Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/10594/2018
HU/10598/2018
HU/10603/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 January 2019	**On 07 February 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

N C
V C
T C
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr S Tariq, Legal Representative, West London Solicitors Ltd
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellants are all citizens of India. They are mother, father and son. The son is aged 16. The appellants arrived in the UK as a student and

dependants and received further grant of leave until 1 June 2015 following a curtailment decision. In a decision sent on 31 October 2018, Judge Andrew of the First-tier Tribunal (FtT) dismissed their appeals against the decision made by the respondent on 26 April 2018 refusing them leave to remain. In granting permission to appeal, Judge Grant-Hutchison of the FtT stated that it was arguable that the judge had misdirected herself in four respects.

2. I heard excellent submissions from both Mr Tariq and Ms Everett, for which I express my gratitude.

3. It is unnecessary to set out the appellants' grounds in full as I am persuaded that there are at least two material errors in the judge's decision.

4. The first error is that the judge incorrectly identified the appellants as overstayers. As Mr Everett conceded, that was incorrect since the appellants still had valid leave when they applied for leave to remain in May 2015. Ms Everett submitted that this was not a material error, but it is clear from paragraphs 8 – 11 that the judge regarded this adverse immigration history as a significant factor in the Article 8 proportionality assessment and at paragraph 21 the judge highlighted the need to maintain immigration control.

5. The second error concerns the judge's, treatment of the third appellant's circumstances. Although stating that she had taken note of the guidance given by the Supreme Court in **KO & Others v SSHD** [2018] UKSC 53, there is nothing to indicate that she understood that this decision left unaffected two important principles set out by previous High Court authority. First of all, at the date of the decision and the hearing the respondent still had a policy stating that in the case of children who had resided in the UK for seven years strong reasons had to be shown for not granting them leave to remain. Secondly, in **MA (Pakistan)** [2016] 705 Elias LJ stated, to similar effect, that strong or powerful countervailing reasons had to be given for requiring a child resident in the UK for seven years to leave the UK. There is nothing to show that the judge adopted such an approach. For the judge the fact that the child had been in the UK was simply "something I must consider" (paragraph 12) and that it was for the appellants to provide strong reasons why the child should be permitted to remain.

6. My concern about the nature of the judge's treatment of the seven year issue is intensified by two matters. One is that although making reference to the letter from the third appellant, the judge appears to have regarded it as irrelevant to assessment of her best interests. The other relates to the manner in which the judge dealt with the Social Circumstances and Family Assessment Report by Dr Jasmine Murray, which concluded that to disrupt the family by requiring them to leave together would be detrimental to the third appellant's emotional health and wellbeing. Whilst

the judge was entitled to make some criticisms of this report I do not consider that those made warranted setting entirely at nought the social worker's findings which were based on interviews and close observation.

7. For the above reasons, I conclude that the judge materially erred in law.

8. But for two respects, I would consider that I am in a position to re-make the decision for myself. The first matter is that the third appellant is now a young man seeking to make a career as an engineer and he has not as yet had his voice heard as to what he considers to be in his best interest and why. Second, I am concerned about some of the features of the social worker report as criticised by the FtT Judge. If I simply had this report to consider, I would have to focus more on the issue of the methodology of the report than its contents. I think in fairness the appellant's representatives should be offered the opportunity of seeking a further report from a more established expert.

9. I should also comment that whilst I have applied the law as I understand it to be currently, there are cases in the pipeline before a presidential panel of the Upper Tribunal intended to clarify various aspects of **KO**, including its applicability to the case of children with seven years or more residence in the UK. It is likely there will be a reported decision on these cases by April 2019.

10. For the above reasons I conclude that:

    – the decision of the FtT Judge must be set aside for material error of law.

    – the case should be remitted to the FtT so that the third appellant is afforded the opportunity of giving oral evidence and the appellant's representatives have the opportunity to produce a further expert report, this time from an established expert. Any such report is to be produced to the First-tier Tribunal within ten weeks of this decision being sent to the parties.

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: 3 January 2019

H H Storey

Dr H H Storey
Judge of the Upper Tribunal