



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/25050/2016

THE IMMIGRATION ACTS

Heard at Field House
On 14 August 2018

Decision & Reasons Promulgated
On 29 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

S S
(ANONYMITY DIRECTION MADE)

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Jaquiss, Counsel

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

DECISION AND REASONS

1. The appellant appeals with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal Telford dismissing her appeal against a decision of the respondent, dated 3 October 2016, refusing her application for leave to remain on the grounds of private and family life. The appellant came to the UK in October 2010 as a Tier 4 student and she brought her husband and son, born on 8 November 2009, with her. She was subsequently granted an extension of leave under Tier 1 in order to work with her husband and son as her dependants. On 1

June 2014 she gave birth to a daughter. Shortly after the birth of her daughter, she applied for leave on human rights grounds but her application was refused and her appeal dismissed. She became appeal rights exhausted on 7 January 2016. On 1 February 2016 she submitted further representations, which led to the decision now appealed.

2. In brief, the respondent considered the reasons provided by the First-tier Tribunal for dismissing the previous appeal on article 8 grounds and decided the appellant had not shown her circumstances had changed since then. It was still not accepted there would be significant obstacles to the appellant's reintegration in India. The appellant had submitted evidence showing she suffered from depression and anxiety but removing her from the UK would not breach article 3 of the Human Rights Convention. It was in accordance with the best interests of the appellant's son to return to India with his parents, where there is a functioning educational system. The appellant's private life had been established at a time when her status was precarious.
3. The refusal letter concluded by stating that the appellant's representations did not meet the requirements of paragraph 353 of the Immigration Rules and did not amount to a fresh claim. The letter informed the appellant that she had no right of appeal. However, a duty judge ruled the appeal should proceed, applying *Sheidu (Further submissions; appealable decision)* [2016] UKUT 00412 (IAC).
4. Judge Telford noted that evidence had been adduced showing the appellant's son suffered from anxiety. It was argued he had remained in the UK for more than seven years and it would not be reasonable to remove him. It would be contrary to his best interests. The judge rejected these arguments, noting, in paragraph 14, that "*[t]he parents, as highly educated professional middle class [people], will be able to return and reintegrate. They have shown what is obvious, that it is more than possible for people to advance themselves in society in India. The child appellant (sic) will not suffer harm as they claim. Responsible loving parents will work together to mitigate and ameliorate and diminish any negatives in the move and emphasise the positive aspects, of which there are many, long lasting and ultimately more beneficial than the short-sighted immediacy of life in the UK.*"
5. The judge noted that a report had been provided by an independent social worker, Mr Charles Musendo, but he gave it little weight, stating that the instructing solicitors had asked him "*to second guess or even first guess what the overall decision should be.*" The social worker had not seen all the evidence and had failed to give consideration to the economic progress being made in India. The judge doubted whether the report was truly independent.
6. Finally, the judge noted that no medical evidence had been provided showing the child would not resolve any "*health, stress or mental issues*" in India with his parents.
7. Permission to appeal was sought on five grounds:

- (1) In directing himself that there was no basis on which to depart from the findings of the previous tribunal, the judge had arguably erred by failing to apply the principles set out in *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka Starred* [2002] UKIAT 00702, particularly, in view of the passage of time, at paragraph 38;
 - (2) No separate best interests assessment had been conducted;
 - (3) The judge's reasons for rejecting the report of the independent social worker were not legally sustainable;
 - (4) The judge had failed to apply paragraph GEN.3.2 of Appendix FM of the Immigration Rules; and
 - (5) The judge had reached conclusions which were not open to him to make on the evidence.
8. Permission to appeal was granted by the First-tier Tribunal in respect of all the grounds.
 9. No rule 24 response has been filed by the respondent.
 10. I heard submissions from the representatives as to whether the First-tier Tribunal Judge had made an error of law in his decision.
 11. There is no reason to believe that the issue raised in the fourth ground was actually argued before Judge Telford.
 12. Ms Jaquiss sought to argue that the judge had erred in the manner described in the first ground. However, I find that is not the case for the following reasons. Firstly, the previous determination has not been made available in this appeal. Whilst extracts are set out in the reasons for refusal letter, these cannot safely be used as a starting-point without seeing the rest of the determination. Secondly, it is clear the previous judge made adverse findings, as did Judge Telford. Moreover, the latter expressly stated in paragraph 30 of his decision that he recognised the case was different from that before the first judge. Earlier in the decision, at paragraph 7, he had noted the need to consider whether there were any material differences as between the situation at the date of hearing and the date of the previous decision. He applied this in paragraph 11. There is no error in this approach.
 13. The remaining grounds can be taken together because they all focus on the key issues in the appeal, which are the best interests of the appellant's older child and whether it was reasonable for him to leave the UK.
 14. Ms Jaquiss argued that the judge had erred by dismissing the report of the independent social worker. It was clear the social worker was qualified to comment on the best interests of the child. The reasons given by the judge for questioning the independence of the report writer do not stand up to scrutiny. It will almost always be the case that the report is commissioned by one of the parties. The social

worker had been right to set out the legal framework applicable in cases relating to the welfare of children.

