Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/41649/2014
IA/41655/2014
IA/41657/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 May 2016	**On 20 May 2016**

Before:

UPPER TRIBUNAL JUDGE GILL

Between

GG	(First appellant)
RM	(Second appellant)
JMC	(Third appellant)

(ANONYMITY ORDER MADE)

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ANONYMITY ORDER

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) and given that these proceedings involve a child, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellants.

This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the Appellant: Mr P Thoree, of Thoree & Co Solicitors
For the Respondent: Ms A Brocklesby-Weller, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellants are nationals of Bolivia. The first appellant is the wife of the second appellant. They arrived in the United Kingdom on 21 February 2006 with leave as visitors valid until 21 August 2006. They have remained without leave since. The third appellant is their son, born in the United Kingdom on 26 May 2006.

2. The appellants have been granted permission to appeal against the decision of Judge of the First-tier Tribunal Kelly who, in a decision promulgated on 6 October 2015, dismissed their appeals on human rights grounds (Article 8) against decisions of the respondent, each dated 29 September 2014, to remove them from the United Kingdom having refused their applications of 3 September 2013 for leave to remain in the United Kingdom on the basis of their rights under Article 8. As the respondent issued separate decisions in respect of each appellant which each appealed, there are three appeals in this case.

3. The key issue before the Upper Tribunal is whether the judge materially erred in law in reaching his finding that it would be reasonable to require the third appellant to leave the United Kingdom. The third appellant has speech and learning difficulties. The period of the third appellant's residence in the United Kingdom was 7 years 3 months as at the date of the application for leave, 8 years 3 months as at the date of the respondent's decision, 9 years 4 months as at the date of the judge's decision and nearly 10 years as at the date of the hearing before me.

The respondent's decision

4. The respondent's reasons for refusing the appellants' applications for leave are set out in a decision letter addressed to all three appellants dated 29 September 2014 (hereafter the "Reasons for refusal" letter or "RFRL"). The respondent refused the applications because she considered that the appellants did not meet the requirements of Appendix FM and para 276ADE of the Statement of Changes in the Immigration Rules HC 395 (as amended) (hereafter referred to collectively as the "Rules" and individually as a "Rule") and that there were no features of their case justifying a grant of leave under Article 8 outside the Rules.

The judge's decision

5. The issue before the judge was whether the third appellant satisfied the requirements of para 276ADE(iv) outside the Rules. Under para 276ADE(iv), it was necessary for the third appellant to show that he is under the age of 18 years, he had lived in the United Kingdom continuously for at least 7 hours (discounting any period of imprisonment) and that it would be reasonable to expect him to leave the United Kingdom.

6. The only factual issue before the judge in relation to the third appellant was whether it would be unreasonable to expect him to leave the United Kingdom.

7. Before the judge, it was conceded on the behalf of the appellants (paras 20 and 21 of the judge's decision) by Counsel who appeared for them before the judge (Mr. J Rene) that the first and second appellants do not qualify for leave to remain under Appendix FM, either on the basis of their relationship with each other or as the parents of the third appellant. Mr. Rene accepted on behalf of the appellants that the outcome of the appeals of the first and second appellants was likely to turn on the reasonableness or otherwise of requiring the third appellant to leave the United Kingdom.

8. The judge nevertheless found, at para 39 of his decision, that the first and second appellants do not satisfy the requirements of para 276ADE. He found that there were no very significant obstacles to their reintegration in Bolivia. He noted that they had spent the majority of their lives living in Bolivia and that they speak the native language. At para 36 (in connection with his assessment of the third appellant's case) and at para 39 (in connection with his assessment of the first and second appellants' cases under para 276ADE), he rejected their claim to have no friends or relatives living in Bolivia.

