Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17142/2017
HU/17145/2017
HU/17146/2017
HU/17147/2017

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
on 16 January 2019	**on 11 February 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

NATASHA [G]
WELANI [N]
[H N]
[H G]
(anonymity direction not made)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No appearance
For the Respondent: Mr Diwnycz - Senior Home Office Presenting Officer.

DECISION AND REASONS

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1. The appellants appeal with permission a decision of First-Tier Tribunal Judge Mensah promulgated on 5 April 2018 in which the Judge dismissed the appellants appeals on human rights grounds.
2. There was no attendance on behalf of the appellants at the hearing before the Upper Tribunal. Notice setting out clearly the date, time, and venue was sent by first-class post to the appellants at their residential address and to their nominated advocates Crown & Law Solicitors on 26 November 2018. None of the notices have been returned as not having been delivered by the Royal Mail. I am satisfied that there has been valid service of the notice informing the appellants and their advocate of the hearing in accordance with the Procedure Rules. There is no explanation for the failure to attend by the appellants or their nominated representative. No application for an adjournment on grounds that warrant the same, or at all, has been made. In the absence of any communication explaining the failure to attend I consider it appropriate in all the circumstances, including the principles of fairness and the overriding objective, to proceed with this appeal in the absence of the appellants.

Background

3. The appellants are a family group, all citizens of Malawi, born on 1 August 1985, 11 November 1985, 7 January 2010 and 7 September 2013 respectively. The Judge sets out their immigration history at [2] of the decision under challenge. The Judge notes at [3] that the appellants seek leave to remain in the United Kingdom on the basis of their family and private life arguing in particular that the eldest child has now been in the United Kingdom for 7 years from January 2018 and that to ask them to leave and return to Malawi would not be in the interests of the children and will be in breach of their family life.
4. The Judge clearly considered the evidence with the required degree of anxious scrutiny considering the family circumstances in a structured manner. The Judge's core findings are set out at [13 – 15] in the following terms:

> "13. Taking all of the evidence together, I accept the eldest child has developed a private life in the United Kingdom. In fact I accept the entire family will live develops and private life given the time they have spent in the UK. I accept the eldest child has spent 7 years here and has not previously lived in Malawi. I accept as a child at primary school she will have developed her own network of friends and will feels settled in the United Kingdom.
>
> 14. However, I find her family life with her two siblings and her parents far outweighs any private life she has developed. I am of the view it is with that family support she will be able to adjust to a life in Malawi. I don't accept the eldest doesn't speak any Chichewa and I don't accept the parents would be unable to support their children. They have shown

> themselves to be very capable individuals who have both spent significant times in the United Kingdom without any leave. They have both managed to care for the children without a right to work in the United Kingdom.
>
> 15. Whilst generally I accept it would not be reasonable for a child to leave after 7 years I also consider it very fact sensitive and dependent upon all the circumstances. A child who spent 7 years in the United Kingdom is not a trump card for status in the United Kingdom. I consider the best interests of the child are met by returning with her entire family to the country they are nationals and where they have worked, are familiar with the culture and language and can reintegrate. There is a paucity of evidence to support a claim it would be unreasonable. I find it is reasonable for all the children including the eldest child to return to Malawi with their parents."

5. The appellant sought permission to appeal which was initially refused by a Designated Judge of the First-tier Tribunal but granted on a renewed application by a judge of the Upper Tribunal on 4 October 2018 who found it arguable that the Judge's brief findings at 13 – 15 inadequately assess the factors under 117B(6) and fail to consider relevant jurisprudence.
6. The respondent has filed a Rule 24 response dated 6 November 2018 opposing the application.

Error of law

7. The Judge accepts that the eldest child is a "qualifying child". By virtue of section 117D a "qualifying child" means a person who is under the age of 18 and who— (a) is a British citizen, or (b) has lived in the United Kingdom for a continuous period of seven years or more. If a child is a qualifying child for the purposes of section 117B of the 2002 Act as amended, the issue will generally be whether it is not reasonable for that child to return.
8. The Secretary of State in her Rule 24 response refers to the decision of the Supreme Court in KO (Nigeria) [2018] UKSC 53. In this decision the Court disapproved the reasoning in MA (Pakistan) & Others [2016] EWCA Civ 705 in so far as the immigration history of the parent being relevant and found that the question of whether it is reasonable to expect a child to leave the UK is to be decided without considering the immigration history of the parents. The immigration history is relevant however to whether the parents will be leaving the UK. To that extent their record becomes indirectly material because it may lead to them having to leave the UK. It is only if, even on that hypothesis, it would not be reasonable for the child to leave that the provision may give the parents a right to remain. The reasonableness of the child leaving the UK is to be considered on the basis that the facts are as they are in the real world, so that if one parent has no

right to remain, but the other does, or if both parents have no right to remain that is the background against which the best interests' assessment is conducted. The ultimate question is whether it is reasonable to expect the child to follow the parent with no right to remain to their country of origin

9. Although the Judge did not have the benefit of the guidance provided by the Supreme Court available the approach she adopted in determining this appeal is arguably in accordance with the decision in KO.
10. The grounds seeking permission to appeal claim the Judge erred in finding it will be reasonable for the child to leave the United Kingdom arguing the child will have problems integrating into Malawian society as she does not speak the language and has no experience of what life is like in that country and has forged her own ties to the United Kingdom. The grounds also assert the Judge is supposed to take into account that it will be difficult for the parents to provide for the child when returning to Malawi.
11. The submissions amount to no more than disagreement with the findings of the Judge who gives adequate reasons in support of the findings to the contrary.
12. It is also important to note the specific finding of the Judge that the appellants had provided "a paucity of evidence to support the claim that removing the child would be unreasonable".
13. I find the appellants fail to establish arguable legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter. The conclusions are within the range of those available to the Judge on the evidence and whilst the appellants disagree with the findings and clearly seek a more favourable outcome enabling them to remain in the United Kingdom, there is nothing arguably wrong with this decision on the evidence made available to the Judge.

Decision

14. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

15. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated 17 January 2019