Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/41199/2014
IA/41200/2014
IA/41201/2014
IA/41202/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 November 2015	**On 21 December 2015**

Before

LORD TURNBULL
DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellants

and

MB
SB
ZB
SHB
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr A Naft (Senior Home Office Presenting Officer)
For the Respondent: Mr C Emozie (Dylan Conrad Kreolle Solicitors)

DECISION AND REASONS

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1. This is the appeal of the Secretary of State against the decision of the First-tier Tribunal allowing the appeals of the Appellants, who are a family comprising mother, father and two daughters, all citizens of Algeria, against the decisions to remove them as overstayers under section 10 of the Immigration and Asylum Act 1999 of 30 December 2014, their applications for leave to remain on human rights grounds having been refused.

2. The application leading to this appeal was made on 31 October 2012 and emphasised the elder daughter's length of residence, particularly noting the fact that she did not speak French or the form of Arabic spoken in schools, which would set her back in her education. The application was refused because the Secretary of State did not accept that the adult family members and youngest daughter would face serious obstacles to integration in Algeria, and it would not in those circumstances be unreasonable for the elder daughter to join them there. The immigration history provided with the Secretary of State's appeal bundle before the First-tier Tribunal recorded an application being made on 22 October 2008 which was refused on 14 September 2009, then reconsidered and the refusal decision maintained on 1 February 2010. The application of October 2012 had been refused in a decision that did not carry the right of appeal on 25 April 2013. On 7 August 2013 each family member was issued with form IS151A (the form notifying its subject that they are liable to removal).

3. The witness statements of the parents set out that the father entered the country on 1 October 1999 on a visa to play judo: given the level of violence in Algeria at the time, he decided to remain here. His future wife joined him here on 11 September 2004 having entered as a visitor, and they married on 6 September 2007. The elder daughter was born here on 30 July 2005, and the younger on 10 April 2012. The children were well established here and as time went on he had become to feel increasingly protective of their daughters; he strongly felt that they all belonged in the United Kingdom, having made their home here. It was noted that the elder daughter would be eligible to register as a British citizen from July 2015. The family often spoke Arabic at home, but did so in a dialect inconsistent with that broadly spoken in the education system in Algeria.

4. The First-tier Tribunal noted that the facts underlying the appeal were undisputed, and that the parents had lived in the United Kingdom for fifteen, and ten and a half years, respectively, and that the elder daughter had lived here for almost a decade. Her acting deputy head teacher had written that she fully participated in school life including after-school clubs and activities; she had made many positive friendships and had been given the responsibility of being a "playground buddy" in Keystage 1. The First-tier Tribunal noted that it had undertaken its own research into the Algerian dialects referenced by the parents in their witness statements via the public domain source *Wikimedia*, which had confirmed that Algerian

Arabic was different from the more classical Arabic used for official purposes, and that those who were proficient in the former might well struggle to access knowledge and information sought to be imparted via the latter. According to her parents, she would be put into reception classes with much younger children because she lacked the language skills which would be extremely distressing for her, seriously prejudicing her educational development. Applying the guidance in *EV (Philippines)* it was in her best interests to remain in the United Kingdom without having her education disrupted.

5. As to the parents' situation, they were overstayers in this country who had sought to regularise their immigration status since 2008, but the Home Office had delayed in resolving the matter. In these circumstances, there was nothing to displace the statutory identification of the public interest in section 117B(6) of the Nationality Immigration and Asylum Act 2002 as not requiring the departure of a parent with responsibility for a qualifying child (i.e. in this case, one whose departure from the United Kingdom would be unreasonable given that they had resided here for seven years).

6. The Secretary of State challenged the decision, on the grounds that

(a) as shown by *EG Nigeria* [2008] UKAIT 00015 it was unwise and wrong to conduct post-hearing research online without giving the parties the opportunity to comment upon it: and this undermined the conclusion regarding language difficulties in Algeria;
(b) the First-tier Tribunal had treated the child's best interests as incapable of displacement by other factors;
(c) Insufficient reasoning was given for the relevance of the delay in the Secretary of State's decision making.

7. Judge Zucker granted permission to appeal on behalf of the First-tier Tribunal on 2 September 2015, finding each of those grounds arguable.

Findings and reasons

8. The Immigration Rules provide, materially, that:

> "**Requirements to be met by an applicant for leave to remain on the grounds of private life**
>
> **276ADE**.The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant: …
>
> (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or
>
> (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of

> imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or ….
>
> (vi) is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."

9. Given the finding by the First-tier Tribunal that the elder daughter's departure from the United Kingdom would be unreasonable, she satisfies Rule 276ADE(iv): but that did not resolve the status of the rest of the family, whose prospects, absent cogent evidence of an inability to integrate back in Algeria, rest on a consideration of the case outside the Rules, an exercise which must give central attention to the statutory considerations identified in 117B of the Nationality Immigration and Asylum Act 2002 addressing the public interest considerations applicable in all such cases, which sets out:

> "(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
>
> (a) the person has a genuine and subsisting parental relationship with a qualifying child (has lived in the United Kingdom for a continuous period of seven years or more), and
>
> (b) it would not be reasonable to expect the child to leave the United Kingdom."

