



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

Appeal Numbers: HU/00150/2019
HU/00155/2019
HU/00161/2019

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 5th August 2019**

**Decision & Reasons Promulgated
On 19th August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**S R (FIRST APPELLANT)
N M (SECOND APPELLANT)
S M (THIRD APPELLANT)
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Pledger, a Solicitor

For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Appellants are all nationals of Uzbekistan. SR was born on 3 November 1970 and the children on 15 July 2004 and 14 January 2008 respectively. They arrived in the United Kingdom on 6 June 2014 with valid visit visas. An application was made for protection which was

refused and the appeal was dismissed. A second application for protection was made. That was refused by the Respondent. The appeal was dismissed by Judge Brookfield sitting at Manchester on 29 April 2019. There is no appeal to me in relation to the refusal of that protection claim. It is only in relation to Article 8.

2. Permission to appeal was granted by Judge Simpson on 18 June 2019. Ground 1 is that the independent social worker's expertise (Alison Tyrell) had been mischaracterised in that she does have the relevant expertise to comment on children and what their best interests are. Ground 2 is that the Section 55 best interest assessment has not been adequately considered.
3. The Respondent did not file a Rule 24 notice. No concession was made in relation to either points.
4. Ms Pledger sought to submit an e-mail dated 25 July 2019 from Ms Tyrell which expands on her expertise. Having heard submissions I declined to admit that document as the Judge cannot have materially erred in relation to not considering evidence not adduced.
5. I point out here that Ms Tyrell is plainly an expert within the field of adult social care. The question is whether it extends to children.

Ms Tyrell's report

6. In paragraph 1.1 of her report of 2 March 2019 Ms Tyrell says:-

"I am a qualified social worker trained in social work with children, families and adults at Coventry University. I have completed post graduate qualifications in Adult Social Work at standard and advanced levels, and have progressed to Senior Social Worker in Adult Social Care in my employed role where I am currently employed as a Best Interest Assessor. Additionally, since April 2012 I have been an Independent Social Worker, engaged in assessment work for a range of agencies completing reports for Courts, Tribunals, Judicial reviews, and other Legal arenas.

I am registered to practice as a social worker with the Health Care Professions Council, and am a member of The British Association of Social Workers.

I am experienced at assessing people with No Recourse to Public Funds and Unsettled Immigration Status. This has been gained through my employed role and independent social work."

She goes on at paragraph 1.2:-

"My employed role has provided me with wide ranging and varied experience of assessing and supporting people with physical disabilities, mental health impairments, learning disabilities and a range of health impairments.

During my employment as a Social Worker, I have gained experience in Adult Social Care in the practice areas of Community Social Work with Disabled Adults and their families, Community Social Work with Older People, Community Social Work with Adults with Serious and Enduring Mental Health Impairments, Hospital Social Work and Assessment of Adults and their families with No Recourse to Public Funds”

and she goes on at paragraph 1.3 to say:-

“My experience of assessing and supporting people with No Recourse to Public Funds has included engaging with those with Unsettled Immigration Status, HIV, experience of trauma and torture, experience of sexual, physical and psychological abuse, civil/armed conflict, enslavement, destitution, forced prostitution and people trafficking.

This has involved engaging with people from a range of nationalities, cultures and religious beliefs and has included assessing individuals, couples and families with children.

I have experience of assessing parental skills through my role as an Independent Social Worker assessing Foster Carers”

and then she explains what her instructions are and she summarises her conclusions as follows:-

“2.1 In my opinion, N currently needs support and intervention to promote his mental health and wellbeing. As such I anticipate that his current symptoms associated with reduced mental health would be a significant barrier to reintegration in Uzbekistan at this time.

2.2 I would strongly advise that his mental health and the risks associated with this be assessed by a suitably qualified professional before undertaking any forced removal of this young person, and measures put in place to minimise risk of significant self-harm in the event that a removal is undertaken.

...

2.9 The children expressed that they are happy with their current circumstances and arrangements, though clearly N is suffering ongoing symptoms associated with his mental health.

2.10 In my view it would be in N and S’s best interests for them to experience stability, security and continuity at this time.

2.11 Overall it appears that for reasons beyond their control these two young people have experienced significant disruption and changes in their young lives, but have embraced life in the United Kingdom which they now see as their home.

2.12 For these reasons it is difficult to see how it would be in their best interests for their circumstances to change significantly at this time.”

7. I have not quoted 2.3 to 2.8 because they are part and parcel of the continuity of their experiences relating to schoolfriends, coming over here, going to church and being settled in their community.
8. The report is lengthy and detailed. I was pointed to the CV by Ms Pledger. I was referred to her relevant expertise in participating in best interest decisions. It refers to Ms Tyrell undertaking work as an independent social worker from 2012. Predominantly this involves the assessment of individuals, families and informal carers and preparation of formal assessment reports for the judicial arena. In 2016 Ms Tyrell completed a course of study with Bournemouth University and gained the academic qualification to practice as a best interests’ assessor. Her training included Children’s Social Care Legislation and safeguarding of children. I was pointed to the Adolescent Wellbeing Scale forms relating to the children.

