Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/11735/2018
HU/11717/2018
HU/11721/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 May 2019	**On 11 June 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

RUTH [A] (FIRST APPELLANT)
G A (SECOND APPELLANT)
E A (THIRD APPELLANT)
(ANONYMITY DIRECTION MADE FOR 2ND AND 3RD APPELLANTS ONLY)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr M Ntochukwu of Counsel, instructed by Cardinal Hume Centre
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. Under challenge in this appeal is the decision of Judge Siddall of the First-tier Tribunal (FtT) sent on 5 February 2019 dismissing the appeal of the appellants against the decision made by the respondent on 15 May 2018

refusing her application for leave to remain. The appellants are mother and two children. All are citizens of Nigeria. The second and third appellants were born in June 2009 and October 2012 respectively. The first appellant arrived in the UK in 2008 on a student visa to study health and social care, but in 2013 her college lost its sponsorship and she did not complete her qualification. The third appellant, E, has been diagnosed as having special needs. The first appellant is a single parent. At the hearing before the FtT the family was being supported by their church and friends who provide them with food and small amounts of money.

2. The appellants' grounds of appeal were heavily discursive. The judge who considered the application for permission granted leave only on "what I will call Ground 1 that is, the reasonableness of the child leaving the UK". The appellant's skeleton argument produced for this hearing sought to reformulate this ground so that the main errors concerned alleged failure to apply the judicial principles enunciated in respect of the reasonableness of expecting the second child (now aged 9) to leave the UK as set out as a requirement of paragraph EX.1 of the Immigration Rules and section 117B(6) of the NIAA 2002 or to give adequate reasons for departing from these principles. It was argued that the judge erred in taking into account the parent not having a right to remain in the UK. This was said to be at odds with the guidance set out by the Supreme Court in **KO** [2018] UKSC 53 and **MA (Pakistan)** [2016] EWCA Civ 705 at paragraph 49. This error was said to have been committed by the judge at paragraph 50, wherein she wrote:

> "50. The case of *KO (Nigeria) [2018] UKSC 53* confirms much of the reasoning in *MA (Pakistan)* but emphasises that the conduct of parents should not be taken into account when assessing whether it is reasonable to expect a child to leave the UK and whether for example the test set out in section 117B(6) can be met. However the case also suggests that the position of the parents may be indirectly relevant to the question of whether it is reasonable for the child to leave. The words of Lewison LJ in the case of *EV* were approved when he stated that the assessment of the best interests of the child must be made on 'real world' facts and take into account the position of the parents: '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?' To that extent therefore the fact that a parent may be removed because they have no right to remain will be a relevant factor".

The same error was said to have been made in paragraph 61.

3. The judge's approach was also said to be contrary to the reasoning of the Court of Appeal in **SSHD v AB (Jamaica) [2019] EWCA Civ 661** which held, in line with **JG (section 117B(6): "reasonable to leave" UK)** Turkey [2019] UKUT 72 (IAC)**,** that it is not a requirement of section 117B(6) for there to be a realistic prospect of the child leaving the UK as a consequence of the person's removal. The grounds pointed out that in **JG** the Upper Tribunal found that it would not be reasonable to expect the

child to leave the UK, notwithstanding that the appellant was highly dishonest and unscrupulous. It was further submitted that the judge erred in linking the life of the child G (the second appellant) around her parent. Aim was taken at what the judge set out at paragraph 54:

> "54. Following the guidance in *MA (Pakistan)* I give significant weight to the fact that G has lived all her life here and is now aged nine. She has entered the school system here and I find that it would be disruptive to her life and her education if she were to return with her mother to a country that will be unfamiliar to her. Nevertheless, she has not yet reached a crucial stage of her education and is at a young age when her life inevitably revolves around her parent. She has been living within a Nigerian community at her friend's house which would make her transition easier".

The judge was said to have been plainly wrong and inconsistent in paragraph 54 of the decision in finding on the one hand that it would be disruptive to the second appellant's life and education if she were to return with her mother to Nigeria (a country with which she was not familiar), and on the other hand concluding in the same paragraph that G could be returned to Nigeria with her parent. In this regard, emphasis was placed on the judge's finding at paragraph 57 that:

> "57. Clearly it is in the best interests of the children to remain living with their mother. On balance I find that it would be in G and E's best interests to remain in the UK with their mother as a move to Nigeria would be disruptive for them and E would no longer be able to access the substantial support she has been receiving to address her particular needs".

4. The judge was said to have erred further in departing without reason from established judicial and statutory guidance when finding at paragraph 54 of her decision that G "has not reached a crucial stage of her education and is at a young age when her life inevitably revolves around her parent". In addition to G's school ties and connections to her friends, the fact that she had resided in the UK for over seven years (nearly ten) meant that the judge was obliged to consider whether there were "powerful reasons" why G who had been in the UK for nearly ten years should be removed, notwithstanding that the two children's best interests were found to lie in remaining in the UK with their mother. Reference was made to the reported case of **MT and ET (child's best interests; ex tempore pilot)** Nigeria [2018] UKUT 88 (IAC).

