Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/07391/2014
& IA/37070/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2 December 2015	**On 4 December 2015**

Before

UPPER TRIBUNAL JUDGE GILL

Between

SM **Appellant**
(ANONYMITY ORDER MADE)

And

The Secretary of State for the Home Department **Respondent**

Representation:
For the Appellant: Mr R Parkin, of Counsel, instructed by World-wide Solicitors
For the Respondent: Mr Staunton, Senior Home Office Presenting Officer

Anonymity Order
I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the child referred to herein as "L". I therefore issue an anonymity order which extends to the applicant. No report of these proceedings shall directly or indirectly identify L. This direction applies to both the applicant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND DIRECTIONS

Introduction and background facts:

1. The appellant is a national of Tunisia, born on 11 June 1995. He arrived in the UK on 20 January 2013 with entry clearance as a visitor valid until 7 July 2013. He had appealed to the First-tier Tribunal (Immigration and Asylum Chamber) ("FtT") against the following decisions of the respondent:

   i) a decision of 23 August 2013 refusing his application made in time, on 5 July 2013; and

   ii) a decision of 18 September 2014 to refuse his asylum claim made on 3 April 2014 at a time when his leave was being extended under s.3C of the Immigration Act 1971 (the "1971 Act").

   The appellant's leave remains extended under s.3C because his appeal against the decision of 23 August 2013 has not been finally determined.

2. In February 2013, the appellant met a Ms E G (hereafter "Ms G"), who is a national of Colombia. Ms G and the appellant were engaged in October 2013 and married on 30 January 2014. Ms G has indefinite leave to remain in the UK. She has a daughter ("L") who was born in the UK in August 2006 and who was 8 years old at the date of the hearing of the appellant's appeal (26 November 2014). L is a British citizen.

3. The appellant's appeals were heard on 26 November 2014 before Judge of the First-tier Tribunal Oakley, who dismissed the appeals on asylum grounds, under the Immigration Rules and on human rights grounds. The appellant sought permission to appeal to the Upper Tribunal ("UT") which was refused by the FtT. Upper Tribunal Judge Martin refused permission on the asylum grounds and in relation to Article 3. However, she granted permission to challenge the judge's assessment of Article 8, in particular, his finding that there were no insurmountable obstacles to family life continuing in Tunisia when the appellant's wife, with whom the judge accepted the appellant had a genuine and subsisting relationship, has an 8-year-old daughter who lives with her but who has a regular and ongoing relationship with her father. Judge Martin considered that this arguably created an insurmountable obstacle to the family relocating to Tunisia. Judge Martin had before her the second ground which, in essence, contended that, as L was a British citizen, it was not reasonable to require her to leave the territory of the European Union permanently. In this regard, reliance was placed upon Sanade and others (British children – Zambrano – Dereci) [2012] UKUT 00048 (IAC). The grounds contend that, by extension, it was unlawful to separate L from her mother; and that, if family life were to continue outside the UK, one of these events would have to occur.

The "error of law" hearing

4. The judge accepted that L had regular contact with her biological father and that she had a close relationship with him. Although L was living with her biological mother and had regular contact with her biological father, the judge found that it was in L's best interests to live with one of her parents (her father). It follows that he contemplated that L would cease living with her mother.

5. On 23 September 2015 (the "error of law" hearing), I heard the appellant's appeal and announced that the judge had materially erred in law and set aside the following findings:

   i) in relation to the appeal under the Immigration Rules, his finding that there were no insurmountable obstacles to family life continuing between the appellant and Ms G outside the UK and therefore that the appellant did not satisfy EX.1(b) of Appendix FM; and

   ii) in relation to the appeal outside the Immigration Rules on Article 8 grounds, his finding that it was in L's best interests for her to be with one of her biological parents and his conclusion that the decision was not disproportionate.

6. My reasons are given in my decision promulgated on 16 November 2015. I decided that the judge's error was not to be found in the appellant's grounds. In summary, I considered that the judge's finding that it was in the best interests of L to remain with one of her biological parents was illogical, since she was at the time of the hearing living with her biological mother and she had regular contact with her biological father with whom the judge found she has a close relationship. His finding that it was in L's best interests to have something markedly less than that which she was then enjoying was irrational. In effect, he did not consider her best interests. Instead, he conflated his assessment of her best interests with what he considered was reasonable.

