Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/23325/2014
IA/23326/2014
IA/23327/2014
IA/23328/2014
IA/23329/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 31 March 2016

Decision Promulgated
On 22 April 2016

Before

Deputy Upper Tribunal Judge Pickup

Between

Laximun Puddoo
Marie Antoniette Savrina Puddoo
Senna Heide Puddoo
Keira Haylee Puddoo
Anania Hope Puddoo
[No anonymity direction made]

Appellants

and

Secretary of State of the Home Department

Respondent

Representation:

For the appellants: Ms C Warren, instructed by Irving & Co Solicitors
For the respondent: Ms R Petterson, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellants' appeal against the decision of First-tier Tribunal Judge Parker promulgated 27.3.15, dismissing the appeal against the decisions of the Secretary of State, dated 13.5.14, to refuse their application for leave to remain in the UK. The Judge heard the appeal on 12.3.15.

2. Upper Tribunal Judge Dean, sitting as a judge of the First-tier Tribunal, refused permission to appeal on 29.5.15. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Canavan granted permission to appeal on 28.9.15.

3. Thus the matter came before me on 31.3.16 as an appeal in the Upper Tribunal.

Error of Law

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision of Judge Parker should be set aside.

5. In granting permission to appeal, Judge Canavan found that whilst the First-tier Tribunal Judge carried out a detailed assessment of the family's circumstances with reference to the correct authorities relating to the best interests of the children, it is at least arguable that, despite mentioning the independent social work report at §26, the judge "may not have given appropriate weight to findings contained in that report when he moved on to assess whether the children would be able to adapt to life in Mauritius with their parents. Although the first ground of appeal is perhaps less arguable because the First-tier Tribunal Judge did appear to take into account the children's length of residence, permission is granted on all grounds because they both go to the issue of whether the First-tier Tribunal Judge erred in his overall proportionality assessment."

6. The Rule 24 response, dated 6.10.15, submits that the judge correctly asked whether it would be reasonable for the children to go to Mauritius and has undertaken a comprehensive assessment of their circumstances between §25 and §28. It is submitted that pursuant to EV (Philippines) the best interests are to be considered in the context of the parents having no right to be in the UK; in this respect, it is submitted, the judge correctly identified at §24 that the children's best interests lie in being with their parents.

7. "It is submitted that the First-tier Tribunal Judge appropriately considered: 7 years under the immigration rules in light of Singh and Khalid and the statutory definitions underpinning 117B and exhaustively applied the case of Azimi Moayed to the appellants' circumstances. The First-tier Tribunal Judge notes at paragraph 25

that 7 years is only a guide and correctly applies the reasoning of 7 years from the age of 4 in the context of the children's wider circumstances."

8. "It is submitted that the First-tier Tribunal Judge has taken into account the independent social worker's report at §26, specifically referencing the negative reaction of moving to Little Hutton. It is therefore averred that the appellants' grounds amount to no more than a disagreement with the First-tier Tribunal Judge's well-reasoned findings."

9. Ms Warren submitted that the judge failed to follow ZH (Tanzania) to make a holistic assessment of the best interests of the children and that the highest reference to best interests is at §24 where the judge states that it is in the best interests of the child to be with both parents. She also criticised the judge's repeated reference to children being adaptable and asserted that none of the difficulties referred to of the parents returning to Mauritius was taken into account in the best interests assessment, even though specifically mentioned at §14.

10. The judge correctly assumed at §16 that this is a case where all the appellants will remain as a family and thus return as a family, with no separation. At §18 the judge recognised that the real issue in the case was the best interest of the children. In that paragraph the judge addressed the difficulties the adult appellants might have in returning to Mauritius, including the loss of wider family support and that he would be returned with a wife converted from Hinduism to Christianity.