5. I heard submissions from both representatives for which I express my gratitude.

My Assessment

6. I do not find any of the appellants' grounds made out.

7. It is argued that the judge erred by taking into account the parent's immigration misconduct when assessing reasonableness, contrary to the guidance given in **KO**. It is true that in paragraph 59, when conducting her analysis of reasonableness, the judge stated that "I take into account that the first appellant is a single parent who has not had leave to remain in the UK since 2013". However, as the grounds themselves recognise, that statement must be read in the context of what the judge said at paragraph 50. The judge opens the paragraph by accurately describing the principle set out in **MA (Pakistan)** and confirmed by **KO** that the conduct of the parent should not be taken into account when assessing reasonableness. In stating that the position of the parents "may be indirectly relevant to the question of whether it is reasonable for the child to leave", the judge was not seeking to depart from the guidance set out in **MA (Pakistan)** and **KO** but rather to underline that part of that guidance was an acceptance of the indirect relevance of parental conduct. In paragraph 50 and related paragraphs the judge was simply noting, accurately, what was said by Lord Carnwath in paragraph 18 of **KO**:

> "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:
>
> > '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 ...'"

Hence, the appellants' principal submission must fail. The judge did not depart from Supreme Court guidance, which in turn drew on other Court of Appeal cases.

8. To the extent that the grounds seek to pray in aid the Court of Appeal's and Upper Tribunal's guidance in **SSHD v AB (Jamaica)** and **JG** respectively, I again see nothing to indicate that the judge departed from it. The judge does not base her assessment of reasonableness of there being a realistic prospect of the child leaving the UK as a consequence of the first appellant's removal. The judge simply hypothesised what the children's situation would be if they left the UK, and concluded that taking

all the circumstances into account it would be reasonable for them to leave the UK.

9. I see no merit in the attempt in the grounds to use **JG** as a factual precedent. The fact that in the **JG** case the Upper Tribunal found that the very poor immigration history of the parent did not make the appellant's removal reasonable, was a finding on the particular facts of that case. It was already the premise of the judge's assessment in this case that the conduct of the parent should not be taken into account except indirectly.

10. It is also readily observable from the judge's decision that she should approach her assessment of reasonableness in line with the guidance given by the Court of Appeal in **MA (Pakistan)** so as to ask whether there were "powerful reasons as to why leave should not be granted" (paragraph 58).

11. The grounds seek to argue that having found at paragraph 57 that "it would be in the best interests of the children to remain in the UK with their mother as a move to Nigeria would be disruptive for them and E would no longer receive the substantial support she has been receiving to address her particular needs", it was inconsistent of the judge to have concluded that there were powerful reasons for them to be expected to leave the UK. However, in making that assessment the judge was careful to apply the principles from case law, specifically referring in paragraph 45 to what Elias LJ said at paragraph 47 of **MA (Pakistan)** that – "even where the child's best interests are to stay, it may still not be reasonable to require the child to leave".

12. Whilst the judge's assessment of the appellants' circumstances was robust, I do not consider it was legally flawed. Reading the judge's decision it is clear what the powerful reasons were for expecting the children to leave: in terms of linguistic considerations, she found that they both had some familiarity with Yoruba and that English is spoken in Nigeria in any event and that there is a functioning education system in Nigeria; in terms of social and cultural factors, she noted that in the UK they were living within a household of ethnic Nigerians; in terms of E's health, she noted that the evidence did not demonstrate that she was autistic and that the background evidence indicated that it was possible to access paediatric and speech therapy services in Nigeria; in terms of family circumstances, the judge expressly did not accept the first appellant's claim to have lost contact with family in Nigeria; and in terms of economic circumstances, the judge noted that the first appellant had acquired skills and work experience in the UK which would assist her in finding employment and being able to support her family back in Nigeria.

13. In amplifying the grounds and his skeleton argument, Mr Ntochukwu contended that the judge erred in treating the oldest child's connections as confined to that with her mother. However, what the judge said at paragraph 54 was that "she has not yet reached a crucial stage in her

education and is at a young age when her life inevitably revolves around her parent". In stating that the child's life "revolved" around her mother, the judge clearly did not mean to suggest the child has no other ties. The judge was clearly drawing on observations made in a range of decided cases which have emphasised the relevance of whether or not a child is at an advanced or critical stage of their education. In relation to both G and E, the judge clearly recognised that they had friendships through school and community. At paragraph 63 the judge notes that:

> "63. The letters of support contained in the bundle demonstrates that the first appellant and her children have established a strong private life in the UK since her arrival and she has been supported by her friends and by the church (although this support is not without limits, as demonstrated by the letter from Ms [O]). I must take into account the fact that this private life has been established while her leave here has been highly precarious".

14. In short, the judge's assessment of reasonableness was characterised by a particularly careful attention to higher court guidance and her application of that guidance to the facts of the appellants' case does not disclose any material error of law.

15. For the above reasons I conclude that the appellants' grounds fail to identify an error of law in the judge's assessment of reasonableness. Accordingly, her decision must stand.

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

Unless and until a Tribunal or court directs otherwise, the second and third appellant are granted anonymity. No report of these proceedings shall directly or indirectly identify them. This direction applies both to the second and third appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date: 7 June 2019

H H Storey

Dr H H Storey
Judge of the Upper Tribunal