Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/20998/2015
IA/21010/2015
IA/21007/2015
IA/21002/2015

THE IMMIGRATION ACTS

Heard at Stoke	**Decision & Reasons Promulgated**
On September 27, 2017	**On October 3, 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR G K
MRS K G
MASTER I G K
MASTER I G K
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants:	Ms Jegarajah, Counsel instructed by Greater London Solicitors Limited
For the Respondent:	Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity direction in this matter pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

2. The appellants are citizens of India with the first and second appellants being husband and wife and the third and fourth appellants being their children.

3. On November 19, 2014 the appellants lodged an application for leave to remain on compelling and compassionate grounds outside of the Immigration Rules. The respondent refused their applications on May 20, 2015 and grounds of appeal were lodged by the appellants. The matter was listed before Judge of the First-tier Tribunal Shanahan (hereinafter called the Judge) on June 10, 2016 and in a decision promulgated on July 4, 2016 she dismissed their appeals.

4. The appellants appealed those decisions and permission to appeal was refused firstly by Judge of the First-tier Tribunal Easterman on October 21, 2016 and secondly by Upper Tribunal Judge Smith on January 10, 2017.

5. The appellants lodged a judicial review on February 9, 2017 and on May 4, 2017 the High Court stated-

> "This is a very rare case in which I think there is an arguable case based on the First-tier Tribunal Judge's conclusion in [49] and the importance of the seven years since the age of 4 that I has been here. Apart from section 55 the question of proportionality arises in respect of his private life. In addition, while there has been some overstaying it is clear that the father was initially let down and subsequently given very poor advice by his representative so that the overstaying is not blatant. If no request for a hearing is made the court will make a final order quashing the refusal of permission without a further hearing."

6. On July 21, 2017 Vice President Ockelton granted permission to appeal.

7. The matter came before me on the above date and I heard submissions on the error or law from both representatives. Mr Bates accepted that if there was an error in law then the decisions should be remade and the appeals allowed as their position now would be stronger than it was fifteen months ago.

SUBMISSIONS

8. Mr Bates argued that whilst the High Court had given permission the Judge had considered the appropriate authorities and in a finely balanced decision had found that refusing their applications would not be disproportionate. Their status in the United Kingdom had always been precarious and the decision taken was open to the Judge.

9. Ms Jegarajah submitted that in giving permission the High Court had applied a higher test than that applied by the Upper Tribunal when considering whether there was an error in law. She submitted the Judge had erred in her overall approach to the seven-year rule and thereafter had wrongly applied PD and others (Artilce 8-conjoined family claims) Sri Lanka UKUT 00108 (IAC). She submitted there had to be

strong reasons for refusing the third named-appellant's appeal and bearing in mind the evidence submitted she argued the Judge had erred in her approach to this appeal and thereafter erred in refusing the remaining appellant's appeals.

ERROR OF LAW

10. These appeals date back to June 2016 although their actual applications were made in November 2014 and refused by the respondent in May 2015.

11. The Judge clearly considered the facts very carefully and in a detailed decision she refused all appeals.

12. The parties recognised that the third-named appellant's appeal was key to the outcome of all the appeals in that he had come to this country legally and had been here for over seven years. For the reasons explained in the Judge's decision the appellants became overstayers after November 2012 albeit it was accepted that they had attempted to extend their leave in this country but had been let down by legal representatives-a fact recognised by the High Court when setting aside the Upper Tribunal's decision to refuse to give permission to appeal.

13. The Judge's consideration of the third-named appellant's appeal can be found between [38] and [49]. The Judge concluded that the third-named appellant's interests were best served living in the United Kingdom. The High Court made it clear when sending the matter back to the Upper Tribunal that it was the Judge's finding at [49] and the importance of him being here for seven years that provided the basis for an argument there had been an error.

14. Having identified that the third-named appellant's best interests were in the United Kingdom the Judge would have had to consider the proportionality of removing this appellant and her family applying the principles of PD and others (Artilce 8-conjoined family claims) Sri Lanka.

15. In MA (Pakistan) [2016] EWCA Civ 705 Elias LJ confirmed that the Upper Tribunal was correct in Treebhawon and others (section 117B(6)) [2015] UKUT 674 (IAC) to find that if the criteria in section 117B(6) are met then Article 8 will be infringed; no further balancing consideration is needed. At [46] Elias JL stated-

> "Even on the approach of the Secretary of State, the fact that a child has been here for seven years must be given significant weight when carrying out the proportionality exercise. Indeed, the Secretary of State published guidance in August 2015 in the form of Immigration Directorate Instructions entitled "Family Life (as a partner or parent) and Private Life: 10 Year Routes" in which it is expressly stated that once the seven years' residence requirement is satisfied, there need to be "strong reasons" for refusing leave (para. 11.2.4). These instructions were not in force when the cases now subject to appeal were determined, but in my view they merely confirm what is implicit in adopting a policy of this nature. After such a period of time the child will have put down roots and developed social, cultural and educational links in the UK such that it is likely to be highly disruptive if the child is required to leave the UK. That may

> be less so when the children are very young because the focus of their lives will be on their families, but the disruption becomes more serious as they get older. Moreover, in these cases there must be a very strong expectation that the child's best interests will be to remain in the UK with his parents as part of a family unit, and that must rank as a primary consideration in the proportionality assessment."

16. Having read the Judge's decision I am satisfied that whilst she clearly had regard to all the evidence her approach was not from the position emphasised in MA (Pakistan) namely that there had to be strong reasons for refusing leave. She accepted the third-named appellant's best interests were to remain here but refused his appeal on the basis of his parent's circumstances and the availability of housing and employment for his parents. The Judge found the expert reports did not address how the third-named appellant would be able to adapt to change circumstances but the error of law was a failure to identify "strong reasons" for refusing leave especially in circumstances where the appellant had spent his formative years in this country.

17. In light of the firm guidance given in this appeal by the High Court I find there was an error in law.

REMAKING OF DECISION

18. Mr Bates had already conceded that the family's circumstances, in September 2017, were even stronger than they were in June 2016 when the Judge originally heard the appeal. I also had before me further evidence adduced under Rule 15(2A) of the 2008 Rules

19. Taking all the evidence into account and bearing in mind the reason I found an error in law I find that in light of the immigration history, the finding made in [49] of the Judge's decision and the fact there are no strong reasons for refusing the third-named appellant's appeal I allow both his appeal and those of his parents and sibling.

NOTICE OF DECISION

20. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I have remade the decision and I allow all appeals under article 8 ECHR.

Signed Date 02.10.2017

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

No fee award was requested and in any event the appeal was allowed based on the evidence provided during the appeal process.

Signed Date 2.10.2017

Deputy Upper Tribunal Judge Alis