Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers:**
HU/00858/2017

HU/00869/2017

HU/00872/2017

HU/00877/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 September 2018	**On 11 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

MARIE [L]
JEAN [L]
[M L]
[E L]
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J Metzer (Counsel)
For the Respondent: Mr C Avery (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellants' appeals against decisions to refuse their human rights claims were dismissed by First-tier Tribunal Judge Pears ("the judge") in a

decision promulgated on 27th March 2018. At the heart of the judge's decision lay a finding that it would not be unreasonable to expect the third appellant, who had by then spent fourteen years in the United Kingdom, to leave the United Kingdom and return to Mauritius, the country of her nationality. The judge found that her parents, the first and second appellants, and the third appellant's sibling, the fourth appellant, had not shown that refusal of their human rights claims amounted to a disproportionate response. The family could be returned to Mauritius as an entire unit.

2. In grounds in support of an application for permission to appeal, it was contended that the judge erred in assessing the third appellant's position, failing to have regard to the need for powerful or strong reasons supporting a finding that it would be reasonable to expect her to leave the United Kingdom. Similarly, the judge failed to give proper weight to the length of the third appellant's residence in the United Kingdom and failed to properly assess the strength of her best interests in remaining here. Finally, there was no proper regard to section 117B(6) of the 2002 Act and, overall, a failure to apply guidance given by the Court of Appeal in MA (Pakistan) [2016] 1 WLR 5093.

3. Permission to appeal was granted on 17th July 2018. There was no Rule 24 response from the Secretary of State. In readiness for the hearing, the appellants' solicitors provided a bundle and Mr Metzer handed up a skeleton argument and a bundle of authorities.

Submissions on Error of Law

4. Mr Metzer said that the third appellant was a qualifying child, now 15 years of age. The decision revealed a failure to take into account the need for powerful or strong reasons to support a finding that it would be reasonable to expect her to leave the United Kingdom. The need for such reasons appeared in the judgment in MA (Pakistan), particularly at paragraph 49 and also in Home Office guidance on family migration, particularly at page 75 of that guidance. At paragraphs 32 to 36 of the decision, the judge reached a conclusion that the best interests of the third appellant required that she should remain in the United Kingdom. He then went on to find that those best interests were outweighed but nowhere were strong or powerful reasons identified.

5. The length of the third appellant's residence in the United Kingdom was not given proper weight. Again, guidance given in MA (Pakistan) showed that this was a substantial factor, as did Home Office guidance. As at the date of the hearing, the third appellant had spent fourteen and a half years in the United Kingdom. This should have been given due weight. What appeared in Home Office guidance was itself a relevant factor, as explained in SF and Others [2017] UKUT 00120.

6. There was a similar failure to assess the strength of the third appellant's best interests. This was a clear requirement in the light of EV (Philippines) [2014] EWCA Civ 874, at paragraphs 34 to 37 of the judgment. The judge was required to evaluate the strength of her best interests, in order to make a proper assessment of whether those best interests were outweighed. At paragraphs 34 and 35 of the decision, the judge concluded that the third appellant's best interests were indeed outweighed but without first assessing the strength of her ties to the United Kingdom.

7. Finally, so far as the first and second appellants were concerned, the decision revealed no proper regard to section 117B(6) of the 2002 Act. If it were properly found that it would not be reasonable to expect the third appellant to leave, her parents might succeed in showing that their removal would be disproportionate. The judge would be required to take into account the wider public interest in this part of the assessment. If the judge erred in relation to the third appellant, the error was material in relation to the other appellants. The third appellant's parents and her sibling, now 6 years old, ought to have been granted leave.

8. Mr Avery said that of importance was a prior decision made by the First-tier Tribunal in May 2015, when an earlier appeal was dismissed. The judge summarised the earlier findings and properly took them into account as a starting point. The judge based his assessment on the previous judge's findings. There appeared to be no fundamental difference in the family circumstances between the dates of the first and second decisions. In conducting the balancing exercise, the judge took into account the best interests of the third appellant and the public interest in the maintenance of immigration control. Overall, the decision was adequate.

