Upper Tribunal (Immigration and Asylum Chamber)

Appeal Number: AA/05798/2015

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal	**Decision promulgated**
on 19 July 2017	**on 7 August 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

OPF
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss Dhaliwal instructed by Genesis Law Associates Ltd
For the Respondent: Mrs H Aboni Senior Home Office Presenting Officer

ERROR OF LAW DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Ford promulgated on 27 February 2017 in which the Judge dismissed the appellant's appeal on all grounds.

Background

2. The appellant is a national of Nigeria born on [ ] 1974. The appellant entered the United Kingdom in 2004 lawfully as a student, with leave extended until it expired in early 2006. The appellant's wife entered the United Kingdom as a visitor in 2006. The appellant and his wife met after she entered the United Kingdom. They started their relationship after the appellant's leave had expired.

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3. The appellant's first child E was born in the UK on [ ] 2007, their second child EI was born in the UK on [ ] 2010, their third child EIO was born in the UK on [ ] 2013, and their fourth child OOF was born in the UK on [ ] 2016.
4. An application to regularise the appellant's status was made on 25 November 2011, seeking leave to remain on human rights and humanitarian protection grounds, which was refused on 22 May 2012. On 7 June 2013, the appellant applied for leave to remain on human rights grounds with his wife and children as named dependents. On 21 August 2013, the appellant applied for asylum with his wife and children as dependents. The applications made in 2013 were refused in a decision dated 18 March 2015 which is the subject of the appeal before the Judge.
5. Having considered the evidence with the required degree of anxious scrutiny the Judge sets out her findings of fact from [39] to [79] of the decision under challenge, which can be summarised in the following terms:

    i. The appellant delayed significantly in making this claim for asylum waiting from 2006 until 2011 until he made his first application to regularise his stay following the birth of his children [39].
    ii. This is not a case that turns on credibility issues. The respondent delayed in the decision-making process but no prejudice to the appellant or his wife was made out as they benefited from the support given within the education system in the UK for children with special educational needs and for health care provided by the NHS. The appellant has made no financial contribution to the cost of his children's care or their education and nor have he or his wife made any financial contribution to the cost of her four caesarean sections or for the support she has received for all her pre-or postnatal care [40].
    iii. The appellant worked illegally in the United Kingdom from 2006 onwards and only stopped working when it became clear to his employer he had no permission to do so [41].
    iv. The appellant and his wife has secured additional educational qualifications in the UK including accountancy qualifications, health and social care NVQs and additional qualifications for the security industry [42].
    v. The appellant's wife is a qualified primary school teacher in Nigeria [43].
    vi. It was accepted neither the appellant's family nor his wife's family in Nigeria are accepting of their two older sons who have autism [44].
    vii. It was not accepted either the appellant's family or his wife's family intended to do any harm to the autistic children but if they did there was no real risk they would achieve their intentions [45].

viii. The appellant and his wife are caring parents who are very supportive of their children and intent upon meeting the children's needs. They have learned a lot about the support of their two sons who have autism. E suffers from severe autism requiring a high level of educational support which he receives in a special school he attends in the UK [45].

ix. There was no estimate of how much E's placement costs the public purse although the Judge has judicial knowledge from sitting in another jurisdiction that the cost of such specialist placement runs into tens of thousands of pounds per annum [46].

x. EI attends mainstream school and there is insufficient evidence to establish he has been assessed as needing a specialist placement. The child receives additional teaching assistance at school as well as input from a special education needs teacher and speech and language therapy services. There is no up-to-date evidence from the school as to how they are coping with his special education needs and progress he is actually making [47].

xi. In relation to EIO, the Judge was not satisfied he has a diagnosis of autistic spectrum disorder at the present time. The child uses an inhaler. The Judge was not satisfied on the evidence that such medication was not available in Nigeria [48].

xii. In relation to OOF, the Judge was not satisfied the medication she requires is not available in Nigeria [49].

xiii. The appellant's wife suffers from depression. In late December/early January 2017 she decided to leave the two younger children on their own in the family home when she went to collect the two older children. As a result, social services became involved although the outcome of their investigation was that there were no ongoing protection concerns [50]

xiv. Whilst accepting the appellant's wife has been in receipt of antidepressants there was no evidence to conclude such medication was not available in Nigeria [51].

xv. The appellant claimed asylum asserting the family face a real risk of persecution in Nigeria because the two older children suffer from autism and also claim to be at real risk of persecution on account of their religious beliefs as Christians [52].

