



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/12793/2016  
HU/12795/2016  
HU/12797/2016  
HU/12798/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 26<sup>th</sup> October 2018

Decision & Reasons Promulgated  
On 9<sup>th</sup> November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

SAJEEWA [P]

SUDENI [A]

[S D P]

[S D M P]

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr Aslam of Counsel

For the Respondent: Ms Kiss, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Sri Lanka. He was born on 30 June 1975.

2. The appellant appealed against the decision of the respondent dated 4 May 2016. The appeal was dismissed by Judge Lucas (the judge) in a decision promulgated on 26 October 2017. He found the respondent's decision to be proportionate.
3. The grounds claim the judge failed to follow **MA (Pakistan) [2016] EWCA Civ 705**. In particular at [49]:

*"However, the fact that the child has been in the UK for seven years would need to be significant weight (sic) 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 at a starting point that leave should be granted unless there are powerful reasons to the contrary."*

The grounds claim that had the judge considered the case properly and adequately he would have reached a different conclusion. Instead, he merely asserted that it was reasonable to expect the children to leave the UK without seeking to explain what factors made that course exceptionally reasonable. There was no basis for assuming that it would be in the children's best interests to be uprooted and the assertion must be that consideration of the best interests was simply subordinated to consideration of their parents' position which was against the concept of the cited case law.

4. In a decision dated 11 April 2018, Judge Lambert refused permission to appeal, inter alia as follows:

*"2. The judge gave reasons for finding the appellants not to meet the requirements of the Rules despite the status of the oldest child as a qualifying child, and found no good reason to consider Article 8 outside the Rules. The reasoning in the decision is evidence-based, succinct and adequate. The grounds take issue with the findings made by the Immigration Judge on the evidence, but in effect amount to no more than disagreement with those findings and an attempt to re-argue the appellant's case."*

5. The grounds were renewed to the Upper Tribunal.
6. Deputy Upper Tribunal Judge Hutchinson granted permission to appeal on 7 September 2017. She said, inter alia:

*"2. ... the renewed grounds of appeal argue in effect that 1. The judge failed to follow **MA (Pakistan) [2016] EWCA Civ 705**; 2. The best interests of the elder child lie in remaining in the UK; 3. No reasons were given for finding that it was reasonable to expect the children to leave the UK; 4. The parents fall within paragraph 276ADE(vi) as there are very significant obstacles to re-integration."*

3. *Whilst the final ground identified in relation to paragraph 276ADE(vi) is lacking in merit, the best interest assessment, at [30] is arguably inadequate, including given that the elder child is a qualifying child under section 117B and that assessment has arguably been conflated with the wider public interest assessment. Although Judge Lucas correctly identifies that the crux of the appeal is the status of the eldest qualifying child and his younger sibling and identifies that neither of the adult appellants had leave to remain nor can they satisfy the Immigration Rules, it is just arguable that there is inadequate reasoning in respect of the 'powerful reasons' required to justify removing a qualifying child."*

### **Submissions on Error of Law**

7. Mr Aslam relied upon the grounds.
8. Ms Kiss conceded that judge's reasoning was limited but that nevertheless he did not err.

### **Conclusion on Error of Law**

9. The judge did not refer in terms to **MA (Pakistan)**, but I find that he nevertheless covered the appropriate issues in his analysis. The judge took into account the appellant's arguments and the evidence supplied on their behalf. See [4] – [9] of the judge's decision. As regards the best interests of the children, the submission made is that their best interests were best served by remaining here. Both children were integrated and were at school. The main appellant's evidence was that the children spoke English but that their first language was Sinhalese, although that was contradicted by the second appellant who said that the children's first language was English.
10. The judge accepted the arguments that had been put forward that the best interests of the children would be to remain here. It was accepted that they were both in education and there was evidence of their good progress. The children were fully integrated into life here. The judge accepted and understood the wish of the family to remain but he also had to take into account the position of the children's parents who had no leave and whose appeal was based upon the status of the eldest qualifying child and his younger sibling.
11. The judge accepted the children would face temporary inconvenience and short-term difficulty in readjusting. But given the family would return as a unit, the judge found the children would have the support of their parents such that given there were no exceptional or compelling circumstances, he found the decision to be proportionate.
12. I find the judge covered all appropriate issues, albeit briefly. The judge did give significant weight in the proportionality exercise to the eldest child's presence here for seven years. That was significant in the analysis. Equally, the judge was entitled

to consider the position of the parents and the fact that they were returning as a family unit. See KO (Nigeria) [2018] UKSC 53 in particular at [51].

**Decision**

The decision did not contain a material error of law such that it should be set aside. The Tribunal's decision shall stand.

No anonymity direction is made.

Signed

Date

2 November 2018

Deputy Upper Tribunal Judge Peart