Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/44935/2014
IA/44939/2014, IA/44943/2014
& IA/44936/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 April 2018	**On 23 April 2018**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

M A (FIRST APPELLANT)
MR E E (SECOND APPELLANT)
MISS A O (THIRD APPELLANT)
MISS J E (FOURTH APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: unrepresented
For the Respondent: Mr Walker

DECISION AND REASONS

1. The appellants appeal with permission against the decision of the respondent made on 21 October 2014 refusing them leave to remain pursuant to paragraph 276ADE of the Immigration Rules and on human rights grounds.

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2. The appeals have a complicated history. The appeals were first heard by First-tier Tribunal Judge Rothwell in a decision promulgated in 2015 and who dismissed them for the reasons set out in her decision of 27 July 2015. Permission to appeal to the Upper Tribunal was then granted and the matter than came before Deputy Upper Tribunal Judge Chana on 17 March 2016. In a decision dated 28 July 2016 she upheld the decision of the First-tier Tribunal. Permission to appeal to the Court of Appeal was granted.

3. In a decision of that court by consent and for the reasons set out in the statement of reasons appended to the order of 25 July 2017 the parties agreed amongst other things that in light of the guidance provided by the Court of Appeal in MA (Pakistan) and others [2016] EWCA Civ 705 that the Deputy Judge, that is Judge Chana, had not correctly considered the issue of reasonableness. That is to say that there had been insufficient consideration of the significant weight that ought to be given to the fact that the child in this case, the third appellant, had been here in excess of ten years.

4. For the reasons set out in my decision promulgated on 16 February 2018, I found that the decision of Judge Rothwell did involve the making of an error of law and set it aside. I also gave directions as to how the matter was to be remade. A copy of that decision is annexed to this decision.

5. When the matter came before me the appellants were not represented. The first appellant explained that she had only been told two days earlier of the hearing and she did not have funds to pay for Counsel. I arranged for enquiries to be made of the appellants' solicitors which resulted in two letters being sent by email. It is evident from these that the solicitors had sought to obtain instructions and funds from the appellants but that these had not been forthcoming.

6. In considering whether to adjourn the matter I bore in mind that it appears that the Tribunal had not served the hearing notices at the appellants' current address but equally it appears that this had not been notified to the Tribunal either by the appellants or by her solicitors. The letters from the solicitor indicate that they made several efforts to contact the appellant about the hearing date and it is to say the least surprising that none of these were successful. When questioned about whether she had received a copy of the decision of mine of 16 February she was unable to assist and could provide no proper explanation as to why, although she knew it had been due, she did not go to her solicitors' lawyers if as appeared she was not getting letters from them.

7. I considered that there was no prospect of the applicant getting representation from Malik Law Chambers nor, given that she is without funds, any prospect of future representation, and on that basis and given what had occurred on the previous occasion and the history of this appeal, I was satisfied that I could proceed justly to determine the appeal without the need to adjourn it.

8. I heard evidence from the appellants having asked them in line with my prior directions to address anything that had changed since the matter was before the First-tier Tribunal in 2015. The first appellant was able to tell me only that her daughter was about to do her GCSEs and that they had been forced to move accommodation in London owing to violence perpetrated on their earlier accommodation.

9. The first appellant said that she could not return to Nigeria as she had nothing there, no ties, no accommodation and no means of living. She was not anymore in contact with her brother or other relatives.

10. The third appellant said that she did not know anything other than living in the United Kingdom and had not had any contact with her father since he had brought her cousins (the second and fourth appellants) to the United Kingdom in 2012. I asked if she had any contact by telephone or any other electronic means and she said that she had no contact details for him.

11. The second and fourth appellants confirmed that their life had been in Nigeria difficult in that they had had no free time and had been forced to do household chores and had not been given enough food to eat. The second appellant confirmed that she was at school and was about to start her GCSEs.

12. Mr Walker adopted the refusal letter but accepted that in the case of the third appellant the situation had now changed in that she had spent some thirteen years in the United Kingdom, very nearly double the figure which was seen to be a significant factor in paragraph 276ADE(iv).

13. In making my decision I have taken into account the evidence I heard as well as the evidence set out in detail in the decision of Judge Rothwell at paragraphs [6] to [17].

