Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/08644/2016
HU/08697/2016, HU/08650/2016
HU/08656/2016, HU/08662/2016
HU/08669/2016, HU/08684/2016

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 29 July 2019	**On 9 August 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

AAMER [M]
ZAINAB [M]
[G A]
[M A]
[S H]
[A M[1]]
[A M[2]]
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Barton, instructed by Briton solicitors
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are all citizens of Pakistan. The first and second appellants are husband and wife and the parents of the remaining five appellants. The first appellant entered the United Kingdom initially as a student in 2001. His leave to remain was extended successively until an application for further leave was refused in July 2011. He appealed against that decision but became appeals rights exhausted on 11 June 2012. None of the appellants have had any form of leave to remain since 2012. The third and fourth appellants together with the second appellant entered as dependants of the student father in 2008. The remaining appellants were born in the United Kingdom. The appellants appealed against a decision of the Secretary of State dated 29 March 2016 refusing their human rights applications. The First-tier Tribunal, in a decision promulgated on 29 September 2017, dismissed the appeals. Permission to appeal was refused in both the First-tier Tribunal and Upper Tribunal. Following successful proceedings for judicial review, permission was granted.

2. Ms Barton, who appeared for the appellants before the Upper Tribunal, relied on the grounds of appeal. Those grounds assert, *inter alia*, that the judge failed to have proper regard for the best interests of the children (section 55 of the Borders, Citizenship and Immigration Act 2009) and to the judgement of the Court of Appeal in *MA (Pakistan)* [2016] EWCA Civ 705. The judge had failed to identify 'powerful reasons' requiring the family to be removed to Pakistan. Ms Barton submitted that there no such reasons were present in this case; the only blemish on the immigration history of the appellants being the decision of the first and second appellants to overstay after 2012 when their application for further leave was refused an appeal dismissed.

3. Mr Tan, who appeared for the Secretary of State, pointed out that the proceedings predated the judgement of the Supreme Court in *KO (Nigeria)* 2018 UKSC 53. He submitted that the judge's decision in many respects prefigured that judgement. In essence, the judge had found that it would be reasonable to expect children, whose parents had no right to remain in the United Kingdom, to accompany those parents to the country of nationality of all members of the family.

4. Having reserved my decision and after I had returned to chambers following the hearing, the court usher came to my chambers to tell me that Ms Barton had told her that the appellant [AM[1]] (HU/08669/2016) had been issued with a British passport. I was not invited to reconvene the hearing although I was told that Mr Tan had been informed of this fact which had not been referred to in submissions. I was not given any indication as to how I was expected to treat this new information in my analysis or why it should make any difference to my deliberations. This new information was given without any context whatsoever.

5. As both the parties and the First-tier Tribunal judge correctly considered, the focus in these appeals is upon the reasonableness of return. We now

have the benefit of the judgement in KO (Nigeria) [2018] UKSC 53 in particular at [18-19]:

> "18. On the other hand, as the IDI guidance acknowledges, it seems to me inevitably relevant in both contexts to consider where the parents, apart from the relevant provision, are expected to be, since it will normally be reasonable for the child to be with them. To that extent the record of the parents may become indirectly material, if it leads to their ceasing to have a right to remain here, and having to leave. It is only if, even on that hypothesis, it would not be reasonable for the child to leave that the provision may give the parents a right to remain. The point was well-expressed by Lord Boyd in SA (Bangladesh) v Secretary of State for the Home Department 2017 SLT 1245, [2017] ScotCS CSOH_117:
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> > "22. In my opinion before one embarks on an assessment of whether it is reasonable to expect the child to leave the UK one has to address the question, 'Why would the child be expected to leave the United Kingdom?' In a case such as this there can only be one answer: 'because the parents have no right to remain in the UK'. To approach the question in any other way strips away the context in which the assessment of reasonableness is being made …"
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> 19. He noted (para 21) that Lewison LJ had made a similar point in considering the "best interests" of children in the context of section 55 of the Borders, Citizenship and Immigration Act 2009 in EV (Philippines) v Secretary of State for the Home Department [2014] EWCA Civ 874, para 58:
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> > "58. In my judgment, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?"
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> To the extent that Elias LJ may have suggested otherwise in MA (Pakistan) para 40, I would respectfully disagree. There is nothing in the section to suggest that "reasonableness" is to be considered otherwise than in the real world in which the children find themselves."