xvi. The appellant's wife lived in Lagos before coming to the UK and claims her former husband threatened her after he learned she had fallen pregnant by the appellant after coming for a visit in 2006 [53].

xvii. Few details of threats have been provided [54].

xviii. The appellant grew up in Ibadan, Oyo State where he studied in the local polytechnic [55].

xix. The appellant and his wife have family members in Nigeria [56].

xx. The move to Nigeria will be contrary to the best interests of E and have a detrimental impact upon him causing him distress, anxiety and upset. As a severely autistic child changes to his routine might be distressing. A move to Nigeria will mean his special educational needs will not be as well supported as they are in the UK [57].

xxi. E will not only have to face changing his schooling, his home and his community, but also be removed from the only society has known since birth in the UK. E has some understanding of Yoruba and the Judge was not satisfied that his understanding of this language was significantly worse than his understanding of English [58].

xxii. E has an understanding of Yoruba as both his parents speak this language [59].

xxiii. EI has less severe autism but also severe delay in his understanding of language and social communication skills. The Judge was not satisfied on the evidence that he requires a placement in a special school [60]. EI's best interests are to be permitted to remain at his present school in his present home and community without disturbance. He was born in the UK and has lived here throughout his life [61].

xxiv. None of the children have lived in the UK for seven years prior to the date of application [62].

xxv. Neither the appellant nor his wife or children can be returned safely to the north-east of Nigeria or the Niger Delta or to Akwa Ibom State where they would face an unacceptably high level of risk due to their religious beliefs and the children's autism in these areas [63].

xxvi. The Judge was not satisfied the same level of risk exists elsewhere in Nigeria. Whilst the appellant provided evidence a placement at a specialist autism school in Abuja was unaffordable he had not provided evidence to show a placement at Pacific School in Lagos will be unaffordable or of equal cost to the special school in Abuja. Nor has he provided evidence to contradict what is stated in the refusal letter that the appellant and his wife could seek assistance from the Zamarr Institute in Abuja who provide specialist autism associates, or to show that they could not be accessed for advice and support [63].

xxvii. It is wrong to compare what is available in Nigeria with that available in the UK, and to consider what is available within Nigeria when looking at the question of internal relocation and whether it is reasonable for this family to locate internally [64].

xxviii. The appellant and his wife are intelligent qualified people which can be used on return to Nigeria. The appellant can secure employment if he takes his family to an urban area outside the named areas where risk is too high [65].

xxix. The Judge finds the appellant's wife could secure employment as she has qualifications as a primary school teacher although

she will need to dedicate herself to the care of the two oldest children, but would not be without support in doing so as the refusal letter identifies NGOs and voluntary groups who work in supporting those with autism [65].

xxx. The Judge accepts the family will be without support from members of their extended family due to their ostracism of the autistic children [66].

xxxi. The appellant and family cannot meet the requirements of the immigration rules for leave to remain in any category [67].

xxxii. The decision to remove the appellant and his family is contrary to the best interests of the two older children. The two other children will not be adversely affected by the removal. The appellant and his wife will continue to care for all the children and will not abandon them and will protect them within the community. The issue in the case is one of proportionality [67].

xxxiii. The appellant and his wife have a very poor immigration history, having formed a relationship with his wife and having married and had two children before making a human rights application in summer 2013 followed by an asylum application in August 2013 [67]. The appellant has worked in the UK without permission and studied in the UK without permission. Little weight is attached to the private life he and his family have formed when they had no permission to be here [68].

xxxiv. The appellant and his wife are Yoruba who lived in Nigeria until adulthood. The appellant's wife lived in Lagos and the Judge finds it reasonable to expect the appellant and his family to relocate internally to Lagos where the appellant lived before leaving to come to the UK. Lagos is the appellant's wife's home area [69].

xxxv. Educational opportunities for the two younger children will be the same as they are for every child in Nigeria with entitlement to free primary school education. Educational opportunities are available to the two older children although significantly worse than those available in the UK. The two older children will be faced with societal discrimination although their parents are willing and able to protect them and such discrimination will not amount to a real threat of violence or real risk of persecution. There is an internal relocation option available to avoid any risk and citizens of Nigeria are free to move to different areas enabling the appellants to reduce the risk due to autism but also due to religious beliefs by relocating [70].