7. At the "error of law" hearing, Mr Parkin and Mr Wilding (who appeared for the respondent) were agreed that I had sufficient information to re-make the decision on the appeal. I did not agree. My reasons are given at para 27 of the "error of law" decision. In summary, I said that I could not see how any proper assessment of the question whether there are insurmountable obstacles to family life being enjoyed in Tunisia between the appellant and Ms G could be undertaken without evidence of the impact on L of either going to Tunisia with her mother or remaining in the UK whilst her mother relocates to Tunisia.

8. At paras 28-29 of the "error of law" decision, I put the parties on notice that the parties should deal with a third option, i.e. the option of the appellant returning to Tunisia to make an entry clearance application to re-join Ms G, which the parties should deal with. I indicated that my preliminary view was that Chikwamba v Secretary of State for the Home Department [2008] UKHL 40 could be distinguished on three grounds, as follows:

   i) First, that it is by no means clear that the appellant satisfies the requirements for entry clearance as a spouse, given Ms G's earnings of approximately £13,000 per annum (para 23 of the determination of the judge).

   ii) Secondly, that the appellant does not have a parental relationship with L.

   iii) Thirdly, that L has only known the appellant for a short duration.

9. Thus it was that the resumed hearing took place before me on 2 December 2015.

The resumed hearing

10. At the commencement of the hearing, Mr Parkin informed me that the only evidence he relied upon in the bundle submitted under cover of a letter dated 25 November

2015 is the ultrasound evidence at page 18b of the bundle which relates to the unborn child of the appellant and Ms G. He requested permission to rely upon this evidence on the ground that it relates to a fact that has arisen since the hearing before the judge. Mr Staunton did not object to its admission. Mr Parkin informed me that he did not rely upon the evidence at pages 16, 17, 18a, 19a and 19b of this bundle.

11. I asked Mr Parkin to ensure that he drew my attention to any evidence in the bundle that was before the judge if it is relied upon in connection with the issues that were before me. My attention was not drawn to nay such evidence.

12. At the commencement of the hearing, Mr Parkin and Mr Staunton agreed that, in the event that it was necessary for me to consider the Article 8 claim outside the Immigration Rules, it would not be necessary for me to conduct the full five-step approach to assessing Article 8 claims as explained by Lord Bingham at para of R (Razgar) v SSHD (2004) UKHL 27; it would be sufficient for me to make any additional findings that I consider are necessary and conduct the balancing exercise in order to decide whether the decision is disproportionate.

13. In SSHD v SS (Congo) [2015] EWCA Civ 387, the Court of Appeal held that, in the consideration of an Article 8 claim of an individual who had established family life at a time when his/her immigration status was "*precarious*" (as this term is understood in Strasbourg jurisprudence, to be distinguished from the meaning of this term under s.117B of the Nationality, Immigration and Asylum Act 2002 (the "NIAA 2002"), see (AM (Malawi) [2015] UKUT 0260 IAC), the balancing exercise is to be carried out by asking whether the circumstances were exceptional in cases that do not involve children and by considering whether the circumstances were compelling in cases that do involve children.

14. By way of shorthand only, I refer to these different approaches as "tests" although, strictly speaking, they are not tests, as such: they merely describe how pressing an individual's circumstances need to be so that due weight is given to the state's interests.

15. I invited Mr Parkin and Mr Staunton to address me on the applicable test in the instant case, given that L is not the applicant's daughter and that he does not have a parental relationship with her. Mr Parkin submitted that the applicable test is that of compelling circumstances because Ms G has a parental relationship with L and therefore the decision will impact upon L. Mr Staunton submitted that the test of exceptionality applies.

16. Mr Parkin submitted that the best interests of the applicant's unborn chid must be considered. He said that there was no authority on the point.

Oral evidence

17. The appellant gave oral evidence in the English language, which he spoke fluently. An interpreter in the Arabic language was at hand to assist if he required assistance which, in the event, he did not.

18. In examination-in-chief, the appellant said he, his wife and her family could not live together in Tunisia because his life is in danger in Tunisia.

