Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/51052/2013
IA/51097/2013
IA/51113/2013
IA/51119/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 June 2015	**On 15 June 2015**

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE ARCHER

Between:

SAJMIR MATOSHI	**First Appellant**
BLERINA MATOSHI	**Second Appellant**
ALESIA MATOSHI	**Third Appellant**
EVEREST MATOSHI	**Fourth Appellant**

(Anonymity Direction Not Made)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr P Nathan, Counsel instructed by Kilby Jones Solicitors LLP
For the Respondent: Ms S Vidyadharan, Home Office Presenting Officer

DECISION AND REASONS

1. Although the appeal touches on the welfare of children it does so in only the most general terms and we see no reason to, and do not make, an order restricting publication of the details of this case.

2. This is an appeal by members of a family against a decision of the First-tier Tribunal to dismiss their appeals against the decision of the Secretary of State refusing them leave to remain in the United Kingdom on human rights grounds. In simple terms they are citizens of Albania. The first two appellants are married to each other and have been in the United Kingdom for some time. They have exercised degrees of pretence and discreditable behaviour in the means used to establish themselves in the United Kingdom although, as far as can be seen on the papers before us, they have lived industriously once they had arrived. It might be thought that there is a strong public interest in their removal.

3. The children however are in an entirely different position. They are obviously innocent to any shenanigans on the part of their parents. They were born respectively in September 2006 and December 2008 and so have been in the United Kingdom for long enough to start to establish significant private and family life outside the home. There is evidence in the case of the older child, the third appellant, that she is doing very well at school and generally behaving in a way that is wholly to her credit and about which her parents ought to have proper pride. The point is that this is a case where the rights of the children suggest a very different outcome from the rights of the parents and therefore particular attention to their needs is merited.

4. There is a difficulty in the case which did not really emerge until the start of the hearing before us although it is there on the papers for anyone who troubles to see it. The respondent appears to have ignored completely her obligations under section 55 of the Borders, Citizenship and Immigration Act 2009 to consider the interests of the children when she made the decision that is subject to appeal. Considering their interests is a statutory obligation. The respondent is required to make their rights a primary consideration. This is not a case where there is simple failure to mention the statute. There is nothing in the papers to suggest that that obligation has been given any thought whatsoever.

5. When this was pointed out Ms Vidyadharan took an opportunity to take instructions. She then accepted that the respondent's decision is unlawful because of the respondent's total failure to show that she had regard to her section 55 obligations. It followed that the best course is for the Upper Tribunal to set aside the decision of the First-tier Tribunal and substitute a decision ruling that the respondent's decision is not in accordance with the law. The respondent must now make a proper decision in accordance with her statutory obligations.

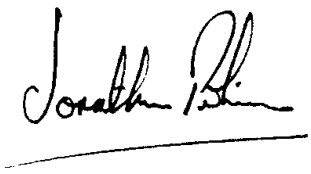
6. We hesitated a little before making this decision because there are findings about the children which are helpful and they should not be lost lightly.

7. It is quite plain that the First-tier Tribunal Judge allowed himself to be confused about the operation of paragraph 276ADE of the Immigration Rules because he appears to have overlooked the fact that the time of the application (which is the critical time in the Rules), the Third Appellant had not been in the United Kingdom for long enough to qualify for their protection. The findings that are been favourable are not the result of generosity on the part of the Tribunal but a positive response to independent evidence about the child's performance at school and although the whole case can be looked at again, we will be very surprised indeed if any less favourable view about Third Appellant is taken when the case is looked at again but, we emphasise, that is a matter for the Secretary of State.

8. We therefore find that the First-tier Tribunal erred in law. We set aside that decision and, as indicated, replace it with a decision that the Secretary of State's decision is not in accordance with the law. It is now for the Secretary of State to make a lawful decision which can be subject to processes of appeal if that is what the appellants decide to do.

Notice of Decision

The appeal is allowed. The decision of the First-tier Tribunal is set aside. We substitute a decision allowing the appeal because the decision is not in accordance with the law.

Signed
Jonathan Perkins
Judge of the Upper Tribunal  Dated 10 June 2015