



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/02281/2020

THE IMMIGRATION ACTS

Heard at Manchester CJC (via Skype)
On 26 March 2021

Decision & Reasons Promulgated
On 7 April 2021

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SHANICE MELISSA NESBETH
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pipe instructed by Rogols Solicitors.

For the Respondent: Mr Tan - Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant, a citizen of Jamaica, was born on the 18 January 1996. Her immigration history which shows she entered the United Kingdom on 8 February 2014, applied for leave to remain on 10 July 2014, which was refused on 18 September 2014, against which the appellant became appeal rights exhausted on 2 February 2017, are preserved findings.

2. This appeal arises out of an application for further leave to remain made on 15 October 2019 on the basis the appellant has a genuine and subsisting parental relationship with her two younger half-sisters, with whom she lives together with her mother. The appellant claims her mother works very long hours and that she is the carer of her half sisters in her mother's absence who has 'stepped into the shoes of a parent'. It was also argued, in the alternative, that her removal will be disproportionate pursuant to article 8 ECHR.
3. The application was refused by the Secretary of State on 24 January 2020, on the basis the respondent was not satisfied the appellant had a genuine and subsisting parental relationship with her half sisters. The appellant's appeal against the refusal was allowed by a Judge of the First-team Tribunal in a decision dated 11 August 2020, against which permission to appeal was granted by a Resident Judge of the First-tier Tribunal on 1 September 2020, and the First-tier Tribunal decision set aside by the Upper Tribunal on the papers on 24 November 2020, although the First-tier Tribunal's findings in relation to the appellant's immigration history, the assistance she provides for her half sisters whilst her mother works, and her mother's employment details are also preserved findings.

Background

4. Mr Pipe in his skeleton argument specifically referred to the following paragraphs of the First-tier Tribunal which he stated were preserved:
 - [15] HOPO not relying on credibility findings of Judge Raikes;
 - [28] HOPO did not dispute the care provided by the Appellant to her half-siblings, nor the hours worked by her mother;
 - [29] HOPO accepted that the Appellant did not come to deliberately overstay and accepted that she has lived together with her mother and half siblings;
 - [35] Finding on undisputed evidence in relation to the care provided by the Appellant and her mother's work;
 - [36-39] Findings in respect of the evidence of caring role performed by the Appellant.
5. The reference to a decision of Judge Raikes, is a reference to an earlier determination of another judge of the First-tier Tribunal, which dismissed the appellant's appeal against the respondent's decision to refuse her application for leave to remain on article 8 private life grounds with appeal number IA/38988/2014. Although permission to appeal was granted to challenge Judge Raikes decision to the Upper Tribunal the decision was upheld by the Upper Tribunal in a decision promulgated on 2 February 2017.
6. At [15] of the First-tier Tribunal decision being reconsidered in this appeal it is written:
 15. As regards the credibility findings of Judge Raikes, Mr Swaby did not rely on them. He did not invite me to find that the appellant or her mother were not credible, whether on the basis of the evidence given to me or on the basis of the findings of the previous Judge.

In any event, those findings are of marginal relevance to the matters I have to decide: the judge had concerns about the evidence as to the circumstances of the appellant's arrival and staying in the United Kingdom, as opposed to the family situation of the appellant, her mother and half sisters. The case has moved on significantly since 2014 (with the appellant now having lived with her mother and half sisters for some 5 ½ years), which facts were accepted by Mr Swaby. The focus now is squarely on the nature of the relationship as between the appellant and her half sisters. Further, to the extent that the circumstances as to the appellant's coming to and remaining in the United Kingdom (and her intentions) are relevant, they are relevant to the second issue (balancing immigration control against the article 8 rights and those of her family here). In closing, Mr Swaby accepted that the appellant had not deliberately overstayed in 2014.