19. I intervened to stop Mr Parkin asking questions about the nature of the relationship between L and her biological father because the judge's finding that L has a close relationship with her father stands. Mr Parkin informed me that, in that event, he did not have any further questions.

20. Mr Staunton did not have any questions in cross-examination.

21. In answer to my questions, the appellant said that he could not return to Tunisia to make an entry clearance application because his life is in danger in Tunisia. He said that there were no other reasons why he could not return to Tunisia to make a entry clearance application.

22. Neither Mr Staunton nor Mr Parkin had any questions they wished to put to the appellant arising from my questions.

23. Ms G gave evidence in the English language, which she spoke very fluently. In examination-in-chief, she said that she is pregnant and that the appellant is the father of the chid she is expecting. The anticipated delivery date is 14 December 2015. She is currently on maternity leave. Before going on maternity leave, she worked at the Chocolate Factory, earning £13,000 gross a year.

24. It was put to her that the respondent had suggested that she and L could live with the appellant in Tunisia. Ms G said that she did not see herself moving to Tunisia and taking from her daughter; all that she has in the UK. Her daughter was born in the UK. She herself has lived in the UK or 20 years, since she was 7 years old. The UK is her home. She said that there was no way that she could leave her daughter behind and go to Tunisia with the appellant. Ms G said that there would be a huge impact on L of having to move to Tunisia to live. She has her friends in the UK. There was simply no way that she (Ms G) could take this away from L.

25. Mr Staunton did not have any questions in cross-examination.

26. I asked Ms G what she would decide to do in the event that the appellant had to leave the UK upon having pursued all legal avenues and failed in challenging the decision: whether she would decide to relocate to Tunisia to enjoy family life with the appellant and if so, whether she would go alone and leave L behind or whether she would take L with her; or whether she would remain in the UK with L. She said she would have to stay with her daughter in the UK.

27. Neither Mr Staunton nor Mr Parkin had any questions they wished to put to the appellant arising from my questions.

Submissions

28. Mr Staunton submitted that, in view of the evidence of Ms G that, if the appellant is removed, she would remain in the UK with L, the decision would not compel L to leave the UK and therefore no EEA law issue arises.

29. Mr Staunton referred me to the Home Office guidance on the meaning of insurmountable obstacles, set out at para 24 of Iftikhar Ahmed v SSHD [2014] EWHC 300 (Admin).

30. In relation to the Article 8 claim outside the Immigration Rules, Mr Staunton submitted that the appropriate test was that of exceptionality. He submitted that there were no exceptional circumstances in this case because the relationship between the appellant and Ms G can continue even if the appellant were removed. He could make an entry clearance application. Ms G and L can visit him in the meantime. He does not have a parental relationship with L. He submitted that the rights of an unborn child, if they fell for consideration, were limited and the Tribunal should not place significant weight upon those rights. Mr Staunton submitted that, even if the appropriate test is whether there are compelling circumstances, the decision was not disproportionate, for the same reasons. On the oral evidence of Ms G, L will continue to maintain contact with her biological parents. He submitted that s.117B(6) of the NIAA 2002 does not apply because the appellant does not have a parental relationship with L. However, he asked me to take into account the remainder of s.117B.

31. Mr Parkin relied upon his skeleton argument. In relation to the question of "*insurmountable obstacles"* under EX.1, Mr Parkin submitted that the fact that Ms G would not leave the UK in order to enjoy family life with the appellant if to do so would mean taking her daughter away from the UK was itself an insurmountable obstacle for the purposes of EX.1. Indeed, Mr Parkin submitted that the fact that Ms G would remain in the UK if the appellant were to be removed was a very significant obstacle to family life. Family life between the appellant and Ms G would effectively come to an end. The family life that is currently being enjoyed cannot be enjoyed in any country outside the UK.

32. Mr Parkin reminded me that the appellant is not an overstayer. His family life was established when his immigration status was precarious but lawful. His spouse cannot meet the income threshold for a successful application for entry clearance. Any application for entry clearance would be likely to fail or, at least could not be assumed to be successful. He submitted that this was relevant to the issue of proportionality because it is goes to the question whether the separation will be short term or long term. He reminded me that the Court of Appeal in MF (Nigeria) v SSHD [2013] EWCA Civ 1192 had indicated that the test of *"insurmountable obstacles"* is wrong.