9. The judge directed himself on the applicable law at paras 14-19, reminding himself, inter alia, of the guidance in relevant case law (Singh [2015] EWCA Civ 74, SS (Congo) [2015] EWCA Civ 387, Sunasee [2015] EWHC 1604, Razgar [2004] Imm AR 203 and that there is no requirement of 'exceptionality', pursuant to Huang [2007] UKHL 11), the burden and standard of proof, the provisions of s.117A-D of the Nationality, Immigration and Asylum Act 2002 (the "2002 Act"),

section 55 of the Borders, Citizenship & Immigration Act 2009 and ZH (Tanzania) (FC) v SSHD [2011] UKSC 24).

10. At para 38, the judge concluded that it would be reasonable to require the third appellant to leave the UK. He gave his reasons at paras 23-38, which read:

> "23. In assessing the reasonableness of requiring the third appellant to leave the United Kingdom, I am required by Section 55 of the Borders, Citizenship & Immigration Act 2009 to treat the third appellant's best interests as a primary consideration. I also take into account the guidance given by the higher courts in cases such as Azimi-Moayed [2013] UKUT 00197 (IAC) and EV (Philippines) [2014] EWCA Civ 874.
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> 24. In EV (Philippines), the Court of Appeal set out the factors to be taken into account and held that the Tribunal was concerned with how emphatic an answer falls to be given to the question: is it in the best interests of the child to remain in the UK? The longer the child has been here, the more advanced or critical the stage of her education, the looser the ties with the country in question, and the more deleterious the consequences of her return, the greater the weight that falls on one side of the scales. If it is overwhelmingly in the child's best interests that she should not return, the need to maintain immigration control may well not tip the balance. By contrast, if it is in the best interests to remain, but only on balance (with some factors pointing the other way), the result may be the opposite.
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> 25. In the balance on the other side, there falls to be taken into account the strong weight to be given to the need to maintain immigration control in pursuance of the economic well-being of the country. As such the immigration history of the parents may also be relevant.
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> 26. In considering the best interests of the third appellant, I attach very significant weight to the fact that he has now been in the United Kingdom for more than nine years, a period of time substantially in excess of the seven-year period that is recognised by immigration law as being of such significance. He was born in the United Kingdom on 26th May 2006 and has never lived outside of the country. I therefore accept that he regards the United Kingdom as his home and has substantial ties to this country.
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> 27. The higher courts have made it clear that greater significance is likely to attach to time spent in this country by a child when the child is of school age and therefore developing ties and attachments outside the immediate family unit than to the equivalent time spent by a child of pre-school age. In this case, the third appellant has been attending nursery and school for more than five years and it is clear from the letter that he himself has written, as well as from his school reports, that he had made many friends in this country. It is also clear that he has hobbies and interests in addition to his academic studies. He attends Taekwon-Do lessons and also classes in acting, singing and dance.
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> 28. I also note that the third appellant is receiving ongoing support from his school's Speech and Language Therapy service as he had exhibited difficulties in his development in these areas.
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> 29. Taking all of these matters into account, I find that it is in the best interests of the third appellant to remain in this country. However, that is not the end of the matter. The best interests of the third appellant must be treated as a primary consideration, but they are not paramount and they can be outweighed by other factors.
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> 30. In assessing the reasonableness of requiring the appellant to leave the country, I am entitled to take into account the poor immigration history of the parents. They came to the United Kingdom in 2006 with leave to remain for a maximum of six months but

they never returned to their country of origin. I find that they were dishonest in applying to come here as visitors when it was plainly their intention to remain in the United Kingdom on a longer term basis. The first appellant admitted in her evidence that she intended to obtain leave to remain as a student once she got here and she has provided documents in respect of an application for student leave that she made in 2006. However, this application was refused on 7th November 2006 and the respondent advised the first appellant at that time that she should leave the country without delay as she would be committing an immigration offence if she remained here. Yet the appellants chose to ignore this advice and did nothing to regularise their immigration statistics for many years. It is plain that they were intentionally seeking to lie low until they had been in this country long enough to make a credible human rights application. I find that this conduct weighs very heavily against them even though I am also mindful of the fact that the third appellant should not be punished for the misconduct of his parents.