xxxvi. The appellant's wife's mental health difficulties do not make a difference to the outcome of the appeal [71].

xxxvii. The family have been a burden on the public purse not only in the provision of health services but also education including the placement at a special autism school. The family speak English but are not and have not been self-supporting for several years. When self-supporting it was due to working without permission [72].

xxxviii. The appellant and his wife entered into a relationship at a time they both knew there were problems with their immigration status and had children knowing their situation was precarious [73].

xxxix. The Judge did not accept E or EI faced torture on return to Nigeria as the country information provided as to the appalling treatment of autistic children relates to children who have been disowned or rejected by their families and who do not have families to protect them [74].

xl. At [75 -76] the Judge writes:

> 75. I have looked carefully at the individual issues relating to [E], [EI], [EIO] and [OOF] the Appellant and his wife. But having looked at the issues for each individual in the family and for the family as a whole, and balancing their needs against the public interest in immigration control and the protection of the public purse, I have reached the conclusion that this decision is a proportionate one. I have considerable sympathy for the Appellant and his family given the burden of care placed upon them by having two autistic children and another child with a congenital disorder. But even taking into account the children's best interests, when this is balanced against the public interest in immigration control and in protecting public finances, I am unable to find that this decision is outside the range of proportionate responses open to the Secretary of State in this case.
>
> 76. In summary, although I am satisfied that in certain parts of Nigeria the families of autistic children and autistic children face a real risk of persecution by reason of their membership of a particular social group, this family is able to avoid that risk by reasonable internal relocation. Similarly, any risk of persecution on the grounds of their Christian beliefs can be avoided by internal relocation to a predominantly Christian area or indeed to Lagos where the population is split 50/50 Christian and Muslim. I have looked at these risks not only individually but together.

xli. The Judge was not satisfied the appellant had established a real risk of torture on return for any member of the family because the appellant and his wife had shown they are able to protect their children and fully intended to do so in the future [77].

xlii. In assessing the issue of proportionality, the Judge considered the factors set out in Section 117A and B of the 2002 Act together with all other relevant factors including the best interests of the children. The Judge concluded there will be no breach of a protected article 8 right. The family will be removed as a unit and can choose where they wish to live in Nigeria on return. Whilst the level of education will fall well short of what is available to them in the UK this does not render the decision disproportionate when taken with the evidence as a whole. The Judge takes into account the length of time the appellant and his children have lived in the UK and in particular that the children do not know any other society as they have lived here since birth. The Judge notes the family have lived in both London and Birmingham despite concerns about how E in particular would cope with change. E appears to have moved

successfully from a mainstream school in London to a special school in Birmingham. Whilst no doubt requiring a high level of support, the Judge accepts the same level of support will not be available to E in Nigeria but did not find this rendered the decision disproportionate [78].

xliii. The Judges states she wishes it to be made clear that she has not analysed individual strands of the evidence in isolation but instead viewed the evidence as a whole when looking at the proportionality of the decision [78].

xliv. The Judge finds the appellant will be in a position to financially support his family and so will be able to access the necessities of life on their return to Nigeria [79].

6. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal. The operative section of the grant being in the following terms:

> "There is no appeal against that part of the decision of the learned to Judge relating to the asylum claim. The appeal is confined to the decision relating to article 8 protection. The thrust of the challenge is that, whereas the learned Judge correctly observed that at the time of application in 2013 none of the appellant's three children had resided in the United Kingdom for a period of seven years, by the time of decision in 2015 the eldest child had been in the United Kingdom for over that length of time and, all the more, by the time of hearing in January 2017 was over nine years old. It is averred that the learned Judge failed to consider the overall length of residence of the children in the United Kingdom, particularly of the eldest child, as relevant to an article 8 proportionality assessment; failed to consider or apply authority including PD & Ors (Article 8, conjoined family claims) Sri Lanka; and failed to give any or due weight to this factor as also to the effect of delay and change in circumstances since the decision."

7. The judge granting permission states "the ground is fairly arguable".

Error of law

8. Judge Ford was tasked with determining this appeal following an earlier decision by another judge of the First-tier Tribunal, who dismissed the appeal on all grounds in a decision dated 28 July 2015, having been found to have erred in law such that the decision was set aside by a Deputy Judge of the Upper Tribunal and remitted de novo to be heard afresh.