14. In reaching conclusions I bear in mind that the starting point must be the best interests of the children assessed without at this stage, considerations of their parents' actions.

The Law

15. In assessing the article 8 claims, I have regard to section s117A and 117B of the 2002 Act which provides as follows:

> *Section 117A*
>
> (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—
>
> (a) breaches a person's right to respect for private and family life under Article 8, and
>
> (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
>
> (2) In considering the public interest question, the court or tribunal must (in particular) have regard—
>
> (a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), "*the public interest question*" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

Section 117B:

(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.

"qualifying child" is defined in section 117D:

"qualifying child" means a person who is under the age of 18 and who-

(a) is a British citizen, or

(b) has lived in the United Kingdom for a continuous period of seven years or more;

16. The relevant paragraph of the Immigration Rules is paragraph 276 ADE (1):

276. ADE (1) The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

(i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and

(ii) has made a valid application for leave to remain on the grounds of private life in the UK; and

…

(iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or

17. It is necessary to consider what was held in MA (Pakistan) at [40] 0 [47]:

> "40. It may be said that the wider approach can be justified along the following lines. It will generally be in the child's best interests to live with his or her parents and siblings as part of a family. That is usually a given especially for younger children, absent domestic abuse or some other reasons for believing the parents to be unsuitable. The approach of the Secretary of State means that the stronger the public interest in removing the parents, the more reasonable it will be to expect the child to leave. But it seems to me that this involves focusing on the position of the family as a whole. In cases where the seven year rule has not been satisfied, that is plainly what has to be done. As McCloskey J observed in *PD and others v Secretary of State for the Home Department* [2016] UKUT 108 (IAC) it would be absurd to consider the child's position entirely independently of, and in isolation from, the position of the parents given that the child's best interests will usually require that he or she lives as part of the family unit. But the focus on the family does not sit happily with the language of section 117B(6). Had Parliament intended to require considerations bearing upon the conduct and immigration history of the applicant parent to be taken into consideration, I would have expected it to say so expressly, not for the matter to have to be inferred from a test which in terms focuses on an assessment of what is reasonable for the child. This does not in my view mean that the wider public interests have been ignored; it is simply that Parliament has determined that where the seven year rule is satisfied and the other conditions in the section have been met, those potentially conflicting public interests will not suffice to justify refusal of leave if, focusing on the position of the child, it is not reasonable to expect the child to leave the UK. When section 117A(2)(a) refers to the need for courts and tribunals to take into account the considerations identified in section 117B in all cases, that would not in my view have been intended to include specific circumstances where Parliament must be taken to have had regard to those matters.
>
> …
>
> 42. I do not believe that this principle does undermine the Secretary of State's argument. As Lord Justice Laws pointed out in *In the matter of LC, CB (a child) and JB (a child)* [2014] EWCA Civ 1693 para.15, it is not blaming the child to say that the conduct of the parents should weigh in the scales when the general public interest in effective immigration control is under consideration. The principle that the sins of the fathers should not be visited upon the children is not intended to lessen the importance of immigration control or to restrict what the

court can consider when having regard to that matter. So if the wider construction relied upon by the Secretary of State is otherwise justified, this principle does not in my view undermine it.

43. But for the decision of the court of Appeal in *MM (Uganda),* I would have been inclined to the view that section 117C(5) also supported the appellants' analysis. The language of "unduly harsh" used in that subsection is not the test applied in article 8 cases, and so the argument that the term is used as a shorthand for the usual proportionality exercise cannot run. I would have focused on the position of the child alone, as the Upper Tribunal did in *MAB*.

44. I do not find this a surprising conclusion. It seems to me that there are powerful reasons why, having regard in particular to the need to treat the best interests of the child as a primary consideration, it may be thought that once they have been in the UK for seven years, or are otherwise citizens of the UK, they should be allowed to stay and have their position legitimised if it would not be reasonable to expect them to leave, even though the effect is that their possibly undeserving families can remain with them. I do not accept that this amounts to a reintroduction of the old DP5/96 policy. As the Court of Appeal observed in *NF (Ghana) v Secretary of State for the Home Department* [2008] EWCA Civ 906, the starting point under that policy was that a child with seven years' residence could be refused leave to remain only in exceptional circumstances. The current provision falls short of such a presumption, and of course the position with respect to the children of foreign criminals is even tougher.