Conclusion on Error of Law

9. The judge's operative reasoning appears at paragraphs 34 and 35 of the decision. As Mr Metzer submitted, those paragraphs do not contain (nor do other paragraphs in the decision) identification of strong or powerful reasons supporting a conclusion that it would not be unreasonable to expect the third appellant to leave the United Kingdom. The need for such reasons has been emphasised by the Court of Appeal in MA (Pakistan) and is also a salient feature of relevant Home Office guidance. With great respect to the judge, the necessary balancing exercise cannot be concluded in favour of the respondent without identifying such reasons. This is so in relation to the immigration rules and the public interest considerations contained in section 117B(6) of the 2002 Act.

10. Also of importance, as Mr Avery submitted, is the judge's summary of the earlier appeal in 2015. The judge recorded the earlier judge's assessment of the immigration history of the first and second appellants. The earlier decision contained a finding that there has been no deceit on their part and that their history can be described as positive. That finding,

amounting to a starting point, was a material factor in the balancing exercise which the judge properly identified as the key task at paragraph 35 of the decision.

11. The grounds of appeal are made out and the decision of the First-tier Tribunal is set aside as containing a material error of law.

Re-Making the Decision

12. Mr Metzer and Mr Avery were agreed that re-making the decision would not require further fact-finding in light of the judge's careful summary of the evidence and the findings he made in the First-tier Tribunal. I decided to proceed with re-making the decision in the Upper Tribunal.

13. I asked Mr Avery what the Secretary of State considered to be strong and powerful reasons supporting a conclusion that it would not be unreasonable to expect the third appellant to leave the United Kingdom. His pragmatic response was that there was nothing he wished to add to the case advanced by the Secretary of State to date.

14. Taking into account the findings of fact made by the judge in 2015, recorded by the First-tier Tribunal Judge in the present appeal, the immigration history of the first and second appellants is a material factor in assessing the wider public interest under section 117B(6) of the 2002 Act. Overall, although aspects of that history may be regarded as adverse, the summary made by the judge in 2015, noted above in paragraph 10, seems entirely appropriate. Since then, the first and second appellants have made further applications for leave.

15. The extent of the third appellant's ties to the United Kingdom and the length of time she has resided in the United Kingdom, now almost fifteen years, must be given due weight. I conclude, as did the judge, that her best interests are to remain in the United Kingdom. I also conclude that the evidence does not disclose strong or powerful reasons showing that it would not be unreasonable to expect her to leave. The immigration history of her parents falls far short in this respect.

16. It cannot sensibly be argued that the fourth appellant, now 6 years old, should be treated differently from her sibling and her parents.

17. Overall, applying the guidance given in MA (Pakistan), and giving due weight as a material factor to the Home Office guidance relied upon by the appellants, the scales tip clearly in favour of the third appellant, for the purposes of the rules, and the first and second appellants, for the purposes of section 117B(6) of the 2002 Act. Taking into account the fourth appellant and her best interests, which are to remain with her other family members, refusal of the human rights claims made by the family

members and any removal in consequence amounts to a disproportionate response. The appeals are allowed.

Notice of Decision

The decision of the First-tier Tribunal is set aside and re-made as follows: the appeals are allowed.

Signed Date 08 October 2018

Deputy Upper Tribunal Judge R C Campbell

Anonymity

There has been no application for anonymity in these proceedings and I make no direction or order on this occasion.

Signed Date 08 October 2018

Deputy Upper Tribunal Judge RC Campbell

TO THE RESPONDENT
FEE AWARD

The appeals are allowed; I make a whole fee award in respect of any fee that has been paid or is payable.

Signed Date 08 October 2018

Deputy Upper Tribunal Judge RC Campbell