9. It was submitted by Ms Dhaliwal that the Judge had made the same error in the decision under challenge as had the earlier First-tier Tribunal judge. The Upper Tribunal was referred to paragraphs 12 to 14 of that original decision which are written in the following terms:

> 12. There was no adequate individual assessment of the eldest child's needs and best interests. More significantly, there was no private life assessment under paragraph 276ADE in relation to that child, who met the seven years residence threshold requirement, as to whether it would be reasonable to expect that child to leave the UK. The similar test under section 117B(vi) provides that the public interest does not require

an applicant's removal where he has a genuine and subsisting parental relationship with a qualifying child, where it is not reasonable to expect the child to leave the UK. The judge should have specifically assessed whether it would have been reasonable, given the evidence of his personal and individual circumstances, to expect that child to leave the UK.

13. In her submissions, Ms Aboni accepted that the judge failed to address paragraph 276ADE in relation to the appellant and his children, in particular the eldest child who has special needs arising from his autism. In error, the judge proceeded immediately to conduct a Razgar proportionality assessment under article 8 ECHR, without first considering whether the appellant or any of his children met the requirements of the Immigration Rules for leave to remain. Further, the judge should only have gone on to the article 8 assessment outside the Rules if it was found that there were compelling circumstances in adequately recognised in the Rules that would render the removal decision unjustifiably harsh. That assessment was not conducted. For the reasons set out above, I find that the article 8 assessment was flawed, failing to adequately address section 117B(vi) and to apply anxious scrutiny to the needs and best interests of the eldest child, if not those of the other children as well.

14. In all the circumstances, I find, for the reasons set out above, the decision of the First-tier Tribunal is inadequate, incomplete and ultimately in error of law.

10. An issue that arises in relation to this head of challenge is that it was conceded that this error was not raised or pleaded when seeking permission to appeal.

11. The actual grounds on which permission to appeal was sought and granted can be summarised in the following terms:

a) Ground 1 - although the Judge identified that none of the appellant's children had lived in the UK for seven years prior to the date of application and therefore identified that the family could not meet the requirements of the Immigration Rules and the decision turned on the issue of proportionality, the Judge should have considered section 117B(6) of the 2002 Act as at the date of the hearing the appellant's oldest child was nine years old and had lived in the UK all his life. The ground asserts the Judge failed to identify that E potentially fell within the definition of a 'qualified child' if it was also found it was not reasonable to expect him to leave the UK. It is asserted although the Judge identified the length of time E has been in the UK for the purpose of the Rules, the Judge failed to identify this for the purpose of the Article 8 ECHR assessment. The fact E was nine years of age is said to be a highly material factor.

b) Ground 2 - in finding the decision to remove proportionate the Judge did not identify the correct legal test as identified in PD and Others (Article 8: conjoined family claims) Sri Lanka [2016] UKUT 108, at [37]. Had she done so the Judge

would have noted that the Upper Tribunal was of the view that "*strong reasons will be required in order to refuse a case with continuous UK residents of more than seven years".* In MA (Pakistan) & Ors, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Anor [2016] EWCA Civ 705 the Court of Appeal said at [49]:

> "However, the fact that the child has been in the UK for seven years would need to be given significant weight in the proportionality exercise for two related reasons: first, because of its relevance to determining the nature and strength of the child's best interests; and second, because it establishes as a starting point that leave should be granted unless there are powerful reasons to the contrary."

The Judge did not factor in the game changing nature of the seven-year residence of E and, especially in light of the findings of fact relating to E and the clear assessment of his best interests, whether this meant that it was not reasonable to expect him to leave the UK - especially when compared to the facts in PD and Others.

12. The claim the Judge failed to note the length of time any of the children or adults in this appeal have been in United Kingdom has no arguable merit. The Judge was clearly aware of when the adults entered the UK and also when the children were born in the United Kingdom. The provisions of the Immigration Rules, and particularly 276ADE(1)(vi) were considered by the Judge who specifically finds that none of the children had lived in the UK for seven years prior to the date of the application. This refers to a specific timeline in relation to which an individual has to prove an entitlement to benefit from the provision of a relevant rule which, in relation to this case, could not be satisfied. The Judge notes that as the appellants could not succeed under the Rule it was necessary to assess the human rights ground of challenge. The Judge provides the correct legal self-direction, as it was understood the date of the determination, at [19] where it is written:

> 19. In relation to Article 8 human rights issues I will firstly consider the Rules and if I am then led to consider proportionality I am obliged to bear in mind the non-exhaustive list of factors set out at s117A and 117B of the Nationality Immigration and Asylum Act 2002 (as amended) in the balancing exercise.

