Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/21416/2015
IA/21420/2015
IA/21423/2015
IA/21426/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 September 2017	**On 27 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between
MS MH
MISS OBDH
MASTER EAH
MISS ODZH
(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. Pipe, Counsel, instructed by Owens Solicitors
For the Respondent: Mr T. Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appeals came before the Upper Tribunal for an error of law hearing on 14 June 2017. In a decision and reasons dated 19 July 2017, I found an error of law and adjourned the appeal for a resumed hearing, with directions. The

error of law decision is appended. Prior to the hearing the Appellant's solicitors lodged a bundle of additional documents in accordance with the directions and rule 152A of the Procedure Rules, which comprised evidence that the second Appellant, Miss OBDH, had been registered as a British citizen on 8 August 2017. The Appellants also sought to rely upon a skeleton argument from Mr Pipe dated 8 September 2017.

Hearing

2. The appeal proceeded on the basis of submissions only, the findings of fact of the FtTJ at [15] and [16] having been preserved. In his submissions, Mr Melvin noted the finding at [15] that there was no contact with the children's father. He further acknowledged that one of the children is now a British Citizen and that in light of SF & others (Guidance, post 2014 Act) Albania [2017] UKUT 120 (IAC) and given the absence of an alternative carer, there was little in the way of argument that the Respondent can put forward and that the decision was a matter for the Upper Tribunal on the evidence.

3. In his submissions, Mr Pipe stated that, whilst the appeal of the second Appellant has fallen away in light of her registration as a British citizen, it would be unreasonable to expect the other family members to leave the United Kingdom and that the requirements of R-LTRPT of Appendix FM of the Immigration Rules were met in respect of the first Appellant and the requirements of R-LTRC 1.6 were met in respect of the other two children.

Decision

4. I allowed the appeals and announced my decision at the hearing. I now provide my reasons.

5. The second Appellant was registered as a British citizen based on the fact that she was born in the United Kingdom and had lived here continuously for 10 years. The Respondent's guidance "Family Migration - Appendix FM, Section 1.0(B) "Family Life as a Partner or Parent and Private Life, 10 year Routes" August 2015 at 11.2.3. provides:

> *"Save in cases involving criminality, the decision maker must not take a decision in relation to the parent or primary carer of a British Citizen child where the effect of that decision would be to force that British child to leave the EU, regardless of the age of that child. This reflects the European Court of Justice Judgment in Zambrano.*
>
> *Where a decision to refuse the application would require a parent or primary carer to return to a country outside the EU, the case must always be assessed on the basis that it would be unreasonable to expect a British Citizen child to leave the EU with that parent or primary carer.*

In such cases it will usually be appropriate to grant leave to the parent or primary carer, to enable them to remain in the UK with the child, provided that there is satisfactory evidence of a genuine and subsisting parental relationship.

It may, however, be appropriate to refuse to grant leave where the conduct of the parent or primary carer gives rise to considerations of such weight as to justify separation, if the child could otherwise stay with another parent or alternative primary carer in the UK or in the EU.

The circumstances envisaged could cover amongst others:

• *criminality falling below the thresholds set out in paragraph 398 of the Immigration Rules;*

• *a very poor immigration history, such as where the person has repeatedly and deliberately breached the Immigration Rules.*

In considering whether refusal may be appropriate the decision maker must consider the impact on the child of any separation. If the decision maker is minded to refuse, in circumstances where separation would be the result, this decision should normally be discussed with a senior caseworker and, where appropriate, advice may be sought from the Office of the Children's Champion on the implications for the welfare of the child, in order to inform the decision."

6. It is clear from the decision of the Vice-President of the Upper Tribunal in of SF & others (Guidance, post 2014 Act) Albania [2017] UKUT 120 (IAC) at [10]-[12] that this Guidance is:

"10. … an important source of the Secretary of State's view of what is to be regarded as reasonable in the circumstances, and it is important in our judgement for the Tribunal at both levels to make decisions which are, as far as possible, consistent with decisions made in other areas of the process of immigration control.

11. It is only possible for Tribunals to make decisions on matters such as reasonableness consistently with those that are being made in favour of individuals by the Secretary of State if the Tribunal applies similar or identical processes to those employed by the Secretary of State.

12. … where there is clear guidance which covers a case where an assessment has to be made, and where the guidance clearly demonstrates what the outcome of the assessment would have been made by the Secretary of State, it would, we think, be the normal practice for the Tribunal to take such guidance into account and to apply it in assessing the same consideration in a case that came before it."

7. The first Appellant entered the United Kingdom lawfully on 22 July 2005. Whilst she subsequently became an overstayer, it has never been the Respondent's position that she has a "very poor" immigration history, so as to justify refusal of the grant of leave on the basis of her conduct. Consequently, I find that the grant of leave would be appropriate in light of the Home Office guidance and the decision in SF (op cit) and the fact that, in light of my finding that it would not be reasonable to expect her British daughter to leave the United Kingdom, the first Appellant meets the requirements of R-LTRPT 1.1.(d) of Appendix FM of the Immigration Rules.

8. The third Appellant will turn 7 years of age on 2 October 2010 and her younger brother will turn 4 years of age on 11 October 2013. In light of my finding that it would be unreasonable to expect their older sister to leave the United Kingdom, I find it would be contrary to their best interests and unreasonable for the family to be split as a consequence of requiring them to leave the United Kingdom. I have carefully considered the requirements of R-LTRC and I find that the requirements of R-LTRC 1.1.(d) are met, with the effect that they should be granted leave in line with their mother.

Notice of decision

9. The appeals of the first, third and fourth Appellants are allowed. The appeal of the second Appellant falls away in light of the fact that she has been registered as a British citizen.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

In light of the fact that the appeal involves three children, unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

25 September 2017