11. At §26 the judge considered the difficulties the children are said to have experienced in relocating to Little Hutton, as contained within the independent social work report. At §27 the judge noted that the children are aged 6, 4 and 3 and have been in the UK less than 7 years. The second youngest is in reception class and the youngest has not yet started school. The judge correctly pointed out at §28 that 'near miss' is not a basis for allowing the appeal outside the Rules on article 8 ECHR grounds. Ms Warren submitted that 'near miss' was not relevant to a best interests assessment of the children.

12. The strongest argument of the appellants is that the judge did not address the best interests of the children individually. However, it is clear from a reading of the decision as a whole that the majority of the discussion in the decision addresses the best interests of the children. The judge has taken into account all the material presented to him, as confirmed in the decision. The judge has taken account of everything urged upon the Tribunal, including the children's ages, length of residence in the UK, the difficulty they had in relocating, and the social work report, even though the expert made a factual mistake at 4.5 in suggesting that the children would not understand the language and would have difficulties adjusting to the culture. It follows that the report could carry only limited weight as it is at least in part based on a factual matrix not accepted by the judge.

13. The judge has addressed the relevant case law and the importance of the 7 years' residence threshold or guidance, which none of the children met. I find the decision amounts to a careful assessment of the children's best interests and can see no material error by failing to address the best interests of each child separately. The judge concludes, in compliance with the case law, that as this family will either stay or return together as a family unit, the best interests of each of the children is undoubtedly to remain with the parents. The suggestion that §24 is the only or highest assessment of the best interests of the children is not borne out by a careful reading of the decision. There was no error in the judge's reference to their young age and thus adaptability. The judge also considered the alleged difficulties the adult appellants might have in relocating to Mauritius. There is no error in failing to consider the possibility of divorce as the judge found as a fact that the family would remain together and at §18 was not satisfied that there would be anything to prevent the family integrating on return. I thus find that the conclusion the judge reached as to the best interests of the children entirely reasoned and justified within the decision. I am not satisfied that any other conclusion was feasible on the facts of this case, even if the judge had separately listed the considerations in respect of each child. In the circumstances, there is no material error of law in respect of this ground of appeal.

14. Similarly, I find no error of law in the judge's treatment of the 7-year threshold. It is clear that the judge did not simply dismiss the considerations of the length of residence of the children because none of them met the 7-year threshold, but rather the judge considered their circumstances and went on nevertheless to make a free-standing article 8 ECHR assessment. Whether the judge was justified in doing so on the facts of this case is far from clear, it being difficult to see what could be considered to be compelling or exceptional circumstances to consider article 8 private and family life outside the Rules. However, in that assessment the judge was and very properly did take account of section 117B of the 2002 Act, in particular noting at §31 that the adults built up their private life and had children when their immigration status was precarious and thus should be accorded little weight. None of the children were qualifying children either under 276ADE or section 117B. The judge thus concluded that the public interest was strong. The judge was also entitled to take into account that the appellants could not meet the requirements of the Rules for leave to remain, which is the Secretary of State's proportionate response to private and family life rights under article 8.

15. I also find no merit in the third ground of appeal, suggesting that the judge failed to assess how adaptable the children would each individually be to a move to Mauritius based on the evidence before him. This is no more than an elaboration of the previous grounds.

16. I therefore find that the grounds of application for permission to appeal fail to disclose any material error. Whilst different judges are entitled to reach different conclusions, provided that the findings are based on the evidence and properly

reasoned, on the facts of this case, I fail to see how any of the suggested errors could or would have produced any different outcome in this case. In effect, this was always a relatively weak claim for leave to remain on human rights grounds outside the Rules. Notwithstanding that the children were all born in the UK, the circumstances of the parents and children either individually or collectively do not outweigh the public interest in maintaining immigration control, which the judge appropriately described as strong. There was no credible basis for resisting the return of the family as a unit to Mauritius. Whilst each case must be decided on its own facts, the dismissal of this appeal was virtually inevitable and I am satisfied that the conclusion reached by the judge is fully justified in the cogent reasons provided.

Conclusions:

17. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal of each appellant remains dismissed on all grounds.

Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make a no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.

Signed

Deputy Upper Tribunal Judge Pickup