31. As stated above, I find that, in the absence of all other considerations, it would be in the best interests of the third appellant to continue living in this country. However, I also find that his health and well-being are unlikely to be compromised to a substantial degree by a move to Bolivia. He would be moving there as part of a family unit and his parents would be able to assist him in adjusting to life in a new country. I note from the reasons for refusal letter that the respondent's research suggests that there is a functioning education system in Bolivia and there is also provision for children with learning difficulties. The appellants have not produced any evidence that suggests otherwise.

32. Whilst I accept that the third appellant has benefited in the past from additional support with speech and language, and that he could no doubt benefit from further input in the future, I do not regard such treatment as being essential to his future health and well-being. I note that, notwithstanding his difficulties with speech and language, he is able to attend a mainstream school and appears from his school reports to be making good academic progress. His school report of 3rd July 2014 states that he is becoming more confident in his speaking and that his reading has improved over the last year along with his general literacy. He is able to perform in amateur theatrical productions and I note that he obtained high marks in his musical theatre and choral speaking examinations. All of this suggests that he would be able to continue to make good developmental progress in Bolivia, especially with the ongoing support of his parents.

33. I have considered the handwritten letter written by the third appellant in which he explains that he loves his life in this country and has many good friends here. However, I also take into account that he is still very young and that he has not yet embarked upon his secondary education. His education has not yet reached a critical stage where any interruption to it could seriously jeopardise his future life chances. As stated above, I find that the third appellant would be able to continue to make good academic progress in Bolivia and is young enough to be able to develop new friendships and interests there.

34. I have read with care the report of Mr. Juan Lema dated 5th March 2015. However, I note that this report was prepared at the instigation of the first and second appellants for the specific purpose of obtaining evidence as to the impact that moving to Bolivia might have on the third appellant. I also note that it relies solely on information that was given to Mr Lema by the appellants themselves rather than being based on an independent assessment of the third appellant. In fact, it appears that Mr Lema did not meet the third appellant at all prior to preparing his report. I therefore find that this report is entirely self-serving and I attach very little weight to it.

35. The first and second appellants suggested that the third appellant is unable to speak Spanish and would therefore struggle to adapt to life in Bolivia for this reason. However, I do not accept this evidence. The first and second appellants are both fluent Spanish speakers and I find it highly likely that the third appellant has in fact been brought up in a home where Spanish has been spoken on a very regular basis, if not as the primary language. I also note the report of Ms Daly, a Speech and Language Therapist, dated 10th January 2012, which states that: "[the third appellant] speaks three languages – German, English and Spanish".

36. The first appellant suggests that her family no longer has any ties to Bolivia. Given that she and her husband grew up in Bolivia and have lived and worked there for most of their adult lives, I do not accept this evidence. Whilst I accept that the first appellant's mother and sisters may be living in Germany now, I find that they are likely to have many other relatives and friends who remain in Bolivia. I therefore find that the first appellant has been untruthful about the family's ties to Bolivia in an effort to strengthen their Article 8 claim.

37. The first and second appellants were both employed in Bolivia before coming to the United Kingdom. Whilst the airline for whom they worked is no longer operating, they did not provide any convincing reason as to why they could not seek alternative employment on their return to Bolivia. I note from the report of Mr Lema that the first appellant has a degree in tourism in Bolivia and it would therefore be open to her to once again seek employment in the tourism industry. The first and second appellants have been supporting themselves by undertaking various cash-in-hand jobs since they came to the United Kingdom. I find that they are resourceful individuals who could seek work on their return.

38. When I consider all of the evidence in the round, I find that it would be reasonable to require the third appellant to move to Bolivia with his parents. I find that his best interests in remaining here are outweighed by the respondent's legitimate interest in maintaining effective immigration control. The third appellant has no immigration status in this country and nor do his parents. His illegal presence here is placing an additional strain on the education services of this country at a time when they are already over-stretched."

11. Having concluded that the appellants do not satisfy the requirements of para 276ADE, the judge said (at para 40) that he found that there are no additional features of the appellants' case that have not already been reflected in his assessment of their case under the Rules and which might lead to a grant of leave outside the Rules.