The Court of Appeal in MA (Pakistan) [2016] EWCA Civ 705 had stated at [40] and [49]:

> "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.
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> …
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> 49. Although this was not in fact a seven year case, on the wider construction of section 117B(6), the same principles would apply in such a case. However, the fact that the child has been in the UK for seven years would need to be given significant weight in the proportionality exercise for two related reasons: first, because of its relevance to determining the nature and strength of the child's best interests; and second, because it establishes as a starting point that leave should be granted unless there are powerful reasons to the contrary."

6. Section 117B(6) of the 2002 Act provides:

> '(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
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> (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
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> (b) it would not be reasonable to expect the child to leave the United Kingdom.'

7. There is no suggestion in the present appeals that the First-tier Tribunal judge has ignored relevant evidence or has considered irrelevant matters in reaching her decision. That decision is thorough and detailed. Judge has referred herself to *MA (Pakistan)* at more than one point in her written decision. There is no reason to suppose that she misunderstood the *ratio* of that judgement. There is evidence in the file of the success which the children are achieving at school but, given the length of time there been

living in the United Kingdom, there are no unusual or exceptional features to the lives which they have enjoyed here. Indeed, Ms Barton's submissions focused almost entirely upon her claim that the judge had failed to identify 'powerful reasons' as per *MA (Pakistan).* As I have set out above, the judgement in *MA (Pakistan)* upon which the appellants so heavily rely must be read in the light of subsequent judgement in *KO (Nigeria)*.

8. Any analysis in a case such as this will eventually expose the tension which exists between the principle that there must be 'powerful' reasons to disturb children who have enjoyed life and education in the United Kingdom for more than seven years and the equally fundamental principle but a child is to be expected to accompany a parent who has no right to remain in the United Kingdom to their country of nationality. As we see from the passages of *KO (Nigeria)* quoted above, the Supreme Court considered both *MA (Pakistan)* and *EV (Philippines) [2014]* EWCA Civ 874 to contain accurate statements of the law.

9. In these appeals, I have to determine whether the First-tier Tribunal erred in law such that its decision should be set aside. There is no error in the analytical process, assessment of evidence and reference to relevant authorities; the only challenge is the judge's conclusion that removal of the family would be reasonable. Ms Barton's submissions lead to the inexorable conclusion that, on the facts, the appeals had to be allowed. She submits, in effect, that the judge could not point to any 'powerful reasons' requiring removal because none exist and because none exist the Tribunal should have allowed the appeals. The problem with that submission is that it ignores the 'real world' perspective which *KO (Nigeria)* urges decision-makers to adopt. The First-tier Tribunal has, following sound and thorough examination of the evidence, reached an outcome which was, in my opinion, available to it on the evidence. She has found that, notwithstanding their long residence and the private life which they have formed in this country, the children can reasonably be expected to live in Pakistan. Ms Barton did not submit that the decision of the First-tier Tribunal was perverse nor do I find it to be so. I fully acknowledge that a different tribunal, working by reference to the same facts, may have come to a different conclusion. That does not in itself render the decision which the First-tier Tribunal reached wrong in law. The judge has decided that it would be reasonable for children who have lived for more than seven years in the United Kingdom to return to the country of their own nationality and that of parents who have chosen to keep the family in this country for a number of years without any legal immigration status. Having regard to all the relevant jurisprudence and to the relevant statutory provisions, I am satisfied that the First-tier Tribunal did not err in law in reaching that conclusion. As regards the recent issue of a passport to one of the appellants, I am aware that the definition of 'qualifying child' for the purposes of Section 117B(6) include British citizens; I was given no reason why this new item of information should make any material difference to the submissions which I received in court.

Notice of Decision

These appeals are dismissed.

Signed Date 29 July 2019

Upper Tribunal Judge Lane