



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

Appeal Numbers: HU/19147/2016  
HU/19156/2016  
HU/19153/2016  
HU/19160/2016

**THE IMMIGRATION ACTS**

**Heard at: Manchester  
Reasons Promulgated  
On: 14<sup>th</sup> March 2018  
2018**

**Decision &**

**On: 16<sup>th</sup> March**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**JL  
LD  
PFL  
JL**

Appellants

**And**

**Secretary of State for the Home Department**

Respondent

**Representation:**

**For the Appellants: Ms N. Patel, Lei Dat and Baig Solicitors**

**For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer**

**DETERMINATION AND REASONS**

1. The Appellants are all nationals of China. They are respectively a father, mother and their two children. They appeal with permission the decision of the First-tier Tribunal (Judge Wedderspoon) to dismiss their linked human rights appeals.
2. The factual matrix before the First-tier Tribunal is a familiar one. Two adults have come, with permission, to live in the UK. They have made a life for themselves, brought their children up here, and now they would like to stay. In this case the father of the family JL arrived with a work permit in 2004 and his wife LD and elder child MJL joined him in 2008. The youngest child PFL was born in the UK in December 2009.
3. It is common ground between the parties that the task for the First-tier Tribunal was first to determine whether any of the four appellants could qualify for leave to remain under the Immigration Rules. In this case the only applicant who had a viable case under the Rules was PFL. She was *prima facie* a 'qualifying child' in that she had spent at least seven continuous years of her life in the UK. The important question for the Tribunal was whether it would be 'reasonable' to expect her to leave the UK. If it was not, PFL qualified for leave to remain with reference to paragraph 276ADE(1)(iv). After conducting its analysis 'under the Rules', the Tribunal was then to proceed to consider whether there were grounds 'outside of the Rules' to allow any of the appeals with reference to Article 8.
4. It is common ground between the parties that this determination does not reflect that approach. The determination sets out at some length various authorities on the question of proportionality, s117 of the Nationality, Immigration and Asylum Act 2002, and the question of reasonableness of the removal of children. It then makes reference to the facts and evidence, before turning, under the heading 'findings', to proceed directly to a *Razgar* analysis of the case. Finding that it would be in the best interests of PFL to remain with her parents, the Tribunal concludes that the decision to refuse leave would be proportionate and that the appeals should all be dismissed.
5. I need not set out in any great detail the objections raised by Ms Patel in her grounds, since before me Mrs Aboni conceded that the First-tier Tribunal had erred in its approach to the extent that the decision could not stand. The errors of law were, in summary:
  - i) Failure to consider the position of each individual appellant under the Rules. PFL had a *prima facie* case under paragraph 276ADE(1)(iv) and this should have been considered in light of the applicable policy guidance and case-law. The failure to do so led the Tribunal to fail to identify 'strong reasons' why she should be refused leave:

see MA (Pakistan) [2016] EWCA Civ 705, PD and Others (Article 8 – conjoined family claims) [2016] UKUT 108.

- ii) Failure to make findings in respect of the private life of JL (junior), a young man who has lived in the UK for approaching ten years.
  - iii) Legal misdirection. In addition to adopting a problematic structure (for which see above) the Tribunal further places reliance on EV (Philippines) v Secretary of State for the Home Department [2014] EWCA Civ 874. The conclusions in EV had no application to this case. The child in EV (Philippines) was not a qualifying child, having only lived in the UK for 4 years. PFL is a qualifying child, and as such quite different policy and legal considerations apply.
6. The decision of the First-tier Tribunal is therefore set aside by consent; the matter is remitted for hearing *de novo* in the First-tier Tribunal.

### **Anonymity Order**

7. There is no reason why the identity of the adult Appellants should be protected. The case does however turn on the presence in the United Kingdom of a child. I have had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders. I am concerned that identification of the adult Appellants could lead to identification of the child involved and I therefore consider it appropriate to make an order in the following terms:

“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 to, amongst others, both the Appellants and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

### **Decisions**

8. The decision of the First-tier Tribunal contains material errors of law. It is set aside by consent.
9. The matter is remitted for hearing *de novo* in the First-tier Tribunal.
10. There is an order for anonymity.

HU/19147/2016  
HU/19156/2016  
HU/19153/2016  
HU/19160/2016

Upper Tribunal Judge Bruce  
7<sup>th</sup> March 2018