13. The Judge was arguably adopting an approach recognised by the Supreme Court in *Hesham Ali* and other cases decided earlier this year in which it was found the First-tier and Upper Tribunals have a human rights jurisdiction not a jurisdiction limited solely to considering the issue by reference to the Immigration Rules. When considering the proportionality of a decision a judge is required to factor into account whether an individual is able to succeed under the Rules as they set out the Secretary of States view of how human rights cases should be assessed, which therefore forms part of the balancing exercise.

14. In relation to the claim the Judge should have allowed the appeal by reference to 276ADE, such claim has no arguable merit as it was not argued before the Upper Tribunal successfully that the appellants were able to succeed on this basis.
15. In relation to s117B(vi) and the concept of a qualifying child, by virtue of section 117D a "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. If a child is a qualifying child for the purposes of section 117B of the 2002 Act as amended, the issue will generally be whether it is not reasonable for that child to return.
16. As stated, it is found the Judge was aware of the period of time the appellant's eldest son E had been in the United Kingdom and the Judge does not commit an error of law by failing to set out the definition of a qualifying child and how that test is satisfied when the Judge was clearly aware of the fact E did satisfy the criteria as a child under the age of 18 who has lived in United Kingdom for a continuous period of seven years or more.
17. The question in this appeal was whether removing E from the United Kingdom was reasonable. The Judge approached the issue of reasonableness within the proportionality assessment starting with identifying the circumstances for all the family members, assessing the best interests of the children which were found to be to remain in United Kingdom, but then assessing the proportionality of the decision as a whole.
18. In relation to the Rules, and specifically paragraph 276 ADE(vi), in *AM (S 117B) Malawi [2015] UKUT 260 (IAC)* the Tribunal held that when the question posed by s117B(6) is the same question posed in relation to children by paragraph 276ADE(1)(iv), it must be posed and answered in the proper context of whether it was reasonable to expect the child to follow its parents to their country of origin; *EV (Philippines)*. It is not however a question that needs to be posed and answered in relation to each child more than once. In this respect, the issue in the current appeal is whether the Judge considered the appropriate test and answered the question of the reasonableness, not necessarily under which label that exercise was conducted.
19. The second ground asserts the Judge did not identify the correct legal test. If this ground is suggesting the Judge failed to set out in the determination the correct test by reference to *PD and Others*, there is no legal obligation upon the Judge to have done so the failure of which amounts to an arguable legal error if she did not. The Judge was clearly aware of the need to take into account all competing elements of the case, to attach appropriate weight to those aspects that were accepted (both positive and negative), and then give reasons for why the appeal was decided as it was. The reference in *PD and Others* does not state that in every case a child who has been in United Kingdom continuously for a period of seven years or more must succeed with their claim, but that the weight given to the fact they have lived in the UK for that time and become settled and integrated

into British society should be given appropriate weight, such that strong reasons are required in order to refuse such an appeal. This is clearly a comment upon the weight a judge is entitled to give to the evidence relied upon by an appellant, but how such evidence is assessed and how much weight is attributed can only be for the decision maker who has the opportunity to see and hear evidence being given, to assess that evidence from all sources, to appraise themselves of relevant legal provisions, and then seek to arrive at wholly sustainable and adequately reasoned conclusions. The case law relied upon in Ground 2 cannot and does not seek to fetter the Judges discretion as to what appropriate weight should be attributed, absolutely. To do so would be arguably unlawful. The issue is whether the Judge in dismissing the appeal gave adequate reasons for why in her view strong reasons existed that required the appeal to be dismissed.

20. Contrary to the allegation in the original grounds, the fact E has seven years' residence is not a 'game changing' factor but one element of the case, similar to the best interests assessment, which is of primary importance. The Judge found that it is in the children's best interest to remain in the United Kingdom for the reasons set out in the determination showing this aspect of the case had been considered with the required degree of anxious scrutiny.

21. In *R (on the application of MA (Pakistan) and Others) v Upper Tribunal (Immigration and Asylum Chamber) and Another [2016] EWCA Civ 705* it was held (notwithstanding reservations) that when considering whether it was reasonable to remove a child from the UK under rule 276ADE(1)(iv) of the Immigration Rules and section 117B(6) of the Nationality, Immigration and Asylum Act 2002, a court or tribunal should not simply focus on the child but should have regard to the wider public interest considerations, including the conduct and immigration history of the parents. This is the aspect of the proportionality assessment the Judge undertook when assessing section 117 B (6) and no arguable legal error is made out in the Judge adopting this approach.