45. However, the approach I favour is inconsistent with the very recent decision of the Court of Appeal in *MM (Uganda)* where the court came down firmly in favour of the approach urged upon us by Ms Giovannetti, and I do not think that we ought to depart from it. In my judgment, if the court should have regard to the conduct of the applicant and any other matters relevant to the public interest when applying the "unduly harsh" concept under section 117C(5), so should it when considering the question of reasonableness under section 117B(6). I recognise that the provisions in section 117C are directed towards the particular considerations which have to be borne in mind in the case of foreign criminals, and it is true that the court placed some weight on section 117C(2) which states that the more serious the offence, the greater is the interest in deportation of the prisoner. But the critical point is that section 117C(5) is in substance a free-standing provision in the same way as section 117B(6), and even so the court in *MM (Uganda)* held that wider public interest considerations must be taken into account when applying the "unduly harsh" criterion. It seems to me that it must be equally so with respect to the reasonableness criterion in section 117B(6). It would not be appropriate to distinguish that decision simply because I have reservations whether it is correct. Accordingly, in line with the approach in that case, I will analyse the appeals on the basis that the Secretary of State's submission on this point is correct and that the only significance of section 117B(6) is that where the seven year rule is satisfied, it is a factor of some weight leaning in favour of leave to remain being granted."

18. I deal first with the position of the third appellant. I accept the evidence before me, which was not challenged, that there is now no contact between her and her parents. In any event it can only have been intermittent and it is not in dispute that she has lived here since the age of 9 months having arrived in 2005 almost thirteen years ago.

19. In considering the level of contact that the third appellant has with her parents in Nigeria, I note Judge Rothwell of the First-tier Tribunal was concerned as to the first appellant's evidence that her parents do not contact her but I have heard additional evidence and that was not challenged by the respondent. In the circumstances, viewing the evidence as a whole I am satisfied on a balance of probability that in effect there has been no real contact between the third appellant and her parents in Nigeria.

20. I note at this juncture that there had been, since the matter was in the First-tier Tribunal, a consideration by the respondent as the competent authority as to whether the third appellant was a victim of trafficking. Whilst the consideration was that she was not, the conclusion was that she had come to the United Kingdom with her aunt in 2005 as her parents could not care for her and in light of the consideration that the relationship between her and her aunt was genuine, it was considered that she did not fulfil the definition of human trafficking.

21. I do note with some concern that there has been confusion over the names of both the first and third appellant as is identified in the conclusive grounds decision but it was not pressed on me that I should not accept the account given by the first and third appellants as to when they arrived in the United Kingdom. In any event, even had she arrived in 2006, the third appellant has still lived here for substantially all her life.

22. I bear in mind also that in this case the other two children have been here less than five years and equally their best interests must also be taken into account.

23. Equally, I bear in mind that as in MA (Pakistan) and in particular the cases of NS, AR and CW within that, not all the children are in the same position. The circumstances of the children are still to be considered in assessing the reasonableness as set out in paragraph 276ADE(iv) and includes the circumstances of the family as a whole.

24. I consider, as a starting point, that the strength of private life established by the third appellant must be stronger given the length of time she has spent here. As is established in MA (Pakistan), once seven years had been reached that is a significant factor to be taken into account. I am satisfied also that the longer that that a child has lived here and particularly where, as here, the appellant has had her entirety of her education here and having no ties to her natural parents, it is fair to say that she knows nothing other than life in the United Kingdom. I consider that significant weight must be attached to her private life in these circumstances, weight that is greater than a child who had lived here only seven years.

25. With regard to the younger two children, they have spent a significant period of their lives. Further, these are important years of their life covering the ages between, in the case of the second appellant 8 and 13, and in the case of the fourth appellant, 10 and 15 nearly 16.

26. I accept the evidence that they were abused by their parents, even though that was not accepted by Judge Rothwell. I received additional evidence which was as to how they had to live in Nigeria which was not challenged by the respondent.

