



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: HU/09440/2015
HU/09442/2015
HU/09445/2015
HU/09447/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 6th September 2017**

**Decision & Reasons Promulgated
On 14th September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ABDENOUR [R]

LAMIA [R]

[RR]

[AR]

~~(ANONYMITY DIRECTION NOT MADE)~~

Respondents

Representation:

For the Appellant: Ms N Willocks-Briscoe, Home Office Presenting Officer
For the Respondents: Ms J Victor-Mazeli, Counsel instructed by Saifee Solicitors

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State I refer to the parties as they were in the First-tier Tribunal.

2. The Appellants are citizens of Algeria. The first and second Appellants are husband and wife and the third and fourth Appellants are their children. They appealed to the First-tier Tribunal against the decisions of the Secretary of State to refuse their applications for leave to remain in the UK on the basis of their private and family life. First-tier Tribunal Judge Maciel allowed their appeals in a decision promulgated on 16th December 2016. The Secretary of State now appeals with permission to this Tribunal.

Background to this Appeal

3. The findings of the First-tier Tribunal Judge, which have not been challenged, are that the first Appellant entered the UK illegally in June 1997 and remained without leave. The second Appellant entered the UK in 2006 on a visit visa and joined the first Appellant. The third and fourth Appellants were born and have lived all their lives in the UK. At the time of the application the third Appellant was 6 years old but had reached the age of 8 years old by the time of the appeal hearing. The third Appellant attends primary school and has a medical condition relating to her hips and feet and has received medical treatment to correct these issues.
4. The First-tier Tribunal Judge firstly considered the appeals under the Immigration Rules. In unchallenged findings the judge found that they could not meet the requirements of the Immigration Rules on the basis of their private or family life. The judge took into account the fact that at the date of the application the third and fourth Appellants had not been in the UK for seven years and the first and second Appellants had been in the UK for less than twenty years. The judge found that it had not been established that there would be very significant obstacles to the first Appellant's integration in Algeria.
5. The judge went on to consider whether it was appropriate to look at the appeals under freestanding Article 8 and considered the guidance in **SS (Congo) [2015] EWCA Civ 387**. The judge identified the compelling circumstances in this case as being the fact that the best interests of the children had not been ventilated in the appeal under the Immigration Rules. The judge went on to consider the appeal under Article 8 through the step by step approach set out in **Razgar [2004] UKHL 27**. In so doing the judge accepted that the Appellants have established a private life within the UK and went on to consider the proportionality of the decision. The judge considered a number of factors and concluded that it would not be reasonable for the third Appellant to leave the UK. In the context of section 117B of the Nationality, Immigration and Asylum Act 2002 she decided that, as they had a genuine and subsisting relationship with the third Appellant, it would be disproportionate to remove the first and second Appellants. She decided, due to his very young age and the fact that he has always lived with his family, it would be in the best interests of the fourth Appellant to remain with his family. The judge concluded that the balancing exercise is "overwhelmingly in the Appellants' favour" in that the removal of the first and second Appellants

to Algeria would have a detrimental effect on the third Appellant and would amount to a disproportionate interference in their private and family life. The judge allowed the human rights appeals of all of the Appellants [38].

6. In her Grounds of appeal the Secretary of State contended that the judge had failed to give adequate reasons or made a material misdirection in law or made irrational findings. It is contended that the judge had failed to adequately reason the findings relating to the third Appellant's private life. It is contended that it is irrational to find that the third Appellant would have no knowledge of Algerian language and culture having been raised by Algerian parents in the UK. It is contended that the judge had not asked himself whether the third Appellant would be young enough to learn the Algerian language. It is contended that it is irrational to conclude that the third Appellant had established a private life of her own that is not wholly dependent on her parents. It is contended that the judge materially misdirected herself in failing to adhere to the principles set down in **MA (Pakistan) [2016] EWCA Civ 705** and failed to take into account all of the factors set out in that decision. It is further contended that the judge failed to properly reason the public interest in maintaining immigration control considering the family's negative immigration history and the economic welfare and recourse to public funds. It is further contended that the judge erred in failing to make any findings in the situation the family would face in Algeria on return and it is contended that there are no findings on education, health, employment or housing within the determination and little or no findings on public interest. In these circumstances it is argued that the judge failed to adequately reason the findings in relation to the third Appellant and those findings border on irrationality.
7. First-tier Tribunal Judge Andrew granted permission on 10th July 2017 on the basis that the grounds disclosed arguable errors of law.
8. At the hearing before me Ms Willocks-Briscoe argued that the First-tier Tribunal Judge's decision was made in a vacuum without proper consideration of all of the facts. It is contended that the judge considered the best interests of the child at paragraph 34 but stopped her consideration at that point. It is argued that the judge used this factor as a trump card but failed to undertake the balancing exercise set out in **MA (Pakistan)**. She argued that the judge did not identify the pros and cons for and against the Appellants before coming to her overall conclusion. Miss Willocks-Briscoe contended that the judge failed to take account of the factors listed in **EV (Philippines) [2014] EWCA Civ 874** at paragraphs 58 and 60. It is contended that the judge failed to take into account a number of factors in considering proportionality including the fact that if the third Appellant had to leave the UK she would be doing so within the family unit which would provide for protective factors. In her submission the judge has failed to identify what makes this decision unreasonable and failed to take into account real world factors as

highlighted in **EV (Philippines)**. She also argued that the judge failed to grapple with balancing all of the factors in Section 117B of the 2002 Act against the positive factors identified.