Assessment

33. I agree with Mr Staunton that, in view of Ms G's evidence that, if the appellant had the leave the UK, she would remain in the UK with her daughter, no EEA law point arises because L would not be compelled to leave the UK, whatever the position as to whether she could stay with he biological father.

34. The judge's findings and reasoning are at paras 51-59 of his decision, which were set out in my "error of law" decision. There is no need to repeat them but his findings continue to apply, except those findings which have been set aside and which are set out at my para 5 above.

35. I will first decide whether the appellant satisfies the requirements of EX.1(b). EX.1 and Ex.2 of Appendix FM which provide:

> **EX.1.** This paragraph applies if
>
> (a) (i) the applicant has a genuine and subsisting parental relationship with a child who-
>
> (aa) is under the age of 18 years, or was under the age of 18 years when the applicant was first granted leave on the basis that this paragraph applied;
>
> (bb) is in the UK;
>
> (cc) is a British Citizen or has lived in the UK continuously for at least the 7 years immediately preceding the date of application; and
>
> (ii) it would not be reasonable to expect the child to leave the UK; or
>
> (b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK.
>
> **EX.2.** For the purposes of paragraph EX.1.(b) "insurmountable obstacles" means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.

36. It is plain, from paras 47-49 of the remarks in *obiter* of the Court of Appeal's judgment in MF (Nigeria) that a higher threshold applies in relation to *"insurmountable obstacles"* than the approach which applies in Article 8 cases according to domestic and Strasbourg jurisprudence. This issue was specifically considered by Sales J (as he then was) in R (on the application of Nagre) v SSHD [2013] EWHC 720 (Admin) at paras 38-43. At para 43, Sales J said that, in cases not involving children where family life is established whilst a person's immigration status is precarious, the gap between the test of *"insurmountable obstacles"* under EX.1(b) and the result that one would arrive at by direct consideration of Article 8 is likely to be small.

37. In Mahad [2009] UKSC 16, the Supreme Court held that the Immigration Rules were not to be construed strictly but sensibly in accordance with the normal meaning of the words used; the question was what the Secretary of State must have intended when she formulated the Rules. In my view, the interpretation of the requirement *"insurmountable obstacles"* is not to be informed by the existence of any gap between "*insurmountable obstacles*" under EX.1(b) and the result that is obtained by following the approach that applies in Article 8 cases according to domestic and Strasbourg jurisprudence. The Secretary of State is entitled to apply a more stringent test for those who are granted leave to remain under the Immigration Rules than those who are granted leave on the basis of Article 8 outside the Immigration Rules.

38. However, even if I am wrong about this, the issue is entirely academic in this particular case for the following reasons:

i) When asked why he could not live in Tunisia with his wife and family, the appellant said that it was because his life was in danger in Tunisia. However, his asylum claim was rejected by the judge and he was refused permission to appeal that part of the judge's decision. The appellant gave no other reasons for not being able to enjoy family life in Tunisia.

ii) In any event, the need to assess whether there are insurmountable obstacles to family life being enjoyed in Tunisia was rendered academic by Ms G's oral evidence before me. She said in oral evidence, that, if all legal avenues for challenging the decision failed and the appellant had to leave the UK so that she is faced with having to decide whether to leave the UK to live with the appellant outside the UK with L or without L or whether to remain in the UK with L and face being separated from the appellant, she said that she would decide to remain in the UK with L. I accept her evidence and I find accordingly.

iii) In the light of that evidence, Mr Parkin submitted that the fact that Ms G would decide to remain in the UK with L and be separated from the appellant was itself an "*insurmountable obstacle*". I reject this submission without hesitation. Whatever meaning is given to the phrase "*insurmountable obstacles*" when one assesses obstacles that are external to the individual's own choice or decision, I am certain that an individual's decision to remain in the UK cannot itself amount to an *"insurmountable obstacle"*. Such an interpretation would make a nonsense of the requirement to show insurmountable obstacles and open EX.1(b) to potential abuse.

iv) It follows that neither the appellant nor Ms G gave any evidence of there being any insurmountable obstacles to family life continuing with each other outside the UK.

39. Accordingly, I find that the appellant does not satisfy the requirements of EX.1(b). I therefore dismiss his appeals under the Immigration Rules.