15. Ms Jaquiss argued that the social worker's report was only one of three important pieces of documentary evidence. The judge also had before him a letter from a consultant psychotherapist and a letter from the child's headteacher. The judge's analysis of this evidence had simply been insufficient. She argued that reasonableness is a low threshold because powerful reasons need to be shown why leave should not be granted to a child who has resided in the UK for seven years. The judge only made a brief reference to the reasonableness test in paragraph 10 of his decision.
16. Finally, Ms Jaquiss argued that, although the judge had referred to the case of *MT and ET (child's best interests; ex tempore pilot) Nigeria* [2018] UKUT 00088 (IAC), he had not applied it. The facts of that case concerned parents with a very poor immigration history, involving criminality. Emphasis was placed on the fact the child concerned had had no experience of living in Nigeria. The child in the present case likewise had no experience of living in India, having been born in Denmark and brought up in the UK.
17. Ms Isherwood argued there was no material error of law in the decision. Although she accepted the welfare of the child was at the centre of the appeal, she argued that the appellant made no distinction between her children in her witness statement. She argued that section 117B(6) of the 2002 Act is not a 'trump card' and she relied on the cases of *EV (Philippines) & Ors v SSHD* [2014] EWCA Civ 874 and *AM (Pakistan) & Ors* [2017] EWCA Civ 180.
18. Ms Isherwood argued that, from the outset, the judge had shown that he recognised that the best interests of the child were the focus of the case. He had been entitled to have regard to the fact that the parents had not been successful in extending their leave and the child's education would have to be paid for by the taxpayer. The judge correctly noted that the child was a 'qualifying child' and that he was not British. The judge was entitled to find that his best interests were protected by returning to the bosom of his family in India. She also argued that the judge had been right to criticise the report of the independent social worker. The judge had dealt adequately with the reasonableness test and the grounds of appeal were no more than mere disagreement with the decision.
19. In reply, Ms Jaquiss argued that the judge had failed to put the child at the forefront of the appeal and, instead, had made generalising statements about India and his parents. He had not dealt with the impact on the child of removal despite the strong evidence in front of him.
20. Having carefully read the decision and considered the arguments put forward by the representatives I concluded that the decision of the First-tier Tribunal should be set aside. I announced this decision at the hearing. My reasons are as follows.

21. It is recognised by both sides that the key issue in this appeal is the impact of removal on the appellant's son. It is uncontentioned that he is a 'qualifying child', as defined by section 117D of the 2002 Act. He had spent more than seven years in the UK as at the date of hearing. Numerous authorities deal with the correct approach to such cases.
22. The best interests of the children are a primary consideration for the tribunal but not necessarily a 'trump card' (*ZH (Tanzania) v SSHD* [2011] UKSC 4). In *Azimi-Moayed* the Upper Tribunal pointed out that, in the generality of cases, it is in the best interests of children to have both stability and continuity of social and educational provision and the benefit of growing up in the cultural norms of the society to which they belong. Lengthy residence in a country can lead to the development of social, cultural and educational ties that it would be inappropriate to disrupt but what amounts to lengthy residence is not clear cut. Past and present policies have identified seven years as a relevant period. Seven years from the age of four is likely to be more significant to a child than the first seven years of life. Very young children are focused on their parents rather than their peers and are adaptable (see [13]).
23. In *Zoumbas v SSHD* [2013] UKSC 74 the Supreme Court reviewed the applicable principles and confirmed that it was right to take into account the fact a child is not British in assessing the weight to be given to best interests (see [24]). In particular, the child's best interests do not have the status of a paramount consideration and, although the best interests of the child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant.
24. In *EV (Philippines)* Christopher Clarke LJ pointed out the importance of assessing the relative strength of the factors which made it in the best interests of the children to remain in the UK. In paragraph [35] of his judgment he set out some of the relevant factors, including the child's age, length of time in the UK, stage of education, to what extent they have become distanced from the country of return, how renewable their connection may be, and to what extent linguistic, medical or other difficulties will make it difficult to adapt.
25. In the same case, which did not involve children with seven years' residence, Lewison LJ found on the facts that, where the parents had no independent right to remain in the UK, it was "entirely reasonable" to expect the children to go with them. The desirability of the children being educated in the UK at public expense could not outweigh their best interests, which was to remain with their parents ([60]).
26. In *MA (Pakistan) & Ors, R (on the application of) v Upper Tribunal (IAC) & Anr* [2016] EWCA Civ 705 the Court of Appeal examined what matters were material to the reasonableness assessment for the purposes of section 117B(6) of the 2002 Act. Elias

