Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/10832/2016

HU/10835/2016

HU/10837/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 24th July 2018	**On 31st July 2018**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

Oluwaseyi [A],

[A A] and [D A]

(Anonymity Direction Not Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr R Singer, instructed by Paul John & Co Solicitors.

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant challenged the decision of First-tier tribunal Judge Hussain who in a decision dated 19th October 2017 dismissed her and her children's appeal against the Secretary of State's refusal of their application on family and private life grounds.

2. The grounds in the application for permission to appeal set out that the judge

> (i) failed to consider section 117B (6) of the Nationality Immigration and Asylum Act which did not require the seven years to have been accrued at the date of application by the child. In and in country appeal the judge should have assessed whether the seven years had been accrued at the date of hearing.
> (ii) failed to make any findings about either child's best interests
> (iii) erred in law by failing to properly assess paragraph 276 ADE (vi)
> (iv) wrongly directed himself that there needed to be exceptionality rather than compelling circumstances for an appeal to succeed outside the immigration rules
> (v) erred in law by failing to have regard to delay

Conclusions

3. For the following reasons I find a material error of law. From an overall reading of the decision, the judge failed to appreciate that the eldest child was born on 18 April 2010 and, by the date of the hearing on 15 September 2017, was seven years old. Mr Singer argued that **MT and ET (child's best interests) Nigeria** [2018] UKUT 00088 had considerably extended the application of Section 117B (6). Although it was submitted by Miss Isherwood that there was minimal evidence submitted in relation to the children there was a witness statement by the lead appellant which included references and information about the children but there was no best interests assessment. Such an assessment was omitted from the paragraph 276ADE assessment and required for both children. (Both have now remained in the UK for seven years). Although the judge cited **MA (Pakistan)** 2016 EWCA Civ 705, because he failed to appreciate that the eldest child was seven years old at the date of hearing, he did not apply the dicta in that authority and approached the proportionality without any consideration of 'powerful reasons' for excluding the appellants from the UK.

4. Both counsel agreed that the findings were inadequate and the matter needed to be remitted to the first-tier Tribunal for relevant findings to be made.

5. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and

Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signed Date 24th July 2018

Helen Rimington

Upper Tribunal Judge Rimington