Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA099222015
IA099282015
IA099332015
IA099472015
IA099582015
IA099532015

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 18th May 2016	**On 26th May 2016**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

MAOA
RMKM
MMAOA
AMAOA
SMA
RMA
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr Marshal of NBS Solicitors
For the Respondent: Mr J Parkinson (9th March 2016)
Mr M Diwnycz (18th May 2016]

© CROWN COPYRIGHT 2016

DECISION AND REASONS

1. This is the appellants' appeal against the decision of Judge Dearden made following a hearing at Bradford on 8th July 2015.

Background

2. The appellants are all citizens of Libya. The first two are husband and wife and the remaining four their minor children.

3. The principal appellant arrived in the UK on 15th September 2007, with leave to enter as a student, subsequently extended until 1st January 2015. His spouse came here on 22nd November 2007, the three children having arrived on 25th October 2007 and the youngest having been born here in 2012.

4. They applied to the Secretary of State for further leave to remain on 22nd December 2014 but were refused on 23rd February 2015. The matter came before Judge Dearden on 8th July 2015.

5. Before the judge it was conceded that only one of the appellants could potentially meet the requirements of the Immigration Rules. SMA, who is presently 16 years of age, having come here when she was 8, could qualify, it was said, under paragraph 276ADE1(iv) i.e. she is under the age of 18 years and has lived continually in the UK for at least 8 years and it would not reasonable to expect her to leave the UK.

6. The judge concluded that SMA could continue her education in Libya, that her best interests are met by remaining with her mother, father and siblings and whilst she would be disappointed to leave her friends behind, it would not be unreasonable to expect her to go with the rest of the family.

7. The appellant's representative had produced a large amount of documentary material relating to the present situation in Libya. The judge noted that they had not claimed asylum here and that the present country guidance of AT and Others (Article 15(c) risk categories) Libya [2014] UKUT 00418 did not conclude that there were substantial grounds for believing that an individual would solely by being present there face a real risk that threats his or her life or person.

8. He then wrote as follows:

> "Mr Vaughan places greater emphasis on the documentation from page 13 onwards of his bundle, the majority of which postdates the country guidance case. It is clear that there is violence in Libya and that some educational institutions have been taken over by various militias. However the current country guidance case is that Libya is not in a state of general insecurity sufficient to warrant protection and of course all these appellants have very substantial support available in Libya from their extended family. The documentation produced by Mr Vaughan is very interesting but in my conclusion insufficient to warrant my departing from the country guidance case of AT."

9. The appellant sought permission to appeal on the grounds that the judge had failed to adequately consider the situation in Libya, in particular whether it was reasonable to expect SMA to return there.

10. Permission to appeal was initially refused but subsequently granted by Upper Tribunal Judge Grubb in the following terms:

> "It is arguable that the judge erred in law by failing properly to consider the background material together with the relevant CG case of AT concerning the situation in Libya in (a) assessing the children's best interests; (b) whether it would be reasonable to expect the fifth appellant to return to Libya under paragraph 276ADE1(iv); and(c) in carrying out the balancing exercise required by proportionality. The judge's conclusion that there is no basis to depart from AT fails to engage with the material and it is arguably inadequately reasoned."

11. Although the Secretary of State initially sought to defend the determination by way of a reply filed on 22nd December 2015 Mr Parkinson accepted that the reference in the determination to "very interesting" was not an adequate consideration of the material before him

12. The decision of Judge Dearden is set aside in that he materially erred in law in failing to adequately consider material relevant to his decision.

Resumed Hearing

Submissions

13. Mr Diwnycz relied on the reasons for refusal letter and readily accepted that the situation in Libya had changed since it was written. He confirmed that it was not the intention of the Secretary of State to split the family

and said that there was ample evidence before me upon which to make the correct decision.

14. Mr Marshall confirmed that the family comes from a town called Gharyan, some 80 Km south of Tripoli. Between Tripoli and their home town lies an area which is particularly dangerous. Reference to the two main towns nearby, namely Zantan and Worshefana was made in the material supplied by the investigation by the Office of the UN High Commission for Human Rights on Libya dated 23rd February 2016. The context for that report was the decline in the political and security situation in Libya with a number of groups emerging pledging allegiance to IS. In the appellant's home area the militia known as Libya Dawn had gained control causing a severe humanitarian crisis with over 120,000 people displaced from the Worshefana area alone. There were reports of significant civilian casualties in that area from Amnesty International as a consequence of the shelling of residential areas by Libya Dawn.

