



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

Appeal Numbers: IA/24836/2015
IA/24839/2015
IA/24841/2015
IA/24842/2015

THE IMMIGRATION ACTS

Heard at Field House

**On 27th October 2017 and
Given extempore. Signed
and sent to promulgation
On 8th November 2017**

**Decision & Reasons
Promulgated
On 9th November 2017**

Before

Upper Tribunal Judge Chalkley

Between

**THI [T]
[A H]
GIANG [H]
[O H]**

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

*For the Appellants: Miss K Anifowoshe of Counsel, Raj Law Solicitors
For the Respondent: Mr P Duffy, Home Office Presenting Officer*

DECISION AND REASONS

1. The appellants are citizens of Vietnam and the first and second applicants are the parents of the third and fourth applicants. They were born, respectively on 17th April 1982, 13th July 1979, [] 2009 and [] 2012.

Immigration History

2. On 22nd June 2015, the respondent refused the appellants' applications for leave to remain in the United Kingdom on human rights grounds. The appellants appealed and their appeals were heard at Hatton Cross on 25th October 2016, by First-tier Tribunal Judge Mailer.
3. The first appellant arrived in the United Kingdom on 5th July 2008, with entry clearance as a Tier 4 (General) Student valid from 30th June 2008, until 30th August 2009. Leave was subsequently extended from 22nd September 2009 until 1st April 2011. She met her partner the second named appellant in the United Kingdom in July 2009 and the third appellant was born in the United Kingdom on 21st March 2009.
4. The first named appellant made application for leave to remain on human rights grounds with the third appellant listed as a dependant. The application was dated 4th March 2011 and was refused by the respondent on 9th May 2011. On 11th August 2011 their appeals were allowed on human rights grounds. As a result, on 17th April 2012, the first and third appellants were granted discretionary leave to remain in the United Kingdom until 1st February 2013.
5. On 23rd November 2014 the fourth appellant was born in the United Kingdom. The first appellant made application on 6th February 2013, for leave to remain in the United Kingdom on human rights grounds with her two sons as dependants. This was refused by the respondent and a Section 47 notice was served on 18th June 2013. Her appeal against that decision was only allowed on Section 47 grounds. On 31st October 2013, her appeal rights were exhausted.
6. On 1st September 2014, the appellants made a joint application for leave to remain on human rights grounds and that was refused without a right of appeal on 28th October 2014. Following a pre-action protocol letter the respondent undertook to review the decision and subsequently issued a further refusal letter dated 25th June 2015, which was the subject of the appellant's appeal to the First-tier Tribunal.
7. The second named appellant entered the United Kingdom with entry clearance as a work permit holder on 5th June 2004. On 14th April 2011, he was served with IS151A Part 2 as an illegal entrant following his admission that he had paid an agent to obtain a passport and false visa to gain entry to the United Kingdom. He was detained, subsequently released and made an asylum application. His appeal against refusal was dismissed on

11th June 2013. His application for leave to appeal was refused and he became appeal rights exhausted on 16th July, 2013.

Hearing before the First Tier Tribunal Judge

8. The judge heard evidence from the first named appellant and considered a letter from the first named appellant's 'adoptive' parents in France. Whether, in fact the first named appellant was legally adopted in France is not known, but from an early age she was taken under their wing and visited regularly by them and also supported financially from time to time by them.
9. The judge noted that the third named appellant was now 7 years of age and a qualifying child in Section 117D of the 2002 Nationality, Immigration and Asylum Act. The judge considered the Court of Appeal's decision in *MA (Uganda) v Secretary of State for the Home Department* [2016] EWCA Civ 450 and in *EV Philippines v Secretary of State for the Home Department* [2014] EWCA Civ 874. He considered the best interests of the children and at paragraph 117 said this

"in the circumstances, I do not find that there are strong or powerful reasons why it would not be reasonable or proportionate for [AH] to be removed together with his parents if their removal is proportionate."

That sentence was challenged by the appellants and, as Upper Tribunal Judge Smith said in granting leave to appeal,

"it may be that his use of multiple negatives in the sentence which renders its meaning opaque, however, on my reading of it that is requiring that there be strong or powerful reasons why the child should not be removed rather than assuming a default position that the child should not be removed and requiring there to be strong or powerful reasons why he should be."

Hearing before me.

10. Before me today Mr Duffy accepted that there was an error of law in the judge's decision. Counsel on behalf of the appellants accepted that there were no other errors in the judge's decision. Mr Duffy, quite correctly in my view, accepted that the appeal should be allowed outright and I am happy to do that.
11. **The appellant's appeals are allowed.**

Notice of Decision

The appeal is allowed.

Upper Tribunal Judge Chalkley
Richard Chalkley

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal I have decided to make a fee award of any fee which has been paid or may be payable (adjusted where full award not justified) for the following reason. The appeal is allowed.

Upper Tribunal Judge Chalkley
Richard Chalkley