27. Whilst their situation in the United Kingdom is precarious in that they are in social housing, they are in school and appear to be progressing well.

28. I accept that they have little to return to in Nigeria and that the first appellant has now few ties to the country of her birth. I accept that it would be difficult for her to re-establish herself but that it would not be impossible. She lived there before and has family there and I do not consider that it could be said in her case that there are very insurmountable obstacles to her integration again into life in Nigeria. It does not necessarily follow that because the second and fourth appellants were abused by their uncle, that this would continue to be the situation were they to return with their mother albeit that I accept the situation would now be precarious in terms of inability to access accommodation and means of livelihood.

29. I consider, viewing the evidence as a whole and in light of these observations, that it would be in the children's best interests for them to remain in the United Kingdom where they have a degree of stability, are being educated and have some degree of support.

30. I bear in mind also that the second to fourth appellants cannot be held responsible for the fact that they are in the United Kingdom living without leave. That is entirely as a result of the actions of the first appellant who has never had leave to be here, has used false documents to enter and to remain here and has worked unlawfully. It is difficult not to conclude that she has contrived through dishonest means to remain in the United Kingdom and to have her children and the third appellant who is in fact her informally adopted daughter, educated at the expense of the United Kingdom. She did so in the full knowledge that she had no right to be here.

31. As noted above it is in the children's best interests for them to remain here, there are significant factors to be borne in mind which militate against them being allowed to do so.

32. First, the first, second and fourth appellants do not fall within the provisions of the Immigration Rules. Second, and bearing in mind the factors set out in Section 117B of the 2002 Act.

33. There is thus the maintenance of effective immigration controls in this case which is significantly a factor militating against the appellants. Whilst I accept that all appellants speak English that is a matter which is neutral and it counts against them that they are not financially independent.

Further, I accept that little weight should be given to the private life of the first appellant given that her life has been here whilst precarious at all times (note to self: insert from last case where this is a problem with children) but equally I note the effect of paragraph 117B(6).

34. I accept that in this case the first appellant has a genuine and subsisting parental relationship with the third appellant who is a qualifying child, albeit that the relationship is not biological parentage, the first appellant is effectively the parent of the third appellant, having cared for her for almost all of her life.

35. I also bear in mind what was held at paragraphs [40] and [44] to [45] of MA (Pakistan). It is, however, also necessary to consider paragraphs [47].

> "47. Even if we were applying the narrow reasonableness test where the focus is on the child alone, it would not in my view follow that leave must be granted whenever the child's best interests are in favour of remaining. I reject Mr Gill's submission that the best interests assessment automatically resolves the reasonableness question. If Parliament had wanted the child's best interests to dictate the outcome of the leave application, it would have said so. The concept of "best interests" is after all a well established one. Even where the child's best interests are to stay, it may still be not unreasonable to require the child to leave. That will depend upon a careful analysis of the nature and extent of the links in the UK and in the country where it is proposed he should return. What could not be considered, however, would be the conduct and immigration history of the parents.
>
> …"

36. In this case, there are a significant number of factors which are different from that in MA, albeit that this is a case where, in reality, the case turns on the reasonableness of expecting the third appellant to leave the United Kingdom.

37. I bear in mind that neither the first. second or third appellants currently meet the requirements of the Immigration Rules.

38. For the reasons set out above, I am satisfied that the appellants have a family life in the United Kingdom, and that on the facts of this case, that would be disrupted by removal to Nigeria. That interference is in accordance with law.

39. I am satisfied also that all four appellants have established private lives in the United Kingdom. In the case of the second to fourth appellants, this was developed while they were children, and having had regard to Rhuppiah and MA (Pakistan), given that this was established while under the control of their mother/aunt. I am not satisfied that it was established while their situation was precarious, given the absence of any mental element. I do, however, note that the mother's status was precarious. The private lives of the second and fourth appellants has considerably less content than that of the third appellant.

40. There is I find significant weight to be attached to the need to maintain Immigration control; that is particularly so where, as here, the first, second and third appellants do not meet the requirements of the Rules.