15. UNHCR reported that the ongoing armed conflict has had a major impact on children’s enjoyment of their rights in Libya including their rights to life to an adequate standard of living and to health care and education which has been severely compromised by the conflict. There were reports of particular risks to girls who had been attacked and harassed by armed groups on their way to school in Tripoli.

16. Mr Marshall relied on the case of PD and Others (Article 8 conjoined family claims) Sri Lanka [2016] UKUT 00108 which held that:

> “In considering the conjoined Article 8 ECHR claims of multiple family members decision makers should first apply the Immigration Rules to each individual applicant and, if appropriate, then consider Article 8 outside the Rules. This exercise will typically entail the consideration and determination of all claims jointly, so as to ensure that all material facts and considerations are taken into account in each case.”

Findings and Conclusions

17. SMA is qualifying child, in that she is under the age of 18 and has spent over 7 years in the UK, indeed the majority of her life here. The issue here is the reasonableness of her return to Libya.

18. None of the material relied upon by Mr Marshall was challenged in any way by the respondent, either as to the conclusions reached or as to the

source, in this case the Office of the United Nations High Commissioner for Human Rights. Neither was it argued that the present situation in Libya was irrelevant to the issue of reasonableness of return. Indeed it is hard to see, in the context of a holistic analysis, why the situation of the country to which SMA would be returned is not a highly relevant factor.

19. The consideration of her best interests requires a broad assessment of multiple aspects of her life. She has been here since the age of 8, and has spent her formative years in the UK with her family. She is at a critical stage of her education, having finished her GCSE examinations and now studying at Bradford College. As in PD, whose appeal was allowed,

> “critical milestones in both her personal and educational development have been passed and are now looming.”

20. She would be returning to what is essentially a failed state where rival militias fight one another for dominance and where IS has a significant presence, particularly in fact in the north west of Libya where the family comes from. The towns nearby have been severely affected by the fighting and very large numbers of people have been displaced. It cannot possibly be in SMA’s best interests to return there.

21. Neither is it reasonable. There is clear evidence that her education would be at the least disrupted and at worst impossible to continue.

22. It is not argued that the appellants, save for SMA, could meet the requirements of the Immigration Rules and in order to succeed they have to rely on Article 8 outside the Rules and the test to be applied is that of exceptional or compelling circumstances.

23. The provision in paragraph 276 ADE1(iv) is mirrored in the statutory framework to the Rules, namely Section 117B of the 2002 Act. It states, inter alia, that, by 117B(vi)

    (i) “(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

    (ii) (a) That person has a genuine and subsisting parental relationship with a qualifying child, and

    (iii) (b) It would not be reasonable to expect the child to leave the United Kingdom.”

24. Paragraph 43 of PD and Others reads as follows:

> "Finally, given that the parents' appeals can only succeed outwith the Rules, we remind ourselves that the test to be applied is that of exceptional or compelling circumstances: see MF (Nigeria) v SSHD [2013] EWCA Civ 1192 @ 42. In our application of this test we refer to, but do not repeat, our various analyses and findings above. The first of the two final considerations which we have identified is the unequivocal statement in Section 117B(6) that the public interest does not require the removal of these parents given that they have a substantial and genuine parental relationship with the third appellant and our finding that it would not be reasonable to expect him to leave the UK. The second is that, given our findings above, the effect of dismissing the two parents' appeals would be to stultify our decision that the third appellant qualifies for leave to remain in the UK under the Rules. Insofar as Section 117B(6) requires a balancing exercise to be performed, we highlight our previous assessments and findings and, balancing everything, our overall conclusion is that the test of exceptional circumstances is satisfied. Thus the first and second appellants' appeals succeed outwith the Rules."

25. There is nothing in this case which can properly be distinguished from that in PD. If their daughter satisfies the requirements of the Rules there are compelling reasons why the parents, and the other minor children, should be granted leave outside them.

Decision

26. The original judge erred in law. His decision is set aside. It is remade as follows. The appeal of SMA is allowed within the Immigration Rules. The remaining appellants succeed outwith the Rules on Article 8 grounds.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 25 May 2016

Upper Tribunal Judge Taylor