Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA229892015
IA229902015 & IA229912015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 May 2017	**On 22 May 2017**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

M E A E
M M
C M A M

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr P V Thoree, Thoree & Co Solicitors
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal with permission against a decision of First-tier Tribunal Judge Rowlands promulgated on 27 September 2016 dismissing their appeals against the decisions of the respondent to refuse them leave to remain in the United Kingdom.

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2. The first and second appellants are the parents of the third appellant; all three are citizens of Ecuador. The first and second appellants are adults and have lived in the United Kingdom unlawfully for a significant period of time. They appear to have made numerous applications which were unsuccessful. The third appellant was, however, born in the United Kingdom and as at the date of the most recent application had lived in the United Kingdom for seven years.

3. The judge concluded that the first and second appellants did not meet the requirements of paragraph 276ADE(vi) or any of the other provisions as he was not satisfied that there were significant obstacles to their integration again in Ecuador.

4. The judge then went on to deal with the child, the third appellant, making findings specifically at paragraphs [11] and [12] considering that, applying Section 55 of the Borders, Citizenship and Immigration Act 2009, it was reasonable to expect her to go to Ecuador with her parents and that she would be able to re-adapt again to life in Ecuador. Having had regard to the decision in Tinizaray v SSHD [2011] EWHC 1850 (Admin), and that the child there was British he found that her best interests were best served by being with her parents and they should return to Ecuador as they do not fulfil the Immigration Rules and she could reasonably be expected to go with them.

5. The appellants have sought permission to appeal this on several grounds but as distilled in submissions today this is that the judge failed properly to have regard to the best interests of the child, failed properly to have regard to the relevant Immigration Rules, the Secretary of State's policies as set out in the Immigration Directorate Instructions, and, also had failed properly to apply relevant case law.

6. Mr Thoree submitted essentially that this was a case in which there was an inadequacy of reasons and in any event that the judge had failed properly to engage with the law, in particular Section 117B(6) of the 2002 Act.

7. For the respondent, Mr Wilding submitted that there was in fact in this case no material error, given that the judge very properly addressed himself to the best interests of the child. It could not in this case be said that there was any improper conclusion reached given that in effect it had been open to the judge on the material provided to conclude that, having balanced the various different factors, it was still reasonable to expect the child to go to Ecuador with her parents. He submitted relying on Dube [2012] UKUT 90 (IAC) that in effect the issue here was substance, not form and that the judge had properly dealt with the issues, specifically dealing with all the relevant facts at paragraphs 9 to 15 of the decision.

8. Whilst I accept that the judge has in this case addressed the best interests of the child, I consider that at no place in the decision has the judge properly considered the significance of the child reaching the age of 7

years. That is a factor to which attention is drawn in MA (Pakistan) & Ors [2016] EWCA Civ 705, particularly at paragraphs 46, 47 and 49.

9. The Court of Appeal has made it clear that significant weight has to be attached to the fact that the child has reached 7 years of age, that this must be given significant weight in the proportionality exercise for two related reasons, first because of its relevance to determining the nature and strength of the child's best interests and second because it establishes as a starting point that leave should be granted unless there are powerful reasons to the contrary.

10. There is no proper indication in the judge's decision that he has considered either of these issues nor could it be said that he would have reached the same conclusion had he properly taken them into account. This required a nuanced balancing exercise taking into account the interests of the child and particularly the fact that she had reached 7 years of age, which he has not done and for these reasons I am satisfied that the decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

11. Both parties have agreed that in effect there will need to be a complete rehearing of this case as the findings of facts could not stand and there would need to be a fresh fact-finding exercise on all issues. For these reasons I am satisfied that it is necessary to remit the decision to the First-tier Tribunal for a fresh decision on all issues.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside

2. I remit the decision to the First-tier Tribunal for a fresh decision on all issues; none of the findings of the First-tier Tribunal are preserved.

3. I maintain the anonymity order made by the First-Tier Tribunal

Signed Date 15 May 2017

Upper Tribunal Judge Rintoul