<u>The grounds</u>

12. Although the grounds take issue with the judge's finding that the first and second appellants "*are likely to have many other relatives and friends who remain in Bolivia*", they do so only in connection with the judge's assessment of that issue in his assessment of the reasonableness of requiring the third appellant to leave the United Kingdom. They do not take issue with his finding that the first and second appellants do not satisfy the requirements of para 276ADE, nor do they take issue with his decision to dismiss the appeals of all three appellants on the basis of Article 8 claims outside the Rules. At the hearing, no issue other than the judge's finding that it is reasonable for the third appellant to leave the United Kingdom under para 276ADE(iv) of the Rules was challenged, this being the only issue raised in the grounds when read as a whole.

13. The grounds contend that the judge materially erred in law in reaching his finding that it would be reasonable for the third appellant to leave the United Kingdom as follows:

    i) The judge's finding at para 32, that he did not regard the support or treatment that the third appellant received in the United Kingdom with speech and language as being essential to his

future health and well-being, was "*an incredible finding"* given that his speech and language will no doubt have an impact on his ability to further his studies. It was wholly wrong to say that it not '*essential to his future health and well-being*'.

ii) The judge erred in his assessment of the report of Mr. Lema. He was incorrect to say that Mr. Lema had not met the third appellant because the report clearly states that the third appellant attended the session with Mr. Lema on 6 March 2015 with the first appellant. Furthermore, the judge was wrong to question the content of the report simply because it had been prepared at the instigation of the first and second appellants. Given that the respondent does not engage in obtaining such reports and that the burden of proof is on the appellants, it is materially wrong to simply disregard a report from a medical professional on the basis of who had instigated the report. It is contended that the very nature of the report demands that the information is obtained not only from the person concerned but where the person concerned is a minor, a parent would provide the necessary information.

iii) The judge speculated at para 36 when he said that the first and second appellants are likely to have many other relatives and friends who remain in Bolivia.

iv) The judge erred in finding at para 38 that the third appellant's illegal presence was placing an additional strain on the educational services of this country at a time when they are already over-stretched because no evidence was placed before the judge about the state of the educational services in the United Kingdom. He therefore engaged in speculation.

Request for adjournment

14. Prior to the hearing, the appellants requested an adjournment of the hearing on the ground that the third appellant will shortly be able to apply to become a British citizen, having lived continuously in the United Kingdom since his birth on 26 May 2006. The adjournment request was refused.

15. Mr Thoree renewed his application for the hearing to be adjourned on the same ground. I refused the request. The fact that the third appellant will shortly be able to apply for British citizenship is not relevant to the issue before me, i.e. whether the judge had materially erred in law.

Submissions

16. Mr Thoree relied upon JO and others (section 55 duty) Nigeria [2014] UKUT 00517 (IAC). He submitted that, at para 32, the judge speculated in finding that the third appellant would be able to obtain treatment in Bolivia and he had failed to consider the best interests of the third appellant. He speculated in reasoning that the first and second appellants have the same expertise as those who are currently professionally providing the third appellant with support. The third appellant would have to start all over again in Bolivia. He has difficulties even in the United Kingdom, the country of his birth. There was no evidence that the third appellant would be able to receive the same level of treatment in Bolivia.

17. The judge erred in assessing the report of Mr Lema. He wrongly stated that Mr Lema had not met the appellant. This factual error tainted his findings at paras 26-29 of his decision. Mr Lema's report does show that Mr Lema had spoken to the third appellant. It was therefore incorrect for the judge to say that the information was provided to Mr Lema by the first appellant. Furthermore, given his finding that it was in the best interests of the third appellant to remain in the UK, the judge's decision might have tipped in the third appellant's favour if he had not made the factual error.

18. The judge erred in taking into account the immigration history of the first and second appellants. In this respect, Mr Thoree relied upon para 41 of PD and Others (Article 8 – conjoined family claims) Sri Lanka [2016] UKUT 00108 (IAC) where the Upper Tribunal said that "*it has been frequently stated that a child's best interests should not be compromised on account of the misdemeanours of its parents".*

19. Mr Thoree submitted that the judge had failed to take into account the fact that the third appellant was a qualified child under s.117B(6) of the 2002 Act. The test of reasonableness has a lower threshold than that of insurmountable obstacles. The only factor that went against the third appellant was the poor immigration history of his parents.