22. In *MA (Pakistan)* it was also confirmed that if section 117B(6) applies then "there can be no doubt that section 117B(6) must be read as a self-contained provision in the sense that Parliament has stipulated that where the conditions specified in the sub-section are satisfied, the public interest will not justify removal." It was additionally held, however, that the fact that a child had been in the UK for seven years should be given significant weight in the proportionality exercise because of its relevant to determining the nature and strength of the child's best interests and as it established as a starting point that leave should be granted unless there were powerful reasons to the contrary. This reflects the discussion above which the Judge was clearly aware of when undertaking the necessary assessment.

23. I find Ms Dhaliwal is unable to succeed in relation to her initial submission. Although this ground was not included in the original grounds of challenge and permission was not granted to pursue this

matter before the Upper Tribunal, Ms Aboni does not oppose the application to amend the grounds to include this additional head of challenge. Accordingly, permission to amend was granted by consent.

24. The Judge clearly considered the position under the Immigration Rules and gives reasons for why the appellant was unable to succeed in relation to the same, by reference to the specific timeline set out in the relevant rule, namely that an applicant is required to identify and establish they can meet the requirements at the relevant date which is at the date of application which was not the case in relation to this appeal.

25. Having considered the decision and evidence with the required degree of care, the evidence made available to the Judge, which did not go as far as examining in detail the impact of removal upon the children and the change of educational providers and family circumstances, despite it being assessed that such factors should have been considered as part of the proportionality assessment, it has not been made out the Judge failed to apply the correct test, failed to identify the appropriate issues in the appeal and relevant facts, and failed to conduct a proper proportionality exercise. In particular, the Judge identified the existence of NGO support, the lack of evidence regarding approaches to schools in Nigeria with only one school appearing to have been approached by the appellants, and the lack of evidence establishing there were not strong reasons for why this appeal should not be dismissed.

26. The Upper Tribunal accepts the Judge undertook a properly structured proportionality assessment in accordance with the law and guidance from the Senior Courts. As a proper proportionality assessment was undertaken the only basis of challenge available to the appellant is on public law grounds. It is clear that this is a matter in relation to which the judge took a great deal of care and could not help but have been moved by the difficulties experienced by the two older children and the family having to cope with them and meet their needs. The Judge clearly noted the extent of the assistance available in the United Kingdom which as the Judge noted cost the taxpayer tens of thousands of pounds a year. The Judge did not decide this matter solely on economic grounds but clearly the economic well-being of the United Kingdom is a legitimate aim specified in article 8(2) ECHR. The Court of Appeal have also reminded us that the United Kingdom can neither educate nor medicate the world. No member of this family has any right or expectation that they will be entitled to remain to benefit from the education and health services provided free at source to British nationals and those otherwise entitled to enter or remain in this country lawfully. At a time of austerity where the pressure upon the budgets of the health service and educational services are as severe as it is often reported in the popular press, there is a strong public interest argument that those entitled to benefit from such services should only be those lawfully entitled. The Secretary of State has a margin of appreciation under European law and it has not been made out before the Judge that the decision to reject the application for

leave to remain was outside the parameters of a reasonable exercise of such a right.

27. Article 8 does not enable an individual to choose where they wish to live. The purpose of article 8 is to prevent unwarranted interference with a protected right by a Contracting State. Family life enjoyed by this unit will continue, as the Judge identified, as they will be removed together. The private life aspects, including education, health, and other community ties that exist will be disrupted in a manner sufficient to engage article 8, as the Judge recognised. The question for the Judge was whether that interference was warranted i.e. whether it is proportionate. The Judge found on balance that strong reasons existed for why the appeal should be refused. In challenging that the appellant disagrees. Disagreement or a desire for a different outcome does not per se amount arguable legal error.

28. Having considered the submissions made and all relevant issues I make a finding of fact the appellant has failed to make out that the Judge has erred in law in a manner material to the decision to dismiss the appeals of this family unit. The determination shall therefore stand.

Decision

29. There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.

Anonymity.

30. The First-tier Tribunal made make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed
Upper Tribunal Judge Hanson
Dated the 4 August 2017