 24 response the Secretary of State opposes the appeal and although acknowledging that the judge could have "provided better signposts", submits that it is clear when read holistically that the judge appropriately directed himself and made findings consistent with the policy guidance set out in the IDIs.

5. The judge sets out the evidence and information before him. The appellants assert that the judge failed to have consideration to material matters and in particular the extensive information before him concerning the position of the children and the situation in Libya.

Background

6. The appellants are a father and mother with their five children. The principal appellant is the father and the other appellants make their application and appeal as, in essence, his dependants. The father first came to the UK as a student in 2003 utilising a visa valid until 17th February 2004 and subsequently extended until 31st October 2004. He left the UK prior to expiry of his leave to remain. He returned on 18th March 2006, again as a student, and was granted extensions of leave to remain until 30th January 2014. His wife, who had also been in the UK with her husband during the currency of his earlier leave to remain and left at the

same time as him, arrived in the UK on a visa valid from 1st April 2006 and her leave was extended in line until 30th January 2014. Of the five children three were born in Libya (in August 1999, November 2000 and March 2002). These three children accompanied their parents on each trip and were granted leave to enter and remain in line. The youngest two children were born in the UK (in November 2003 and May 2006). Of these the older of the two had leave to remain in line with the parents and left and returned with them. The youngest child has not lived anywhere other than the UK. All the children had lived in the UK for a continuous period of 7 years and 10 months on the date of application.

7. The children have all been educated in the UK, the older children to a limited extent in Libya. The father has impressive qualifications and has worked in the UK as an advisor for Npower in the UK and whilst in Libya he worked as a part time accounting teacher at a private university in Tripoli and for the National Oil Corporation.

Error of law

8. Before the First-tier Tribunal it was agreed that the issue before the judge revolved mainly around the children. There was no challenge to the evidence called on behalf of the appellants and no dispute as to the factual matrix.

9. The judge refers to the Country guidance case of AT and Others CG [2014] UKUT 318 (IAC) and to the respondent's guidance as regards travel to Libya. He finds that the appellant and his family do not fall within one of the groups identified, as being at risk and this finding is not challenge by the appellants. The finding that the father and mother have family members in Libya and that they have not suffered any loss or are at any special risk has not been challenged. The judge accepts that the children have been in the UK in excess of 7 years and that they will have put down roots and integrated into life in the UK, particularly the older children. He also finds that they have no significant experience of life in Libya and that in terms of language they use English as their first language amongst themselves and their friends. The judge refers to it being up to the respondent to decide when and if removal should take place.

10. The judge concludes that the family is close and makes a finding that there was no evidence that would suggest that

> "… subject to the current domestic situation in Libya, this family as a whole could not integrate rapidly into an appropriate community with family and be able to access their own academic needs. Indeed there is no evidence before me that that could not be the case."

11. He then goes on to conclude that

> "… there are no insurmountable obstacles to family life being conducted abroad albeit initially the situation may be difficult for the family as a whole".

12. It is difficult to see on what basis the judge has concluded that the family can be removed to Libya given that he refers to removal being subject to the current domestic situation in Libya. This is not a finding that it is proportionate to remove

the family and that it is only their choice not to leave that is preventing them from going. He does not identify what that situation is or how it impacts on the removability of the children and the family. If the situation in Libya is such that it would not be reasonable or proportionate to remove children at the date of the hearing then the appeal should have succeeded. Issues such as non removability, strife and disruption and the stage at which the children's education has reached are relevant factors that appear to have been before the judge and yet he does not appear to have taken these matters into account.

13. Although Mr Diwyncz said he could do little to defend the determination, he relied upon the Rule 24 response and submitted that when the determination was read as a whole it was apparent that the judge had considered all relevant matters.

14. I do not agree. I am satisfied that the judge erred in law. He failed to provide adequate reasons for the findings reached and in particular failed to address relevant evidence.

15. I set aside the decision and remit it to the First-tier Tribunal to be heard afresh, in accordance with the Practice Direction dated 25th September 2012 of the Immigration and Asylum Chamber First tier Tribunal and Upper Tribunal.

Conclusions:

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

I set aside the decision and remit it to the First-tier Tribunal to be heard afresh.

Consequential Directions

The appellant's to notify the First-tier Tribunal 21 days prior to the date of the hearing whether they require an interpreter and if so in which language/dialect. If such notification is not given, an interpreter will not be booked.

Date 6th November 2014

Upper Tribunal Judge Coker