20. In response, Ms Brocklesby-Weller asked me to bear in mind that Mr Lema had considered whether the third appellant could benefit from intervention by 'Bright Futures'. Mr Lema decided that there was no role for 'Bright Futures' because the third appellant was not suffering from a mental health disorder. She submitted that the judge was correct to say that the information provided to Mr Lema had emanated from the first appellant. In any event, there was nothing to show that Mr Lema had the necessary expertise to assess the availability of support to the third appellant in Bolivia or the impact on the third appellant of being returned to Bolivia. She submitted that the judge was entitled to find that the report was of little assistance. In any event, the report of Mr Lema states matters that had already been taken into account by the judge.

21. Ms Brocklesby-Weller drew my attention to the fact that, notwithstanding the fact that the RFRL raised the issue about the availability of treatment for the third appellant in Bolivia, the appellants had not produced evidence to the judge to show that treatment for the third appellant would not be available in Bolivia. The judge did not speculate in stating that the third appellant would be able to access services in Bolivia that were akin to the services that he receives in the United Kingdom.

22. Ms Brocklesby-Weller submitted that, at paras 31 and 32, the judge explained the reasons why he found that the third appellant's health and well-being are unlikely to be compromised to a substantial degree by a move to Bolivia. He explained that the third appellant was in good health and would be moving to Bolivia as part of a family unit with his parents who would be able to assist him to adjust to life in Bolivia. He said that there was provision in Bolivia for children with learning difficulties. He said that the third appellant appeared to be making good academic progress.

23. Ms Brocklesby-Weller submitted that the judge did not err in taking into account the immigration history of the first and second appellants. The question ultimately was whether it was unreasonable to expect the third appellant to leave the United Kingdom. It was relevant to take into account that the appellants did not have a right to be in the United Kingdom, pursuant to EV (Philippines) v SSHD [2014] EWCA Civ 874.

24. I reserved my decision.

Assessment

25. In my judgement, the judge did not err in law when he said at para 32 of his decision, that he did not regard the support that the third appellant has been receiving in the United Kingdom with speech and language was essential to his future health and well-being. At para 31, he said, that the third appellant's health and well-being are unlikely to be compromised to a substantial degree by a move to a Bolivia. It is a fact that, whilst it is unfortunate that the third appellant has learning difficulties and needs assistance with speech and language, this is not a life threatening or other similar serious medical condition. The judge was considering how deleterious the move to Bolivia would be, in relation to the third appellant's need for support with speech and language. He decided that it is unlikely that the move would compromise the third appellant's health and well-being to a substantial degree, given that there is a functioning education system in Bolivia, that there is also provision in Bolivia for children with learning difficulties, that the third appellant would have the support of his parents and that he has done well in the United Kingdom and made good academic progress.

26. I reject the submission that the judge speculated in assuming that the first and second appellants have the same expertise as those who currently provide the third appellant with speech and language support. The reality is that, as parents, they will be able to provide whatever support they can provide *as parents*, as opposed to experts in the provision of speech and language support. There is nothing to show that he assumed that they would be able to provide speech and language

support as experts in that field. Nonetheless, they can provide support as parents, which is not to be considered of nil value just because they do not have expertise in providing support in speech and language support.

27. Mr Thoree submitted that the third appellant would not be able to obtain treatment at the same level in Bolivia. This simply ignores the fact that the appellants did not place any such evidence before the judge. The judge drew attention to the fact that the RFRL stated that there was a functioning education system in Bolivia and provision for children with learning difficulties and that the appellants have not provided any evidence to suggest otherwise.

28. When read as a whole, paras 31 and 32 of the judge's decision are a full and fair assessment of the third appellant's situation with regard to his need for speech and language support and the potential impact upon him of a move to Bolivia, based on the evidence that was before the judge. In my judgement, the judge was fully entitled to find that the third appellant would be able to continue to make good developmental progress in Bolivia, with the ongoing support of his parents.