40. Before I turn to consider the Article 8 claim outside the Immigration Rules, it is necessary for me to draw attention to the fact that the judge did not deal with EX.1(a). Para 7 of the grounds quoted s.117B(6) of the NIAA 2002 but the argument advanced at para 8 of the grounds concerned the separation of L from her mother. The grounds did not challenge the fact that the judge did not decide whether the appellant satisfied EX.1(a). It was the appellant's case before the judge that it would be unreasonable to expect L to leave the UK. It follows that it was not suggested to the judge that the appellant had a parental relationship with L.

41. At the "error of law" hearing, Mr Wilding submitted that EX.1(a) could not apply because the exception in EX.1(a) could only apply if a person has a parental relationship with a child. He drew my attention to the fact that the judge had not made a finding that the appellant enjoyed a parental relationship with L.

42. At the "error of law" hearing, Mr Parkin did not take issue with Mr Wilding's submission that, where a child enjoys family life with its biological parents, it would be virtually impossible to show that the child also enjoyed a parental relationship with a third person; that the judge did not find that the appellant enjoyed a parental relationship with L; and that, for these reasons, EX.1(a) could not apply. At the "error of law" hearing, Mr Parkin's challenge under the Immigration Rules was confined to

the judge's finding that there were no insurmountable obstacles to family life between the appellant and Ms G continuing in Tunisia, i.e. EX.1(b).

43. It follows that it was not the appellant's case before the judge that he has a parental relationship with L. This was not in his grounds nor was it part of his case at the "error of law" hearing. This notwithstanding the evidence of Ms G in her witness statement, that the appellant played a vital role in L's upbringing and that L considered him like her father. I therefore decide the claim outside the Immigration Rules on the basis that it is not the appellant's case that he has a parental relationship with L.

44. In any event, I find that he does not have a parental relationship with L. Her biological parents enjoy a parental relationship with her. It would be unusual for a child to have a parental relationship with a third person. When I asked her what she would do if the appellant had to depart the UK, whether she would leave with him and, if so, whether she would do so with L or without L, or whether she would remain in the UK, Ms G said she would have to remain with her daughter without saying that she would need to discuss the matter with the appellant. It is plain that the appellant does not have any input in the making of any important decisions that concern L and there was no evidence of him having any real input into her life such as would be consistent with an person enjoying a parental relationship with a child. It was not suggested to me at any stage that he enjoys a parental relationship with L.

45. I turn to consider Article 8 outside the Immigration Rules.

46. I will first consider the submissions as to the applicable test. The appellant is not an overstayer. Although there is a distinction between immigration status that is unlawful and immigration status that is precarious for the purposes of s.117B of the NIAA 2002 (AM (Malawi)), the term *"precarious"* in Strasbourg jurisprudence relates to anyone whose presence is unlawful or who has a limit on the period of their stay in the country in question. The appellant entered the UK with leave as a visitor for six months. Since then, his leave has been extended under s.3C of the 1971 Act. Since the extension is of the original leave, the extended leave is leave as a visitor. It is undoubtedly the case that his immigration status has always been precarious, as that term is understood in Strasbourg jurisprudence. This was not in issue before me.

47. The answer to the question as to whether the test should be one of exceptionality or of compelling circumstances depends on whether this is a case which involves children either on account of L or the unborn child or both.

48. In my judgement, the rationale for applying the less stringent test of compelling circumstances in cases involving children applies only where the claimant has a parental relationship with a child. Where there is a parental relationship, this will always amount to family life. However, the converse is not true. A child can enjoy family life with the partner of a biological parent without that partner having a parental relationship with the child.

49. It is because of the existence of a parental relationship that the state's interests carry less weight and the child's greater weight so that compelling circumstances will suffice. Where there is no such parental relationship, the test of exceptionality applies. This is so whether the relationship that is short of a parental relationship

amounts to family life or not or whether it is part of the private lives of the adult and the child or children.

50. Given that the appellant does not have a parental relationship with L, I do not accept that this is a precarious family life case that involves children on account of L. Nor does the fact that Ms G is pregnant and due to give birth shortly make this a case in which the compelling circumstances test should be applied precisely because the child is not yet born. Thus, in my judgement, the applicable test is that of exceptionality.

