Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/02732/2017
HU/02734/2017
HU/02737/2017
HU/02742/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 29 October 2018	**On 14 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

MR SS
MRS NK
MR VS
MISS GK
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Akhtar Ali Gondal, Legal representation, Berkshire Law Chamber
For the Respondent: Ms Julie Isherwood, Home Office Presenting Officer

DECISION AND REASONS

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1. There are four appellants in this appeal. The first and second appellants, born respectively on 7 June 1979 and 7 March 1971, are the parents of the other two appellants who were born on 31 December 2006 and 20 September 2011.

2. The appellants are citizens of India. In addition, the fourth appellant was granted British nationality on 18 April 2018 (two days after the hearing of the decision which is now being appealed). The first three appellants arrived in the UK as visitors on 18 October 2010. The fourth appellant was born in and has lived her whole life in the UK.

3. The appellants applied for leave to remain in the UK under Article 8 ECHR. On 23 January 2017 the appeal was refused. The appellants appealed to the First-tier Tribunal where the appeal was heard on 16 April 2018 at Hatton Cross by Judge of the First-tier Tribunal Hussain.

4. In a decision promulgated on 7 June 2018 the appeal was dismissed. The judge found that the first and second appellants came to the UK as adults and could not establish that there were substantial obstacles to their returning to India. The judge found that they had exaggerated the difficulties they would face in India.

5. The judge's analysis of the third and fourth appellants is very brief. The entirety of the assessment is set out in paragraphs 23 and 24, where it is stated:

> "23. In relation to the third appellant, the Secretary of State noted that whilst he was 9 years old when applying, he had only lived in this country for five years. As a result, this appellant was unable to meet to any of the requirements of paragraph 276ADE(1). At the hearing it was pointed out that the appellant had reached ten years of residence on 10 October 2017. That may be the case but [to] the Immigration Rules clearly state that the relevant age is at the date of application.
>
> 24. In the case of the fourth appellant, she had only lived in this country for four years and therefore did not meet any of the requirements of the Immigration Rules either. Two days after the hearing, the tribunal received a letter from the appellant's solicitors to the effect that this child had been granted British nationality. That position does not in my view alter the appellant's position under the provision of 276ADE in question."

6. The grounds of appeal submit that the judge erred by failing to consider the best interests of the children and by failing to recognise that the fourth appellant, as a British citizen, is a "qualifying child".

7. After hearing submissions from Mr Gondal on behalf of the appellant and Ms Isherwood on behalf of the respondent I delivered my decision that I found there to be a material error of law.

8. When a Tribunal makes a decision which affects children it is necessary for the best interests of those children to be considered. This appeal affects the lives of two children (the third and fourth appellants) but contains no assessment of their best

interests. The absence of a best interest assessment is a material error of law which renders the decision unsafe such that it will need to be considered afresh.

9. A further error arises from the failure to consider Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 (the "2002 Act"). Both the third and fourth appellants were qualifying children under Section 117D(1) of the 2002 Act (the third appellant had been in the UK for more than seven years at the time of the hearing and the fourth appellant is a British Citizen). It was therefore necessary for the judge to address whether it would be reasonable to expect them to leave the UK. There is no such analysis in the decision.

10. Given the extent of further fact-finding that will be needed to remake this decision (and in particular that up-to-date evidence regarding the third and fourth appellants will be required in order for their best interests and the reasonableness of expecting them to leave the UK to be properly evaluated) this is an appeal where it is appropriate for there to be a remittal to the First-tier Tribunal. I therefore have decided to remit the appeal to the First-tier Tribunal with no findings of fact preserved.

Notice of Decision

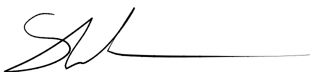
The decision of the First-tier Tribunal contains a material error of law and is set aside.

The appeal is remitted to the First-tier Tribunal to be heard afresh before a different judge.

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

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 or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed



Deputy Upper Tribunal Judge Sheridan Dated: 7 November 2018