Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: IA/11216/2014**
IA/11217/2014
IA/11218/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 2 December 2015	**On 16 December 2015**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PW
IC
TS
(ANONYMITY DIRECTIONS MADE)

Respondent

Representation:
For the appellant: Ms Brockesby-Weller, Senior Home Office Presenting Officer
For the respondents: Mr Adawa-Adams, Counsel

DECISION AND REASONS

1. The appellant ('the SSHD') appeals against a decision of First-tier Tribunal (FTT) dated 5 June 2015 in which the respondents' appeals were allowed under Article 8 of the ECHR.

2. I have made an anonymity order because this decision refers to the circumstances of the third respondent, T. She is the minor child of the first and second respondents.

Background

3. The FTT concluded that expecting the Respondents to reside in Jamaica would be a disproportionate breach of Article 8 of the ECHR on the basis that it would not be reasonable to expect T to reside there.

4. The SSHD appealed against this decision. Permission was granted on the basis that it was considered arguable that the FTT may have made a material error of law in failing to consider sections 117A and 117B of the Nationality, Immigration and Asylum Act 2002 as amended by section 19 of the Immigration Act 2014 ('the 2002 Act').

5. The matter now comes before me to decide whether or not the decision contains an error of law.

Hearing

6. Ms Brocklesby-Weller relied upon the SSHD's grounds of appeal. She submitted that the FTT erroneously failed to pay proper regard to section 117B of the 2002 Act and failed to give sufficient reasons for finding that it would not be reasonable to expect T to reside in Jamaica. Ms Brocklesby-Weller acknowledged that as at the date of the hearing before me T was a 'qualifying child' and section 117B(6) was potentially applicable to her if a decision was to be remade. She therefore accepted that in order for the errors of law she identified to be material I needed to be satisfied that the FTT erred in law in its approach to the question of whether it would be reasonable to expect T to reside in Jamaica.

7. Mr Adawa-Adam asked me to find that the FTT considered section 117B and was entitled to conclude that it would be unreasonable to expect T to reside in Jamiaca, for the reasons provided.

8. At the end of the hearing I reserved my decision, which I now provide with reasons.

Error of law

Section 117B

9. I wholly accept that the effect of section 117A(2)(a) is that the Tribunal must have regard to everything contained in section 117B – see Forman (Sections 117A-C considerations) [2015]

UKUT 00412. The SSHD submits that the FTT failed to do this but it is submitted on behalf of the respondents that this was adequately done.

10. The FTT expressly directed itself to the 2002 Act. Judge Morgan said [16]:

> "I have had regard to Part 5A of section 19 of the Immigration Act 2014. I have given considerable weight to the public interest question. Most of the factors within 117 weigh against the family…"

11. I accept that the judge has not addressed each of the six matters set out in section 117B. The real issue is whether he has had regard to the relevant matters in section 117B. The judge was clearly aware of the first and second respondent's poor immigration history and the need to maintain effective immigration controls as being in the public interest – see [16] and [21-22]. He has therefore adequately taken into account section 117B(1).

12. Although the judge has not specifically referred to the respondents' ability to speak English this factor favoured the respondents and it therefore cannot be said that the failure to take into account section 117B(2) was a material error of law. The respondents are not financially independent and this is a factor that went against the family that the judge should have taken into account. The judge was however well aware that most of the factors within section 117B weighed against the family, and must have considered this matter to be one alongside the immigration history. I do not regard the judge's failure to expressly refer to section 117B(3) to be a material error of law.

13. I now turn to sections 117(4) and (5). Although the judge has not referred to these it is clear that the judge gave very little weight to the private life of the first and second respondents. The judge has made it very clear that *"but for the daughter it would be self-evident that the decision to remove is proportionate…"* [18].

14. Section 117(6) was not relevant when the judge considered the matter because T was not a qualifying child.

15. It follows from the above analysis that whilst the judge could have approached sections 117A and 117B in a clearer and more comprehensive manner, he has adequately addressed those considerations relevant to this particular case. As observed in AM (S 117B) Malawi [2015] UKUT 0260 (IAC) at [8-12] the statutory duty to consider the matters set out in section 117B is satisfied if the FTT's decision shows that it has had regard to such parts of it as are relevant. I am satisfied that this FTT has

demonstrated that the relevant statutory provisions have been taken into account and applied in substance, if not in form.

Reasonableness

16. I now turn to the second submission focussed upon by Ms Brocklesby-Weller. She argued that the FTT has not adequately reasoned why it would not be reasonable to expect T to live in Jamaica. As a starting point it is useful to note that Ms Brocklesby-Weller did not submit that the FTT misdirected itself or applied the wrong test. She was right to do so. The judge accurately directed himself to the ultimate question in a case such as this where Article 8 is to be considered: is it reasonable to expect the child to follow her parents with no right to remain to their country of origin, Jamaica? This self-direction is consistent with the approach recommended in EV (Philppines) v SSHD [2014] EWCA Civ 874 at [58].

17. I accept that the judge has not set out detailed reasons for his view that it would be unreasonable to expect T to reside in Jamaica but when the decision is read as a whole the reasoning is adequate. I do not accept the submission on behalf of the SSHD that the judge has used T's education as a trump card. The judge regarded the facts as "exceptional". Whilst the judge was clearly influenced by the fact that T is well-settled in the education system, this was not the only or determinative factor. The judge also took into account the length of time T had been in the UK and that this was during her "critical, formative years". He also considered that she would face difficulty in adapting to life in Jamaica. I agree with the SSHD that the fact that T does not speak a dialect local to Jamaica is unlikely to present great difficulty as English is spoken in Jamaica. It is important to note that the judge has done no more than accept that T does not speak a Jamaican dialect. His finding that she would face difficulty in adapting to life in Jamaica appears to be predicated not upon that factor but the fact that all her ties to date and her early childhood development has taken place in the UK [19]. T after all was born in the UK and has never lived in Jamaica, even though her parents are both Jamaican.

18. Importantly the judge identified a further and rather exceptional factor "in the daughter's favour" [20]: the fact that T's two brothers were shot dead in Jamaica. The judge could have explained this more clearly but when the decision is read as a whole it is sufficiently clear that the judge regarded this as an additional factor supporting his view that it would be unreasonable for T to live in Jamaica with her parents. The judge was entitled to regard this as a relevant factor. The judge accepted that T's two brothers were shot dead in Jamaica. This would inevitably lead to feelings of insecurity and anxiety for the

family in Jamaica, with inevitable consequences upon T. There was also evidence available to the judge that T's only living brother and grandmother were in hiding in Jamaica.

19. Finally, whilst the judge observed that the delay on the part of the SSHD permitted the respondents and in particular T to establish lengthy residence in the UK [18], the judge has not used this as a reason to support his overall conclusion. The judge was well aware that the respondents could and should have made a voluntary departure as he clearly found their immigration history to weigh against them.

Decision

20. The decision of the First-tier Tribunal does not contain an error of law and I do not set it aside.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
4 December 2015