



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/03134/2015
IA/03304/2015
IA/03486/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 18 August 2015**

**Decision & Reasons
Promulgated
On 11 December 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**SJ (FIRST APPELLANT)
MJ (SECOND APPELLANT)
KJ (THIRD APPELLANT)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Williams, Andrew Williams Solicitors
For the Respondent: Mr Diwncyz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Zimbabwe who were born in 1971, 1979 and 2000 respectively. The first and second appellants are husband and wife and the third appellant is their child. The appellants appealed against the decision of the respondent dated 2 January 2015 to refuse their applications for leave to remain. The First-tier Tribunal (Judge Kelly) in a decision promulgated on 22 April 2015 dismissed the appeal. The appellants now appeal, with permission, to the Upper Tribunal.

2. The third appellant has lived in the United Kingdom for more than seven years. The grounds assert that he satisfied the requirements of E-LTRPT.2.2(d) and that the judge had failed to take account of that fact. Granting permission, Judge Colyer considered that it was arguable that the third appellant met the requirements of ELTRPT.2.2(d) and also the requirements under EX.1. It was not clear from the grant of permission, however, or indeed from the grounds of appeal why the judge may arguably have erred in his assessment of the evidence and, in particular, his application of the necessary test in this appeal (whether that application was by way of EX.1 of Appendix FM or Article 8 ECHR). The judge correctly considered whether there were very significant obstacles in the way of the appellants continuing their private and family life in Zimbabwe notwithstanding the fact that the third appellant had been living in the United Kingdom for more than seven years. That was described as “the ultimate question” by the judge [21] and accepted as such by Miss Oliver, who represented the appellants before the First-tier Tribunal. The judge went on to conclude as follows at [22 - 24]:

I bear in mind that the third appellant has continuously resided in the United Kingdom for a period of nearly 10 years and that this period of residence has occurred during a critical period of his development; that is to say, between the ages of 5 years and 14 years. However, as he himself told me, his father has never hidden from him the fact that they might one day have to return, as a family, to Zimbabwe. The third appellant is not in my judgment at a particularly important juncture in his education. He has only relatively recently embarked upon courses leading to GCSEs which, with the exception of Business Studies, he is not due to sit until the summer of 2016. Whilst a case could no doubt be made - all other things being equal - for the third appellant completing his education in the UK, the fact remains that, as a non-British national, he is not entitled to do so.

In assessing the best interests of the third appellant, I have adopted the approach propounded by Lewison LJ in EV (Philippines v SSHD) [2014] EWCA Civ 874 -

In my judgment, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?

In this case, neither of KJ’s parents have any right to remain in the United Kingdom. On the contrary, they have been residing here unlawfully for the past three years. They have always known that their leave to remain was limited, and they thus had no legitimate expectation of being permitted to settle in the UK. Moreover, there is no obvious alternative to KJ returning with his parents to Zimbabwe. It is not suggested, for example, that his best interests would be served by him remaining with his maternal aunt, who lives in Birmingham and has indefinite leave to remain. Thus, whilst there are undoubtedly some contra-indicators, I am satisfied on balance that the third appellant’s best interests are served by him returning to Zimbabwe with his parents. This will undoubtedly cause a degree of hardship for all the members of this honest and hardworking family, but I am satisfied that they will be able to assist each other in overcoming

such difficulties; difficulties which I in any event hold to be outweighed by the public interest in maintaining the economic well being of the country through the consistent application of immigration controls.

3. The grounds of appeal assert that the judge failed properly to apply *EV (Philippines)* (see above). The appellant asserts that the judge determined the child's best interests when he should instead have been considering whether it was reasonable to expect the third appellant to follow his parents back to Zimbabwe. Frankly, that argument amounts to little more than sophistry; the judge's analysis of the child's best interests inevitably included the consideration of whether it was reasonable to expect him to return to Zimbabwe with his parents. I find that there is no indication at all that the judge has not followed the ratio of *EV (Philippines)*. Indeed, the judge acknowledged that this was a "honest and hardworking family" and that they would no doubt suffer a degree of hardship upon return to Zimbabwe, but it was also plainly open to the judge, on the facts before him, to conclude that there were no very significant obstacles in the way of the appellants continuing their family life in Zimbabwe or, indeed, that it was unreasonable for the third appellant, notwithstanding his long residence in the United Kingdom, to return with his parents to his country of nationality. The judge's decision is supported by cogent and clear reasoning which was plainly in line with relevant jurisprudence, including *EV (Philippines)*. The Upper Tribunal should only interfere with an analysis of the First-tier Tribunal where there are good reasons for doing so and I can identify no such reasons in this instance. Accordingly, the appeal is dismissed.

Notice of Decision

This appeal is dismissed.

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 10 November 2015

Upper Tribunal Judge Clive Lane

I have dismissed the appeal and therefore there can be no fee award.