LJ rejected the submission that the best interests assessment automatically resolved the reasonableness question. Even where the child's best interests are to stay, it may still not be unreasonable to expect them to leave. In applying the reasonableness test in section 117B(6), the tribunal must take all potentially relevant public interest considerations, including the immigration history of the parents (see [45]). This approach was confirmed in *AM (Pakistan)*.

27. In *MT and ET* the President drew attention to the passages in Elias LJ's judgment in *MA (Pakistan)* in which he emphasised that the fact a child has been in the UK for seven years must be given significant weight when carrying out the proportionality balancing exercise. The headnote reads as follows:

"1. A very young child, who has not started school or who has only recently done so, will have difficulty in establishing that her Article 8 private and family life has a material element, which lies outside her need to live with her parent or parents, wherever that may be. This position, however, changes over time, with the result that an assessment of best interests must adopt a correspondingly wider focus, examining the child's position in the wider world, of which school will usually be an important part."

28. I agree with Ms Jaquiss that Judge Telford failed to grapple adequately with these issues and, in particular, he failed to have sufficient regard to the evidence which was before him as to the impact on the child of removal. Before looking at any of the evidence, the judge set out his attitude towards the actions of the parents in paragraph 5, as follows:

"[The appellant] had finished her studies by 15 August 2014. Since then she has delayed her return to her home country by making a series of unsuccessful applications, appeals, appeals from appeals and yet further applications. The application was made after all appeals were "appeal rights exhausted". That phrase might be thought by some to be somewhat meaningless in the context of this case. However, that is not so as the appellant, in this application dated 1 February 2016, was intent upon remaining as long as possible in the UK in order to obtain time for her child to enjoy a free education in the UK."

29. The tone of this paragraph, which is ostensibly included in the decision to set out the background of the appellant and her immigration history, leaves the reader in little doubt that the judge approached this case on the basis that the appellant had somehow "played the system". It is difficult to believe that the judge proceeded with an open mind towards his task of assessing the impact of removal on the child.
30. The judge's findings begin at paragraph 9. What follows runs together the issues of the child's best interests in the reasonableness of removal. The danger of this approach is that the judge has stated his conclusions at the outset without fully justifying them by reference to the evidence. Where he has attempted to explain his conclusions, his approach has not followed the guidance provided by the case law. For example, in paragraph 10, having stated that it is not unreasonable for the respondent to rely on the public interest in removing the appellant, he states that,

"[t]he private life rights of a child not a British citizen, who has been kept in the UK unlawfully by parents seeking only to obtain a free education for a child and to promote a wholly skewed materialistic view upon that child's hopes and aspirations and life is not necessarily something that was envisaged by the provisions (sic) of those drafting article 8. It is not in the spirit of the legal provisions enacted or interpreted. There is so much more to be found in living within a society where honesty, openness and transparency and the maintenance of the rule of law are virtues to be followed it is against the best interest of a child to be brought up to see advantage in manipulating breaching and ignoring the law of the land in which they happen to reside. The best interest of this child are to return to the bosom of its wider family in India."

31. This passage from the decision plainly shows that the judge erred by running together his disapproval of the actions of the parents with his assessment of the best interests of the child. That is legally erroneous.

32. The judge's reasoning continues as follows:

"14 ... The child appellant will not suffer harm as they claim. Responsible loving parents will work together to mitigate and ameliorate and diminish any negatives in the move and emphasise the positive aspects, of which there are many, long lasting and ultimately more beneficial than the short-sighted immediacy of life in the UK.

15. The test I apply is not simply whether the child will receive a better schooling but whether in all the circumstances it is lawful to require the family as one to remove. That is a perfectly reasonable step. The change in their lives will be but one of many that will occur. People are built for change. The parents will make this understandable and acceptable. The most important unit here is the family and it will remain together."