51. I find that the relationship between the appellant and L does not amount to family life (this was not suggested). Whilst L has only known the appellant for a short duration, the fact that the relationship is being enjoyed within the context of a stable relationship between her mother and her mother's partner means that the relationship between the appellant and L represents part of the appellant's and L's private life. I find accordingly.

52. Beoku-Betts [2008] UKHL 39 does not apply until and unless family life is found to exist (Etti-Adegbola v SSHD [2009] EWCA Civ 1319). Since family life is being enjoyed between the appellant and Ms G, her human rights fall to be considered in line with Beoku-Betts. However, I have taken into account L's human rights as concerns the impact on L's private life of being separated from the appellant.

53. Mr Parkin submitted that the best interests of the appellant's unborn child must be considered. He said that there was no authority on the point. I do not accept that the best interests of an unborn child fall to be considered in immigration cases. My decision and reason are as brief as was Mr Parkin's submission on the point.

54. Mr Parkin submitted that the fact that Ms G cannot satisfy the income threshold means that, if the appellant were to return to Tunisia to make an entry clearance application, the separation will effectively be permanent. In effect, he was asking me to take into account the likely outcome of any application for entry clearance. However, if the income threshold is not satisfied, the appellant can apply to be granted entry clearance exceptionally outside the Immigration Rules on the basis of Article 8. There is no reason to pre-suppose that any decision made on such an application will be in breach of Article 8. Even if the application is refused, he will have a right to appeal.

55. Furthermore, in SB (Bangladesh) v SSHD [2007] EWCA Civ 28 the Court of Appeal held, in essence, that an article 8 claim of a person resisting removal is not made weaker by strong prospects of success in a subsequent application for entry clearance; nor is it made stronger by weak prospects in such an application. The court held that that it would be proper for the Tribunal to exclude the prospects of success altogether when assessing the proportionality of removal. This reasoning was confirmed by the Court of Appeal in HC (Jamaica) v SSHD [2008] EWCA Civ 371 and in SZ (Zimbabwe) [2009] EWCA 590.

56. I therefore exclude from my consideration of the appellant's Article 8 claim outside the Immigration Rules the likelihood of an application for entry clearance being successful or unsuccessful. During the period that any entry clearance application is

made, Ms G and L will be able to visit him in Tunisia. They will also be able to maintain contact by telephone, email and Skype.

57. If the appellant leaves the UK, this will have no impact on the circumstances which are currently in place and which currently secure L's best interests. The only impact on L will be on her private life, that she will lose face-to-face daily contact with her step-father, with whom she does not enjoy a parental relationship or family life and who she has only known since February 2013 when the appellant and Ms G met, i.e. a period of 2 ½ years. L is now 9 years 8 months old. I accept that Ms G will be upset. However, she is plainly devoted to L and I find that Ms G being upset on account of being separated from the appellant will not have any impact on L. In all of the circumstances, I find that the impact on L will be minimal.

58. The appellant's departure from the United Kingdom will interfere with the family life that is being enjoyed between the appellant and Ms G. Ms G will be without the appellant during this last phase of her pregnancy. Set against these considerations is the fact that the appellant and Ms G established their family life in the full knowledge that the appellant's immigration status is precarious. They had a child together knowing that he had lost his previous appeal. They could not have been assured of a successful outcome to his application for permission to appeal to the Upper Tribunal or his appeal to the Upper Tribunal.

59. Section 117B sets out a list of factors that must be taken into account. Section 117B(2) is in the appellant's favour as he speaks English fluently. However, this does not give him a positive right to remain (AM (Malawi)), although it is a consideration in the balancing exercise. His private life established in the UK whilst he has been present as a visitor carries little weight (S.117B(5)).

60. On the whole of the evidence, and having given such weight as I consider appropriate to each of the factors for and against the appellant and to the state's interests in the balancing exercise, I have concluded that the decision would not disproportionately interfere with the protected rights of the appellant, Ms G or L whether the applicable test is that of exceptionality or the less stringent one of compelling circumstances.

61. I therefore dismiss the appeals on human rights grounds.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that it was set aside. I re-make the decision by dismissing the appeals on asylum grounds, immigration grounds and on human rights grounds.

Signed Date: 4 December 2015
Upper Tribunal Judge Gill