The Judgement

9. In the decision the Judge deals with the evidence of Ms Tyrell, and in particular at paragraph 9(xiii):-

“It is advised the second appellant has developed mental health problems in the UK after being bullied in his previous school in the UK. He suffers from panic attacks. He has not been diagnosed with PTSD (page C64 of the respondent’s bundle) and the treating mental health practitioner advised in July 2017 that there is no evidence of any underlying mental health problems. He is currently attending an eight week course of counselling at Early Break and takes medication for anxiety. He is described as being organised and confident by the assistant head and SENCO of his school (page 110 of the appellant’s bundle) and has formed a ‘fantastic relationship’ with his head of year. The second appellant has been able to form friendships both in and out of school (page 59 of the appellant’s bundle) despite his anxiety. The independent social worker who completed the report on the family indicates that in her opinion the second appellant requires support to promote his mental health and that his reduced mental health would be a significant barrier to his reintegration into Uzbekistan, though she is unable to predict how he would respond to a move to Uzbekistan. The independent social worker advises that the second appellant’s mental health be assessed before he is forcibly removed from the UK. The second appellant has expressed a wish to remain in the UK and states he is scared of returning to Uzbekistan”.

10. The decision then goes on at paragraph 9(xiv) to deal with a letter from a clinician at Healthy Young Minds regarding the fears that NM has on returning to Uzbekistan and notes that he was referred to a psychiatrist, and it goes on to say:-

“There was no report from a mental health practitioner to advise that the second appellant’s mental health would deteriorate if he were to be removed to Uzbekistan with his mother and sister, and where he would also have the support of his father, with whom he maintains regular telephone contact.”

11. The Judge continues at paragraph 9(xv):-

“The third appellant is now 11 years old and is stated to have suffered from anxiety at bed time and over attachment to her mother (page C63 of the respondent’s bundle). The first appellant advised that her daughter has seen a psychologist in the UK, but that she no longer attends appointments with a psychologist since April 2017. The third appellant is doing well at school, despite not speaking English when she first arrived in the UK, but feels that she does not get much help in school (page 54 of the appellant’s bundle). The third appellant has not been diagnosed with a depressive disorder (page 55 of the appellant’s bundle) or PTSD (page C64 of the respondent’s bundle). The independent social worker who was commissioned to write a report on the three appellants indicates that the wellbeing of the third appellant would be improved once there is certainty about her future. The mental health practitioner who treated the third appellant advises that worry around their situation relating to residency is to be expected (page C64 of the Respondent’s bundle). There was no report from a mental health practitioner to advise that the mental health of the third appellant would deteriorate if she were to be removed to Uzbekistan with her mother and her brother, where she would also enjoy the support of her father with whom she has regular telephone contact.”

12. The Judge went on at paragraph 9(xvi) to say:-

“I note that the social worker who prepared the report at pages 39-77 appears to have significant experience with adults but does not identify any work involvement with children (pages 68-70 of the appellant’s bundle). Her stated areas of expertise do not mention she has any work experience dealing with children or children with mental health problems. The only child related training she has received appears to be in children’s social care legislation and the safeguarding children and it is unclear when this training was undertaken or whether she has ever had the opportunity of using this training in her work. I noted that the social worker does not have any qualifications in psychology or psychiatry. Whilst I accept that she is an expert in relation to adults, I do not find her CV has established that she has any expertise in dealing with children or children with mental health problems.”

Discussion

13. In relation to Ground 1, I am satisfied that the Judge adequately considered the expertise of Ms Tyrell and was entitled to find that she was not an expert in relation to children. It is abundantly clear that the whole focus of her impressive professional and academic life has been focussed on adults who find themselves in very difficult positions. That does not necessarily translate into working with children and despite the use of Department of Health questionnaires, it is not clear that she has anything

particular to say beyond what the children want. That forms part of the best interest assessment. The best interest assessment is the starting point for the Article 8 balancing exercise. It is the primary but not the paramount consideration.

14. Ms Tyrell stated at paragraph 2.2 that
“I would strongly advise that his mental health and the risk associated with this be assessed by a suitably qualified professional”.
15. The acknowledgement that NM would need to be assessed by a suitably qualified professional in my judgment further undermines the suggestion that the Judge materially erred in law in finding that Ms Tyrell had not established her expertise in this field because if she was, she would not need to recommend that. Her report takes the case no further forward.
16. In relation to Ground 2, the Section 55 assessment is found at paragraphs 9(xxiv) and (xxv).
17. Paragraph 9(xxiv) sets out the legal test and quotes extensively from **Azimi-Moayed (decisions affecting children; onward appeals) [2013] UKUT 197 (IAC)**. There is nothing in that which had been countermanded by subsequent jurisprudence.
18. At paragraph 9(xxv) the Judge deals specifically with the children and states that
“they have spent the majority of their lives in Uzbekistan ... which is the country of their nationality and where the father of the second and third appellants live. There will therefore be no interruption to the family life the first appellant and her children enjoy together. The first appellant would remain their primary carer and she would be able to rely on support from her family and the father of her children to help them resettle into life in Uzbekistan. The appellant children would be able to enjoy stability and continuity of social, educational and healthcare provision and the benefit of growing up in the cultural norms of the society to which they belong and would enjoy the benefits of their citizenship in Uzbekistan.”
19. Those findings were clearly open to the Judge. The grounds amount to nothing more than a disagreement with those findings.

Notice of Decision

20. In all those circumstances there is no material error of law and I dismiss the appeals.

Deputy Upper Tribunal Judge Saffer
12 August 2019

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

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 members of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Deputy Upper Tribunal Judge Saffer
12 August 2019

TO THE RESPONDENT
FEE/COSTS AWARD

I have dismissed the appeal and therefore there can be no fee award. I make no costs award as there was no application.

Deputy Upper Tribunal Judge Saffer
12 August 2019