



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/11183/2016
HU/11188/2016
HU/11190/2016

THE IMMIGRATION ACTS

Heard at Field House
On 10th May 2018

Decision & Reasons Promulgated
On 31st May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS Y.P.

MR M.J.P.

MRS C.M.P.

(ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Mr S. Kandola, Senior Home Office Presenting Officer

For the Respondents: Mr S Harding, Counsel instructed by G Singh Solicitors

DECISION AND REASONS

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge K.R. Moore promulgated on 11th October 2017 allowing the Appellants' appeals against a refusal of their application for leave to remain. Permission to appeal was granted by

First-tier Tribunal Judge Pickup. The grounds upon which permission was granted may be summarised as follows:

“The grounds assert that the judge erred in law in focusing almost entirely on the medical needs of the child Appellant, failing to take any account of the public interest factors pointing the other way. It is also pointed out that although the burden was on the Appellants, no evidence was adduced to demonstrate that the child’s medical needs could not be met in India. The evidence to justify the conclusion of the judge was insufficient. I am satisfied that an arguable material error of law is disclosed. All grounds may be argued.”

2. I was not provided with a Rule 24 reply from the Appellants (who I am referring to by their classification before the First-tier Tribunal for ease of reference), however was addressed by their Counsel in oral submissions.

Error of Law

3. At the close of submissions I indicated that I did not find that there was an error of law in the decision such that it should be set aside but that my reasons for so finding would follow. My reasons for so finding are as follows.
4. In pursuing the appeal Mr Kandola did not make any further submission other than to rely upon the grounds as pleaded and submitted that the First-tier Tribunal Judge had allegedly not engaged with the medical treatment. In my view as Judge Pickup has observed, the basis of the appeal focuses on the assessment of the medical needs of the child and the evidence provided in that respect.
5. In respect of the medical evidence provided by the parties and the manner in which it was assessed by the First-tier Tribunal, I do not find that there is an error of law in Judge Moore’s assessment. At paragraphs 15 to 19 of the First-tier Tribunal’s decision the judge has performed a comprehensive assessment of all of the evidence before him both in respect of that provided by the Appellant (primarily in relation to a report dated 30 September 2017 from Great Ormond Street Hospital) and in respect of the evidence provided by the Respondent (in particular the reference to a website entitled “Smile Train India” and the statement that this organisation makes safe and quality assured cleft lip and palate surgery available across the country, although as Judge Moore observed no reference is made in respect of the other conditions suffered by the first Appellant child specifically referred to by Great Ormond Street Hospital and the social circumstances report). In my view, the judge has adequately dealt with this evidence at paragraphs 15 through to 17 and the judge’s conclusion at paragraph 18 is indeed correct wherein he states that the standard and regularity of care required for the child in India is not necessarily the issue. The judge formed the view that whether adequate treatment would be available to the child Appellant in India due to her complex medical condition was the key issue and on that basis the judge was satisfied from the evidence before him that adequate treatment would not be available to the Appellant if she had to go to India with her parents.
6. The judge then, having had an eye to this key factor went on to consider the child’s continuous residence over a period of seven years or more in respect of Section 117B(6) of the 2002 Act and performed an assessment in that regard at paragraphs 20 to 21 of

his decision before reaching the conclusion that it would be unreasonable for the child to go to India. In respect of those findings I accept Mr Harding's submission in reply to this appeal namely that if any error was made it is only that the judge applied too high a threshold. Mr Harding revealed that a copy of the Immigration Directorate Instruction FM 1.0b (see paragraph 11.2.4 of the IDI etc.) was provided by him to the First-tier Tribunal Judge along with the Court of Appeal's decision in *MA (Pakistan)*, and submissions were made that no "strong reasons" existed as to why it was reasonable for the child to relocate to India, and that medical treatment being unavailable was a matter that was not going to be dispositive of the appeal.

7. The Secretary of State's main basis of appeal is the lack of consideration of the public interest, however that submission fails to have regard to her own policy which makes clear that "strong reasons" must be given why a child who has attained seven years' continuous residence, should leave the United Kingdom and that it would be reasonable for the child to do so. In that respect the Secretary of State's submission regarding the precariousness of the child's parents is insufficient given that at paragraph 34 of the decision in *MT and ET (child's best interests; ex tempore pilot) Nigeria [2018] UKUT 88 (IAC)* (see paragraphs 29 to 34 of that decision in general), the Presidential Panel observed that overstaying would not form the basis for a powerful reason that would render removal to the country of origin as reasonable.
8. Therefore, in that respect, given that "strong reasons" were not given by the Secretary of State, and still have not been given to date, if there is any error revealed in the decision of Judge Moore, I am satisfied that the error would be immaterial to the outcome of the appeal given the assessment made by Judge Moore in respect of the medical evidence, which I have already observed was open to him to make, and in respect of the lack of "strong" or "powerful" reasons why it would be reasonable for the child to be removed to India.
9. In light of the above findings, the appeal to the Upper Tribunal is dismissed and the decision of the First-tier Tribunal is hereby affirmed.

Notice of Decision

10. The appeal is dismissed.
11. An anonymity direction is made to preserve the identity of the first child Appellant.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 27 May 2018

Deputy Upper Tribunal Judge Saini