29. I turn to the challenge to the judge's finding at para 36, that the first and second appellants are likely to have many other friends and relatives in Bolivia.

30. I reject the submission that the judge had speculated when he made this finding. He heard and saw the first and second appellants give oral evidence. Plainly, he did not find them credible. For example, he rejected the evidence of the first appellant that the third appellant was unable to speak Spanish, pointing out that this was inconsistent with the letter from Ms Daly, a speech and language therapist, who said that the third appellant speaks three languages, including Spanish. In my judgement, the judge was fully entitled to find, on the whole of the evidence including the fact that the first and second appellants had lived in Bolivia for most of their adult lives and bearing in mind that he heard and saw them give oral evidence, that it was likely that they have many other relatives and friends who remain in Bolivia.

31. I turn to the judge's finding at para 38 that the third appellant’s illegal presence was placing an additional burden on the educational services of this country at a time when they are already over-stretched. I reject the submission that the judge speculated when he made this finding, given that knowledge that the educational services of the country are over-stretched is in the public domain.

32. The next point is whether the judge erred in law in taking into account the immigration history of the first and second appellants. I agree with Ms Brocklesby-Weller that it was relevant for the judge to take into account the fact that the appellants did not have a right to be in the UK, pursuant to the judgment in EV (Philippines). There is nothing in PD and others to the contrary. In any event, it is not the case that the judge considered that the best interests of the third appellant were compromised on account of the misdemeanours of his parents, given that he specifically said, in the final sentence of para 30, that the third appellant should not be punished for the misconduct of his parents. When read as a whole, it is plain that all the judge did at para 30 was to take note of the reality that the first and second appellants had a poor immigration history. If he had omitted to take any account of their immigration history, he would have been leaving out of account a relevant consideration.

33. Mr Thoree also submitted that the judge had failed to take into account the fact that the third appellant is a qualified child under s117B(6) of the 2002 Act. S.117B(6) and the relevant part of the interpretation section, s.117D, state:

> **117B Article 8: public interest considerations applicable in all cases**
>
> (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
>
> (a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

117D Interpretation of this Part
(1) In this Part –

"Article 8" means Article 8 of the European Convention on Human Rights;

"qualifying child" means a person who is under the age of 18 and who –

(a) is a British citizen, or,
(b) has lived in the United Kingdom for a continuous period of seven years or more

34. Thus, there is nothing in s117B(6) which obviates the need to consider whether it is reasonable to expect a qualifying child to leave the United Kingdom. There is therefore nothing at all in this argument.

35. I turn finally to Mr Lema's report.

36. I accept that the judge misunderstood the evidence before him when he said that it appears that Mr Lema had not met the third appellant when he prepared the report, given that Mr Lema prepared his report on 14 March 2015 and that, in his opening paragraph, he said: *"I am writing to confirm our discussion on Friday 6th of March when you came with your son for an initial assessment".*

37. The judge also said that the report relied solely upon information provided by the appellants, by which he obviously meant the first and second appellants given that the report was addressed to the first and second appellants and that the point the judge was making is that there had been no independent assessment of the third appellant.

38. I have read Mr Lema's report carefully. There is nothing in the report that specifically states that the third appellant had been interviewed by Mr Lema. It is clear from some parts of the report that information was provided by the first appellant or the second appellant, for example:

i) In the second paragraph, it states: "*In our meeting, you talked about your current concerns about [the third appellant] and you explained …"* (my emphasis).

ii) In the third paragraph, it states: *"… as well as talking about [the third appellant's] school life, we also talked about other aspects of his life that might be causing him stress and upset*" (my emphasis).

iii) In the fourth paragraph, it states: "*It was also helpful that we could talk about [the third appellant's] developmental history and all the significant changes/events that have happened in his life*" (my emphasis).

iv) In the final paragraph on the second page of the report, it states: *"No history of cutting, overdosing or self-harm but you have noticed him withdrawing and feeling insecure and at times angry …"* (my emphasis).