33. Again, these paragraphs make it crystal clear that the judge had reached his conclusions before attempting any analysis of the evidence provided. I shall now turn to that evidence.

34. I did not entirely agree with Ms Isherwood regarding the appellant's statement. Initially, she does speak about her children jointly. However, she does then turn to explain the issues concerning her son and her concerns about the impact on him of removal. She states that interrupting his current treatment at the Child and Family Mental Health Service (CAMHS) would be likely to lead to increased behavioural and psychological disturbance when he is taken away from a familiar environment and lead to a regression in his ability to communicate.

35. That statement raises concerns about the child which are reflected in the other evidence. I do agree with Ms Isherwood that the report of the independent social worker contains flaws. In the section in which the social worker sets out the framework for his assessment, he refers to, among other things, the UN Convention on the Rights of the Child and the Children Act 1989. I do not see how this assists him to reach an independent judgement. It suggests, not only that his views about the best interests of the child are confused with the application of legal tests, but

also raises the possibility that he has treated the best interests of the child as a paramount consideration, in line with section 1 of the 1989 Act. He further oversteps his role in the section on education by referring to his own research about education in India. He does not have qualifications as a country expert. For the same reasons, I disagree with Judge Telford that the social worker failed to show balance in his report by giving no real consideration to *“the success of over 1 billion souls in a country which went from near starvation in 1943 to a thriving world economy which boasts not only a Space Programme capable of putting craft on the moon but also manages to find itself in receipt of world aid (sic) which its Foreign Office has declared it does not really need.”*

36. Moving on, my concern about the judge’s assessment is that the first reference to the medical evidence and the headteacher’s report is in paragraph 20, which simply states he has taken particular note of all the supporting statements and nothing else.
37. The report of the headteacher states that the child is a quiet boy and that, although shy, he had begun to develop his confidence in sharing his ideas and learning with his teachers as well as his peers. He was referred to CAMHS and he was found to have a social communication disorder. He was assessed by an educational psychologist in April 2016 and was found to be operating at a low level in all areas with some complex social and emotional needs. He receives extra help with reading, writing and maths. He can find it challenging when adjusting to new settings, teachers and adults. He found it difficult to make new friends and to approach others. Moving him to a different country under a different educational system could jeopardise the progress he is making and hinder the speed of his development in all areas of his learning. He is on track currently to make great progress in his learning and his social and emotional development.
38. The report of the consultant child and adolescent psychotherapist stated that the child had been referred to CAMHS by the family’s social worker. This was supported by the family’s general practitioner. The child presented with a range of complex issues. He is extremely quiet and has a diagnosis of selective mutism for which he has been receiving intensive speech and language input. Underlying his selective mutism, there are additional psychological and emotional difficulties. He continues to present as a hypersensitive child and, whilst he is beginning to relate to his peers, he remains very guarded. He is a bright child and is making good academic progress. The letter expressed concern that the uncertainty regarding the family’s immigration status was having a deleterious impact on the child’s mental health. He is highly anxious, frightened and clinging. He is a child who finds change traumatic, leading to rapid regression in his state of mind.
39. Plainly, this was important evidence which went to the heart of the issue of the impact of removal on the child. It was simply stepped over by the judge. At paragraph 22, the judge found as follows:

“I note no medical evidence to indicate that the child will not resolve any health, stress or mental issues when back in India with his parents. The same can be expressed when someone travels from India to the UK to live. This is not a one-way street of travel. There is no “ratchet” which turns only in the direction of healthy living in the UK compared to India.”