41. In summary therefore the points in favour of the appellants are as follows:-

    (1) it is in the best interests of the children to be allowed to remain here;

    (2) the third appellant has spent all her life here bar nine months, that is a significant factor to be borne in mind;

    (3) the family have nothing to return to in Nigeria by way of support or family and to the third appellant, and to a lesser extent the second and fourth appellants, they would be going to a country with which they are not familiar.

42. Militating against them are the following:-

    (1) the serious and significant breaches of immigration law perpetrated by the first appellant;

    (2) second the family are dependent on public funds;

    (3) little weight can be attached to the first appellant’s private life.

43. Viewing the circumstances as a whole I consider that on the particular facts of this case, given the length of time spent here by the third appellant that there are not good cogent reasons why albeit attaching significant weight as enjoined by parliament to the maintenance of immigration control such that it would be reasonable to expect the third appellant to leave the United Kingdom. On that basis, her appeal falls to be allowed under the Immigration Rules. She meets the requirements of paragraph 276ADE of the Immigration Rules.

44. Viewing the family as a whole, I consider given the analysis above that it would be unreasonable to expect the third appellant to remain in the United Kingdom without her mother and that it would be disproportionate in the terms of fairness to require the family to go to Nigeria.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

2. I allow the appeal of the third appellant under the Immigration Rules.

3. I remake the decision by allowing the appeals on human rights grounds

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 April 2018

Upper Tribunal Judge Rintoul

ANNEX – ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/44935/2014
IA/44939/2014, IA/44936/2014
& IA/44943/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 January 2018	
Extempore	…………………………………

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

M A – FIRST APPELLANT
E E– SECOND APPELLANT
A O – THIRD APPELLANT
J E – FOURTH APPELLANT
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Not present and not represented
For the Respondent: Mr S Walker, Senior Presenting Officer

DECISION AND REASONS

1. The appellants appeal with permission against the decision of First-tier Tribunal Judge Rothwell promulgated on 27 July 2015. Permission to appeal against that decision was granted by Deputy Upper Tribunal Judge

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Archer and the matter then came before Deputy Upper Tribunal Judge Chana sitting at Field House on 17 March 2016. In a decision dated 28 July 2016 she upheld Judge Rothwell's decision. The appellants did however applied for and were granted permission to appeal to the Court of Appeal.

2. In a decision of that court by in effect consent and for the reasons set out in the statement of reasons appended to the order of 25 July 2017 the parties agreed amongst other things that in light of the guidance provided by the Court of Appeal in **MA (Pakistan)** that the Deputy Judge, that is Judge Chana, had not correctly considered the issue of reasonableness. That is to say that there had been insufficient consideration of the significant weight that ought to be given to the fact that the child in this case, the third appellant, had been here in excess of ten years.

3. It is important to set out in this case some factors which are unusual The first appellant is the mother of the second and fourth appellants but she is the aunt of the third appellant. The first appellant has been present in the United Kingdom since entering on a visit visa in a false name on 25 January 2005 and was accompanied by the third appellant who was at that point barely nine months old. The third appellant and indeed the first appellant have remained here since and in 2012 were joined by the second and fourth appellant who again entered as visitors and remained unlawfully. The first appellant was encountered working illegally during an enforcement visit and only later, in September 2014, applied for leave to remain for her on the basis of the children.

4. The First-tier Tribunal judge considered the position of the appellants when they appeared before her and being asked to do so by Counsel considered the position of each of the appellants separately starting with consideration of the position of the third appellant. She noted at [26] that the third appellant was the niece and not the daughter. She accepted that she had been here for ten years and knew only life in the United Kingdom but found that her parents in Nigeria did have some contact with them. How much contact is not entirely clear and the judge found at [29] that the first appellant's evidence on this point was exaggerated and different information had been given.

5. The judge found at [31] that it would be reasonable to expect the third appellant to return to Nigeria to be with her parents having directed herself that it was in the child's best interests to be with her parents. The judge also directed herself at [33] in light of the decision of the Upper Tribunal in **AM (Malawi) [2015] UKUT 260** and in connection with Section 117D(6) and paragraph 276ADE (1)(iv). The judge found that in the circumstances of the case it was not unreasonable to expect her to return to Nigeria.

