



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

Appeal Numbers: HU/10181/2017  
HU/10183/2017  
HU/01175/2018  
HU/11234/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16<sup>th</sup> January 2019**

**Decision & Reasons Promulgated  
On 13<sup>th</sup> February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

**Between**

**JOSHY [V] (FIRST APPELLANT)  
LINCY [T] (SECOND APPELLANT)  
[A J<sup>1</sup>] (THIRD APPELLANT)  
[A J<sup>2</sup>] (FOURTH APPELLANT)  
(ANONYMITY ORDER NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: No representation

For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellants are nationals of India whose appeals were dismissed by First-tier Tribunal Judge Lawrence in a decision promulgated on 13<sup>th</sup> July 2018.

2. Permission to appeal was sought and granted by Upper Tribunal Judge Blum in a decision dated 3<sup>rd</sup> December 2018. It was said that the judge may have misapplied the test in **MA (Pakistan) [2016] EWCA Civ 715** or that test itself was now in question following **KO (Nigeria) [2018] UKSC 53**. All the grounds were said to be arguable.
3. The grounds of application refer to the SSHD's own published guidance where it was pointed out that strong reasons would be required in order to refuse a case with continuous UK residence of more than seven years. Paragraph 12 of the grounds says that the starting point is that it would be unreasonable to expect a child who has been in the United Kingdom for more than seven years to leave here unless there are powerful reasons for concluding otherwise. In the instant case Judge Lawrence had applied the reverse approach requiring the Appellants to show that there were strong reasons for remaining in the UK which was clearly wrong.
4. Thus, the appeal came before me on the above date.
5. Before me Ms Jones for the Home Office explained there had been developments. The Secretary of State's response to the Grounds of Appeal under Rule 24 were that the Respondent did not oppose the Appellants' application for permission to appeal because the Secretary of State had decided to grant the Appellants limited leave to remain.
6. Ms Jones explained that she had had a conversation with the agents concerned and had made it clear to them that this was the Secretary of State's position and given what she had said to the agents no criticism should be made of them for not attending the hearing. In passing I would only observe that no matter what assurances were given to them by Ms Jones the agents should undoubtedly have attended the hearing.
7. Ms Jones agreed that there was an arguable error in law in the judge's decision as stated in the grounds.
8. It seems clear to me that the judge did err in law in not applying the approach of **MA (Pakistan)**. Given that the Appellants have been granted limited leave to remain I do not consider it would be useful to set out the matter in any detail. In short, the judge did refer to **MA (Pakistan)** (paragraph 13) and in a number of other paragraphs but did not apply the correct test and as said in the grounds had in fact inverted the test to put the onus on the Appellant.
9. I agree with the grounds of application which say that the judge simply applied the wrong test. That being so there is an error of law in the decision resulting in it having to be set aside.
10. Absent representations for the Appellants I am simply setting aside the decision of the First-tier Tribunal in its entirety. No findings of the First-tier are to stand.

11. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal where, if the appeal proceeds (given the grant of leave I would expect the agents and Home Office to be in early contact about this), the next Judge will be able to consider the implications off what is said in **KO (Nigeria)**.

**Notice of Decision**

12. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
13. I set aside the decision.
14. I remit the appeal to the First-tier Tribunal.
15. No anonymity order is made.

Signed *JG Macdonald*

Dated 6<sup>th</sup> February 2019

Deputy Upper Tribunal Judge J G Macdonald