40. In my judgment, this is not a sufficient analysis of the evidence, which clearly points towards the damaging effects of removing the child from his current situation. The judge has given no reasons for finding the evidence to be unworthy of any weight, apart from his overarching thesis that the family should return to India.
41. The judge then turns to a section headed, Reasons. Again, the judge expresses himself in trenchant terms, stating, *“The parents are exceptionally highly educated and intelligent. They had very successful careers in India. They had resources and a wide and well-placed socially and culturally family background. They hark from the upper echelons of Indian society. This is the reality of life for the appellant and her spouse and will be so over their child. The claim that it is only in England, in the UK that they can obtain a decent education is a concept which frankly deserves to be placed as the respondent submitted quite eloquently, in the dustbin of history.”*
42. The judge eventually returns to the mental health of the child and states it has not been shown that his mental health will deteriorate because the parents would have access to private treatment. However, this is to miss the point of the reports, which is that the child cannot handle change at his particular stage of his development. The judge’s analysis is insufficient. In the subsequent paragraph 31, the judge appears to state that he found the appellant had exaggerated her child’s difficulties and the evidence presented by her was “incredible”. He does not say why the headteacher’s letter and the letter of the consultant psychotherapist were incredible.
43. In the ensuing paragraphs, the judge concludes the decision to remove is proportionate. He refers to the best interests of the child as not requiring him to remain in the UK. He refers to section 117B to the extent he reiterates his view that the appellant has flouted the law. He does not direct himself at all to the question of reasonableness as part of the balancing exercise.
44. For these reasons, the decision of the First-tier Tribunal is set aside because the decision is vitiated by material errors of law.
45. In the circumstances that I had had close regard to the evidence, which had not been updated, I considered it was appropriate for me to remake the decision. The representatives made further submissions.
46. Ms Isherwood asked me to dismiss the appeal. In assessing the reasonableness of removal, the law required me to take account of the actions of his parents and it was correct to say that the appellant had been in the UK without leave. She referred

again to some weaknesses in the report of the independent social worker. She argued that parents were able to meet the needs of the child under the current circumstances and in India they would have much more family support. At some stage the child would have to change schools and teachers. The important thing was that he was not being removed from his family.

47. Ms Jaquiss asked me to find that the best interests of the child were to remain in the UK and that it was not reasonable for him to leave. The public interest factors did not outweigh these matters. She referred again to the submission that strong reasons were needed to remove a child who has lived in the UK for seven years because this would be highly disruptive. She again contrasted the facts of this case with those in *MT and ET*. She referred me again to the report of the independent social worker, the report of the headteacher and the report of the consultant psychotherapist. The nub of the case was that change would be traumatic for this child. She suggested the evidence pointed overwhelmingly towards showing that removing the child was unreasonable. In terms of the test explained in *MA (Pakistan)*, she pointed out that the appellant had had leave continuously until one month before the application was lodged. She asked me to take account also of the fact that there was evidence that the appellant was struggling to cope with her child, which was affecting her mental health as well. She pointed out the family spoke English and were capable of being independent financially. They had supported themselves until 2015.

48. I reserved my decision.

49. I approach my evaluation of article 8 by reference to the five questions to be asked as set out in paragraph 17 of *Razgar* [2004] UKHL 27. The appellant must show that she currently enjoys protected rights and that there would be a significant interference with her human rights as a result of the decision. It is for the respondent to show that the interference is in accordance with the law and in pursuit of a legitimate aim. I must then assess whether the decision is necessary in a democratic society, including whether it is disproportionate to the legitimate aim identified.

50. In this case, the starting-point is that the rules are not met and the determinative issue is the proportionality of removal in those circumstances. Are there exceptional circumstances which justify a grant of leave to remain for the whole family, focusing on the situation of the appellant's son?

51. Section 117B of the 2002 Act defines the public interest. It reads as follows:

"(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English-

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons-

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to-

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where-

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom."

52. By virtue of section 117D(1), the appellant's child is a 'qualifying child' for the purposes of section 117B(6).

53. Applying the applicable standard of a balance of probabilities, I find as follows.

54. The appellant is an educated person, having obtained an MBA and a postgraduate diploma in strategic management and leadership while pursuing studies in the UK. She speaks English and Tamil. Her immigration history is not a particularly bad one. She lived in the UK with leave from 5 October 2010 until 7 January 2016. Her husband and son lived with her lawfully in the UK throughout this period. Her daughter was born in June 2014. The appellant has not had leave since 7 January 2016 but she has not gone to ground. She submitted an application for reconsideration within a month of becoming appeal rights exhausted and she continues to challenge the ensuing decision to refuse her leave.

55. It is a little unclear how the family has supported itself since their statutory leave came to an end. However, I note that the appellant's brother lives in the UK and it is clear that the appellant and her husband are willing and able to work to support themselves. Her husband obtained an MSc before leaving India. Her husband has most recently worked as a chef and the appellant has also occupied herself at a Hindu temple.

56. Both children attend a state primary school. The appellant's son will be nine years' old in November and is about to commence year 4. Her daughter will be about to commence reception class. Neither child has been to India. The appellant's son was

around 11 months' old when he was brought to the UK. Her daughter was born here.