39. I accept that there are other parts of the report which do not specifically state or otherwise indicate that the information stated therein came from the first and second appellants. For example, the second and fourth paragraphs on the second page of the report state:

"[The third appellant's] first language was German as you started to talk to him in your mother tongue. As you were the main bread winner [the third appellant] used to stay with his father, who speaks Spanish but as you said is a 'man of few words' so [the third appellant] did not learn much Spanish. He started walking when he was thirteen months old…

…

[The third appellant] is a very busy and active boy. He does music at school and he also takes Tae kwondo (yellow belt). Mondays he goes swimming. He still meets friends from nursery even though the majority go to different schools. He loves building Lego and is very creative. He gets certificates and stickers from the head teacher very frequently."

(my emphasis)

40. It is plainly the case that the information in the second paragraph, underlined above, cannot have been given by the third appellant. Whilst I accept that the nature of the information in some parts of the report, for example, that contained in the fourth paragraph on the second page (quoted above) *could* have been derived by Mr Lema interviewing the third appellant, I have concluded that the judge was entitled to draw the inference from the report that Mr Lema did not derive his information from the third appellant notwithstanding that he (the third appellant) was present, given that the report does not specifically state that the third appellant was interviewed and that there are statements of information in the report that are expressly attributed to the parents or could only have been provided by the parents.

41. I have therefore concluded that the fact that the judge misunderstood the evidence when he said that Mr Lema had not even met the third appellant when he prepared his report is not relevant. He was nevertheless entitled to draw the inference from the contents of the report that the information provided in the report had been given by the first and second appellants, and that it was not derived by Mr Lema independently interviewing the third appellant.

42. In any event, even if I am wrong about this, I reject Mr Thoree's submission that the judge's decision may have tipped in the third appellant's favour if the judge had not made the errors as to whether Mr Lema had met the third appellant and whether information in the report was obtained by interviewing the third appellant. I have concluded that any such errors (even if the judge made them, which is not the case) are not material to the outcome. I have concluded that the judge was nevertheless fully entitled to place very little weight on the report for the following reasons:

    i) Mr Lema is a Family and Systemic Psychotherapist who was considering whether the third appellant might benefit by intervention by 'Bright Futures'. He and his colleagues concluded that "*there is not a role for us at this present moment regarding treatment as [the third appellant] has not a mental health issue."*

    ii) Accordingly, it was not Mr Lema's task to assess the impact on the third appellant of being required to leave the United Kingdom.

    iii) Whilst I have noted that Mr Lema recognised that feelings of anger and oppositional behaviour in the third appellant may be attributed to his being forced to leave the United Kingdom and said that: "*Research shows that it is lonely being a stranger in the classroom or even in a new neighbourhood, even more in a new country, and youngsters can suffer distress from being uprooted from familiar places and faces, …",* the fact is that he was not asked to assess the impact on the third appellant of being required to leave the United Kingdom *and he did not do so*. He merely spoke in general terms as the sentence I have just quoted demonstrates and that he said in the preceding paragraph that *"… [the third appellant's] development <u>can</u> be affected in a very negative way…"* (my emphasis), not that it would be affected or that it was likely to be affected.

    iv) Importantly, although the report refers to the third appellant having feelings of anger and displaying oppositional behaviour, Mr Lema and his colleagues concluded that he did not have a mental health issue and there was no role for their organisation at present. He suggested two books that the first and second appellants might find it useful to read. The only inference that can be drawn from this is that any impact on the third appellant of being required to move to Bolivia was not serious enough to warrant intervention.

v) Furthermore, Mr Lema did not profess to have expertise on the availability of treatment in Bolivia for children who require speech and language support.

43. For all of the above reasons, I have concluded that the judge did not materially err in law. The appellants' appeals to the Upper Tribunal are therefore dismissed.

Decision

The decision of the First-tier Tribunal did not involve the making of any error on a point of law. The appellants' appeals to the Upper Tribunal are therefore dismissed.

Signed Date: 15 May 2016
Upper Tribunal Judge Gill