9. Ms Victor-Mazeli submitted that the Secretary of State raised two broad points in relation to the judge's decision. It appears that the Secretary of State contends that the public interest has not been properly considered. However in her submission it was properly considered the Appellants were considered as a family under the Immigration Rules. When the judge considered the situation under Article 8 she did so in a coherent way having decided **SS Congo** and identified compelling factors before going on to look at the factors relevant to the case. In considering proportionality the judge properly set out the factors in Section 117B of the 2002 Act. The judge set out the factors against the Appellant including the reliance on public monies and the immigration status of the first and second Appellants. Therefore the judge has undertaken a full assessment of all of the pros and cons in this case. She submitted that the judge has undertaken a thorough analysis of the situation of the third Appellant and in particular through Section 117B(6). In her submission the judge was not required to go through the cases one by one but to deal with the principles and issues and she properly directed herself in relation to those matters.
10. In response Ms Willocks-Briscoe submitted that the judge looked at the public interest in terms of the Rules. Although the judge looked at Section 117B and the factors there, she submitted that the public interest is not limited to those factors and has to be a wider consideration of the facts and the real world factors. In her submission the judge looked at the factors which support the third Appellant but not those which do not. She argued that the judge failed to engage in relation to issues relating to the third Appellant's education in Algeria or how she could maintain friendships built in the UK upon return to Algeria and ignored the fact that the third Appellant's parents are Algerian and fails to ask why they have not brought her up in the Algerian culture. In her submission the issue is the method and approach undertaken by the judge who has not properly considered all relevant factors. She submitted that the judge failed to identify evidence to substantiate her findings.

Error of Law

11. In my view the judge took the proper approach to this appeal. She firstly set out the evidence and the burden and standard of proof before going on to consider the previous decision made by a previous judge in July 2014 in accordance with the principles in **Devaseelan [2002] UKIAT 007021**. The judge made findings at paragraphs 19 to 23. The judge then went on to apply the law to those findings. The judge firstly considered the Immigration Rules and made unchallenged findings in relation to those.
12. The judge considered Article 8 from paragraph 27. Having identified that there were compelling circumstances to consider the appeals under

freestanding Article 8 the judge considered in particular the circumstances of the third Appellant.

13. In considering the situation of the third Appellant the judge considered factors to be weighed against the Appellants taking into account the public interest factors set out at Section 117B noting that the public interest in the maintenance of effective immigration controls is engaged. The judge noted that the third Appellant is in school and receives medical treatment which is provided for from public monies that she will continue to be treated medically at public expense and if they remain the family will have the capacity to access other publicly funded services and benefits. The judge also noted that the Appellants have never been granted any kind of leave with the exception of entry clearance for the second Appellant as a visitor and noted that little weight ought to be attached to the private life established [33]. Therefore in my view, contrary to the submission of the Secretary of State, the judge did take into account the factors against the Appellants in terms of the public interest.
14. The judge considered factors in favour of the Appellants including the finding that if the family were to be returned to Algeria the third Appellant will be isolated as she did not speak the language and would be leaving the life she knew to go to a culture and country completely alien to her [28]. The judge also considered the fact that the family speak English, are not on benefits and are self-sufficient [33]. The judge considered circumstances relevant to the third Appellant at paragraph 34 including the fact that she has attended school in the UK, has been resident in the UK for eight years, has participated in the UK culture, values, pastimes, living standards, language and the prevailing education system having made good academic progress. The judge noted that her connection with Algeria is minimal. The judge found for those reasons that it would not be reasonable to expect the third Appellant to leave the UK. In my view the judge gave adequate reasons for this conclusion having set out all of the factors in favour of the third Appellant including her length of residence in the UK, her integration in the UK in terms of her education and other factors and her lack of connection with Algeria including her inability to speak the language, her disconnect from the culture and also her medical condition. Contrary to the submission of the Secretary of State I accept that the judge gave sufficient reasons for concluding that it was not reasonable to expect the third Appellant to leave the UK.
15. The judge then considered Section 117B(6) of the 2002 Act in the context of the first and second Appellants. The judge's unchallenged finding that the first and second Appellants have a genuine and subsisting parental relationship with the third Appellant. Based on the findings that it was not reasonable to expect the third Appellant to leave the UK the judge allowed the appeals of the first and second Appellants following Section 117B(6). In light of the findings in relating to the first, second and third Appellants the judge found that it was in the best interests of the fourth Appellant to

live with his family and that it was proportionate to allow him to remain with the family.

16. In my view it is clear that the judge took into account all relevant factors, gave sufficient reasons for the findings made and reached conclusions open to her on the basis of the evidence before her. Therefore I conclude that the judge made no material error of law in her approach to the Appellants' appeals.

Notice of Decision

The judge made no material error of law in the decisions.

The decision of the First-tier Tribunal shall stand.

No anonymity direction is made.

Signed

Dated: 12th September 2017

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT FEE AWARD

I maintain the fee award made by the First-tier Tribunal.

Signed

Dated: 12th September 2017

Deputy Upper Tribunal Judge Grimes