10. The First-tier Tribunal's conclusion, in the light of this clear statement of the balance to be struck where removal of a minor would contravene their best interests and thus not be reasonable, was that the family as a whole should remain here.

11. Christopher Clarke LJ stated in *EV (Philippines)* [2014] EWCA Civ 874:

> "34. In determining whether or not, in a case such as the present, the need for immigration control outweighs the best interests of the children, it is necessary to determine the relative strength of the factors which make it in their best interests to remain here; and also to take account of any factors that point the other way.
>
> 35. A decision as to what is in the best interests of children will depend on a number of factors such as (a) their age; (b) the length of time that they have been here; (c) how long they have been in education; (c) what stage their education has reached; (d) to what extent they have become distanced from the country to which it is proposed that they return; (e) how renewable their connection with it may be; (f) to what extent they will have linguistic, medical or other difficulties in adapting to life in that country; and (g) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens.
>
> 36. In a sense the tribunal is concerned with how emphatic an answer falls to be given to the question: is it in the best interests of the child to remain?

> The longer the child has been here, the more advanced (or critical) the stage of his education, the looser his ties with the country in question, and the more deleterious the consequences of his return, the greater the weight that falls into one side of the scales. If it is overwhelmingly in the child's best interests that he should not return, the need to maintain immigration control may well not tip the balance. By contrast if it is in the child's best interests to remain, but only on balance (with some factors pointing the other way), the result may be the opposite.
>
> 37. In the balance on the other side there falls to be taken into account the strong weight to be given to the need to maintain immigration control in pursuit of the economic well-being of the country and the fact that, *ex hypothesi*, the applicants have no entitlement to remain. The immigration history of the parents may also be relevant e.g. if they are overstayers, or have acted deceitfully."

12. In this appeal the First-tier Tribunal gave clear reasons for its conclusions, wholly consistent with the guidance given in *EV (Philippines)* in relation to age, length of residence, the stage of education reached and any linguistic difficulties that might be faced abroad, and consonant too with the statutory steer in section 117B(6). Those reasons were that the elder daughter's best interests lay firmly in favour of her continued residence here given the language disadvantage that she would face if she had to continue her education in Algeria, and bearing in mind that her length of residence was such that she was almost at the stage where she could apply for British citizenship in her own right. The Tribunal properly had regard to the parents' status as overstayers, whilst noting that they had sought to regularise their status repeatedly since 2008. There is nothing unlawful in that striking of the proportionality balance.

13. We do not consider that the post hearing research had any prejudicial bearing on the appeal. As is stated in the headnote to *EG (post-hearing internet research) Nigeria* [2008] UKAIT 00015, "[i]t is most unwise for a judge to conduct post-hearing research, on the internet or otherwise, into the factual issues which have to be decided in a case. To derive evidence from post-hearing research on the internet and to base conclusions on that evidence without giving the parties the opportunity to comment on it is wrong". We would not encourage such enquiries, which are likely to leave the losing party feeling aggrieved, at least absent an opportunity being given to comment on any ensuing research by the invitation of written submissions.

14. Here we appreciate that the First-tier Tribunal was placed in a difficult position by the Secretary of State's decision not to be represented before it, in a case where the educational difficulties the elder daughter would face if relocating to Algeria had been relied on in her various applications. At the hearing before us no positive case has been put on behalf of the Secretary of State (whose case on this point did not extend to checking the content of the website in question or providing evidence in rebuttal) to suggest that the information revealed by the Judge's enquiries was

inaccurate or susceptible to some contrary inference as to the elder daughter's ability to fully participate in the education system than that afforded it. Besides, it seems to us that those enquiries did no more than provide useful support for the oral evidence to precisely the same effect regarding the difference between the dialect of Algerian spoken by this family and that commonly taught in schools.

15. Nor do we consider that the issue of delay was legally flawed. The history of applications made by the family since 2008 is set out in the chronology provided in the Secretary of State's own appeal bundle, which indicates that one refusal by the Home Office required reconsideration, and another denied the right of appeal until subsequent judicial review proceedings were settled on the basis of access to the Tribunal being agreed. In the light of that history, representing a period in which both children but particularly the elder daughter had increasingly set down roots in this country, the First-tier Tribunal's observation that the family, whilst being overstayers, had nevertheless sought to regularise their status over a significant length of time, was a perfectly proper one, and did not require further reasoning.

16. We find no error of law in the decision of the First-tier Tribunal which accordingly stands.

Decision:

The making of the decision of the First-tier Tribunal contains no error of law.

The appeal is dismissed.

We note that an anonymity order was made by the First-tier Tribunal and for consistency, and having regard to the best interests of the children and the interests of justice, we do likewise, now pursuant to Rule 14(1)(b) of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed: Date: 3 November 2015
Deputy Upper Tribunal Judge Symes