6. The judge then dealt with the first appellant including if there was family life between her and the other appellants at [37] but finding having had regard to Section 117B of the 2002 Act and bearing in mind the weight to be attached to effective immigration control that taking all the factors into account it would be reasonable to expect her to return to Nigeria and any

interference with her private and family life was proportionate. She made similar findings in respect of the second and fourth appellants noting that unlike the third appellant they had spent a relatively short time in the United Kingdom having arrived there only in 2012, at that point it was around about three years.

7. The grounds of appeal are in respect of ground (a) misplaced. Paragraph EX.1 simply could not apply in these circumstances. It is not a freestanding provision and none of the parties have leave to remain in the United Kingdom. The second ground is that the judge failed to take the best interests of the appellant's children and niece as a primary consideration, relying on the decision in **Azimi-Moayed** and submitting that it was wrong to assume that the third appellant's best interests would be to return to Nigeria to be with her parents given the length of separation and the significant weight and consideration of the disruption of the child's life should have been taken into account. The third ground is that it would be in the best interests of the children to remain in the United Kingdom as they are in full-time education and have established their way of life here.

8. Dealing with the second ground I consider that there is merit in the observation that there is a want of reasoning in respect of the best interests of the third appellant. The lengthy separation between the third appellant and her parents of some ten years with little or no physical contact is I consider an important consideration. There appears to have been little or no evidence about the situation of the third appellant's family, that is her biological parents, and whether they were able to look after her. Second, in that consideration there also ought to have been consideration of as it put in **MA (Pakistan)** the significant weight to be attached to the fact that she had by this point spent well in excess of seven years in this country. Indeed given that she arrived here at the age of 9 months it is difficult to see that she would have knowledge of anywhere other than the United Kingdom and her only real contact with a parental figure is with the first appellant. There appears also to have been little consideration of her position with regards to her schooling and that by the time she reached 10 years she has begun to develop a private life.

9. Accordingly I am satisfied that this ground of appeal is made out in light of the decision in **MA (Pakistan)** which of course post-dates the decision of Judge Rothwell. **MA (Pakistan)** clarified the law and it is understandable that in the circumstances Judge Rothwell took the view that she did albeit one which has now been amended and clarified by the Court of Appeal.

10. With regard to the third ground of appeal I do not consider that it would have made out. Nonetheless because I have found that the findings in respect of the third appellant have to be set aside it would be difficult given that the family has to be viewed as a whole to do anything other than set aside the decision as a whole and for these reasons I do so.

11. Turning then to how this decision should now be dealt with given that it has been set aside I note that nearly three years has elapsed since the

decision was made. I note also that the appellants have chosen not to attend today. Neither are they represented. There is however a letter on file from the representatives Malik & Malik indicating that their view is that the matter should be remitted to the First-tier Tribunal and that the appellants are unable to fund representation here today. That in my view was not a satisfactory explanation for the failure of the appellants to attend in person although enquiries made by the court staff with Malik & Malik indicate that the appellants were told that it was unnecessary for them to attend. That is manifestly incorrect. They could and should have attended and whilst there is a submission from Malik & Malik that the matter should be remitted to the First-tier Tribunal no additional evidence is produced nor is there anything said which identifies any matters which would need to be taken into account were the matters to be revisited in the First-tier.

12. I am however mindful that three of the four appellants here are minors. I am mindful also that the third appellant is not the natural child of the first appellant and has lived in the United Kingdom for very nearly thirteen years; in fact nearly all of her life. I consider that in the circumstances it would be in the interest of justice to proceed with the hearing, and to adjourn the remaking of the decision to a further dated. This should not however be seen as any endorsement by this Tribunal of the manifestly incorrect and prima facie negligent advice which the appellants' representatives appear to have given to her.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside. The remaking of the decision will proceed in the Upper Tribunal in accordance with the following directions.

Directions

2. The appeals will be relisted for hearing before the Upper Tribunal for it to consider any new material adduced by the appellants.

3. Any new material must be served on the Upper Tribunal and on the other party at least 10 working days before the hearing.

4. The Upper Tribunal will consider again the best interests of the children involved and will reach a new decision on whether removal is proportionate.

5. No anonymity direction is made.

Signed | Date 12 February 2018

Upper Tribunal Judge Rintoul