57. The appellant's parents reside in India. Of course, there would be schools in India which the appellant's children could attend. If it is true, as claimed, that they have no understanding of Tamil at present, they would be able to learn it with the support of their extended family members. The focus of this appeal is the impact of removing the appellant's son given his particular needs.
58. I do not attach significant weight to the report of the independent social worker. Whilst he is well-qualified to give an opinion about the best interests of a child, it seems to me that the report for the most part simply relays the concerns of the appellant and defines the issues according to the information already contained in other sources. Leaving out the unnecessary references to the law and country of origin research, there is not a great deal left which is instructive.
59. However, I do attach significance to those other documents. I have already set out the key parts above. In my judgment, the letters from the headteacher and the consultant psychotherapist form very cogent evidence that this little boy has profound difficulties, leading to the diagnosis of selective mutism. He is currently achieving his educational progress as a direct consequence of the interventions of speech and language therapists and teaching staff trained in helping children with special educational needs. As the reports make clear, removing him from current arrangements at this time would be very damaging indeed.
60. I accept that, in principle, he could attend school in India. I accept his parents would in all probability find employment given their impressive qualifications. I accept there would be family support. There may even be some specialist support available once the parents found themselves in a position to fund it. However, as the reports make very clear, any interruption to the current arrangements would have an extremely deleterious effect on the child, sending him backwards into mutism and exacerbating his underlying anxieties. I do not find the appellant has exaggerated his problems. On the contrary, the evidence is compelling.
61. I find therefore that it is not only in the child's best interests to remain living with his parents but that his best interests also demand the continuation of the current arrangements for the child's education. He has lived in the UK for a significant period beyond the age of four so will have established, in his own way, valuable private life ties with those around him, including people outside his immediate family. He has not experienced life in any country except the UK. The challenges this child faces in communicating with his peers mean that he would face enormous difficulties in forming equivalent relationships in a new country, even with the care and support of his family.
62. I keep in mind that the Immigration Rules have not been met. The rules set out the Secretary of State's policy and, as such, must be given considerable weight (*Hesham*

Ali v SSHD [2016] UKSC 60 at [46]). However, in the circumstances of this appeal, the most important provision is section 117B(6) of the 2002 Act.

63. Is it reasonable to remove the child? There is significant public interest in removing people who have come to the end of their lawful leave. The appellant's leave might correctly be described as 'precarious' and therefore less weight can be attached to the private life which this family has built up for itself over the years. The application was made after the appellant had become appeal rights exhausted. However, given her fears for her son's future were the family to be removed, I do not criticise her for seeking a reconsideration, which she did promptly. The potentially adverse factors enshrined in sections 117B(2) and (3) do not have significant bite in this case.
64. In assessing the reasonableness of expecting the child to leave, I focus solely on the appellant's son. The situation of the younger child is not such as to engage the protection of section 117B(6). I take account of the guidance provided by Elias LJ in *MA (Pakistan)*, emphasised by Lane J in *ET and MT*, that the fact a child has been in the UK for more than seven years must be given significant weight. Even the respondent's internal guidance explains that 'strong reasons' must be shown for refusal. I gain some assistance from the facts of the latter case. The appellant's mother entered the UK as a visitor and overstayed. She made several applications on human rights grounds and also claimed asylum. She committed a fraud offence and was not financially independent. In remaking the decision, applying the law as set out in *MA (Pakistan)*, Lane J found there were not such powerful reasons of public interest as to justify removing the appellant and her child.
65. In the present case, the appellant remained in the UK lawfully for many years and has never gone to ground. She has not committed any offences. She has succeeded on her courses and she has been industrious. There is nothing to suggest she has been untruthful or devious in any of her applications. She has a child whose difficulties have caused her distress to the point of being diagnosed with depression and anxiety herself. As said, I do not find any ground for criticism of her conduct. Strong grounds have not been shown in this case either. Moreover, the impact of removal on this child would be extremely harsh for the reasons already given.
66. In my judgment, it would be unreasonable to expect the child to leave the UK. Removal would be disproportionate due to the exceptional circumstances. The appeal is allowed on article 8 grounds.
67. I grant the appellant anonymity in order to protect the privacy of her child.

NOTICE OF DECISION

The Judge of the First-tier Tribunal made a material error of law and his decision dismissing the appeal is set aside. The following decision is substituted:

The appeal is allowed because the decision of the respondent is unlawful under section 6 of the Human Rights Act 1998.

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

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him 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

Date 20 August 2018

Deputy Upper Tribunal Judge Froom

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award for the following reason. It is far from clear that the full picture regarding the appellant's son was put forward with the application.

Signed

Date 20 August 2018

Deputy Upper Tribunal Judge Froom