Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/08729/2016
HU/08731/2016
HU/08732/2016
HU/08740/2016

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 13 August 2018	**On 28 September 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

CAO [P]
TUYEN [V]
[D V]
[J V]
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr V Jagadeshan, Counsel instructed by Prolegis Solicitors LLP
For the Respondent: Miss R Pettersen, Senior Presenting Officer

DECISION AND REASONS

1. The First and Second Appellants are nationals of Vietnam. The Third Appellant was a national of Vietnam but is now a British national. The Fourth Appellant is a national of Vietnam. The Appellants' children, that is the Third and Fourth Appellants' dates of birth are 28 March 2008 and 22 January 2010, born in the United Kingdom and have never left.

2. The applications for leave to remain were refused on 10 March 2016 which were appealed and the appeals came before First-tier Tribunal Judge Buchanan (the Judge) who on 10 October 2017 dismissed them. Permission to appeal the Judge's decision was given on 4 April 2018 and the Respondent made a Rule 24 response on 7 June 2018.

3. The gravamen of the challenge to the Judge's decision was essentially that the Judge had failed to properly analyse and deal with the fact that the Third Appellant had been in the United Kingdom at that stage some nine and a half years and has now been here sufficiently long to acquire and obtain British nationality. The Fourth Appellant born in the United Kingdom was at the time the Judge considered this matter over 7 years of age. There was no suggestion in the Judge's findings that the First and Second Appellants were not the responsible parents who had the care and control in the upbringing of the Third and Fourth Appellants.

4. It is plain that the Judge laboured under a mistake at least of fact, that the First and Second Appellants were subject to a deportation process. Quite what he made of the Third and Fourth Appellants was less than clear, but it is sufficient to say the arguments as presented in his thinking and findings conflated the issue of the First and Second Appellants' immigration history and conduct in the United Kingdom with the issue of best interests and the issue of whether it is reasonable to expect the children to leave the United Kingdom.

5. In fact the Judge never addressed the Fourth Appellant's, as a qualifying child, case in any material way. It is sufficient to say that the Judge's reasoning showed that he had failed to properly address the issue of whether it was reasonable for the children to leave, even taking into account the parents' immigration history and whether or not in the circumstances either on the basis that Section 117B(6) NIAA 2002 as amended or under the general consideration of proportionality or if it was unduly harsh for the children to leave.

6. I was satisfied that the Original Tribunal's reasoning did not adequately address the critical issues on an appropriate basis, and the Judge made a number of findings which, had he properly looked at this exercise, might well have led to a considerably different decision in relation to the Third and Fourth Appellants

7. Mr Jagadeshan provided a helpful submission in writing addressing the issue and in particular emphasising as might be expected the extent to which the children have been in the United Kingdom, the particular context for the Third Appellant's education, the material difference between expecting them to return and settle into schooling and face the changes that might arise on a return to Vietnam and the general implications of the Secretary of State's published policy in relation to the removal of British citizens and qualifying children.

8. In the light of his submissions and Miss Pettersen's helpful recognition that her hands are to a degree tied now that the Third Appellant is a British national, in the circumstances she correctly realised, in the light of that fact and the fact that he could not be removed, that it was extremely difficult or would be extremely difficult to argue either that it was reasonable for him to leave the UK or that it was proportionate if one looked at it in the wider sense. For these reasons and based on the evidence I for my part am fully satisfied on the facts found that it was not reasonable for the Third and Fourth Appellants to leave the United Kingdom. It followed on the basis that the First and Second Appellants are the carers and parents

responsible for the Third and Fourth Appellants that it is not in the public interest nor proportionate for them to leave the UK.

9. For these reasons therefore I am satisfied that the Original Tribunal's decision can not stand and the following decision should be substituted.

DECISION

The appeal of each of the Appellants is allowed on Article 8 ECHR grounds.

ANONYMITY

No anonymity order was made previously. None has been requested and in the circumstances it does not seem to me given the nature of this decision that an anonymity order is required.

Signed Date10 September 2018

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT
FEE AWARD

Fees were paid by each of the Appellants in the sum of £140.00. In the circumstances I am satisfied that a fee award in respect of each Appellant should be made on that basis.

Signed Date10 September 2018

Deputy Upper Tribunal Judge Davey