7. Despite it appearing to have been accepted by the Presenting Officer below that no reliance was being placed upon the adverse credibility findings of Judge Raikes, submissions were made by Mr Tan in relation to those same issues. Mr Pipe in his submissions in reply expressed surprise that such matters had been raised in light of the earlier position.
8. Whilst not expressed as a concession by the Secretary of State's representative Mr Swaby, the Presenting Officer before the First-tier Tribunal, in an appeal in which the appellant had filed witness statements and had been cross-examined, but in which there was no challenge or exploration of any credibility issues in the questions put to the appellant, whilst Mr Tan may have been able to refer to the previous determination which had been upheld by the Upper Tribunal, the relevance of such submissions is questionable when the facts of the circumstances of the appellant and family members are not in dispute and the adverse issues arose in relation to other matters. The submission relating to Judge Raikes earlier findings is noted but I find is one that warrants little weight being attached to it in all the circumstances.
9. Mr Pipe also refers to [28 - 29] of the First-tier Tribunal decision, which appear in the section of that judgement headed 'Submissions' and are in the following terms:
 28. In his closing address, Mr Swaby relied on the refusal. He did not dispute the care provided by the appellant to her half sisters, nor the hours worked by her mother. He submitted though that, taken at its highest, the evidence did not bear out that the appellant had a parental relationship with her half sisters. He relied on an assertion that it is her mother who makes all the decisions, at least the important ones. I put to him that he could not fairly rely on that argument given that he had not put it to the witnesses to allow them to deal with it. He said he was entitled to do so, given the burden of proof: it was for the appellant to make out that she had the parental relationship. I referred him to different parts of the evidence which might be interpreted as indicating that the appellant does have a decision making role: for example, paragraph 17 of the appellant's witness statement as well as the letter from Forward Thinking Birmingham, as well as the inference, which might be drawn from the overall circumstances (the appellant's mother was absent for long periods of time and it was inevitable that the appellant would have to make decisions). He said that it was inconceivable that her mother would not be called if necessary at work.
 29. He drew an analogy with the sole responsibility rule in entry clearance cases. As to compelling circumstances and Article 8 otherwise, he contended that there were no such circumstances. The appellant only had precarious residence. He accepted that the appellant did not come deliberately to overstay. He accepted that the appellant has lived

together at the same address as her mother and half sisters. There had not been protracted delay in seeking to remove the appellant. As to *Devaseelan*, there was new evidence, the medical evidence, the ISW report and the father now less involved than previously. With regard to *R (RK) v SSHD (s.117B(6); "parental relationship") IJR [2016] UKUT 31 (IAC)*, the facts in that case were stark as compared to this case. He said I should dismiss the appeal.

10. The issue of responsibility for decision-making for the appellants half sisters was explored by Mr Tan before the Upper Tribunal and shall be discussed further below.
11. Actual findings of the First-tier Tribunal specifically referred to by Mr Pipe are those at [35 – 39] which are in the following terms:
 35. The context is important. Only undisputed evidence, the appellant's mother is often absent between Monday to Friday: she works at the residential care home on Monday, Wednesday and Thursday between 8 PM and 8 AM and has to leave home at around 7 PM. On Monday to Friday. She works as a cleaner from 9 AM to 4 PM and go straight to that job when she finishes her night shift. On Tuesday, Friday and Saturday she is on-call for the care home. She works in her cleaning job on Saturday between 9 AM and 1 PM. The net effect of this is that there is much of the week when the appellant has sole responsibility for her sisters. The amount of time that it is only the appellant with her sisters is summarised in paragraphs 11 and 12 of her witness statement. In these circumstances, it is likely that the appellant has to (or would have to) take reasonably important decisions in respect of her half sisters. To test this, I pose the scenario of an emergency, while the appellant's mother is working a night shift. Necessarily, the appellant would have to take decisions in such a situation. Mr Swaby argued that that her mother could be contacted at work and if necessary leave. Of course, that will be possible, but it is stretching matters to the point of being unrealistic to suggest that the appellant's responsibility does not encompass decision-making given the weekly routine and her mother is very long hours.
 36. The appellant refers to her responsibility for her sisters at various places in her witness statement: paragraphs 11, 12, 13 and 17.
 37. Even just to take the example of shopping which the appellant regularly does with her sisters, that will necessarily involve decisions and choices which directly impinge upon the children's diet and nutrition and are, therefore, by their nature, important.
 38. I note that the terms of the letter of 'Forward Thinking Birmingham' of 22 July 2020. The appellant is described as 'main carer' for Shantae (the older sister) together with her mother. She is *the* main carer when her mother is at work. The authors view is that the appellant's role '*... Not only allows the family to function, but most importantly, provides Shantae with the emotional and practical support she needs to remain safe in the community.*' In other words, the appellant's role is indispensable not only for the family as a whole (to work as a family) but also for the well-being of Shantae.
 39. The author then goes on to say this: '*For this reason, I believe that Shanice serves as a very effective and important gatekeeper and a solid preventative measure for future hospital admissions.*' (My underlining). This is an important insight. The Oxford Dictionary defines 'gatekeeper', inter-alia, as:

*'A personal thing that controls access to something.
 'GPs can act as gatekeepers, filtering demands made on hospital services''*

12. In addition to the appellant, those of significance in the case are the appellant's mother Mrs Pamela White, a national of Jamaica born on the 21 December 1969, who has leave to remain in the United Kingdom with a condition preventing recourse to public funds. The appellant's half sisters are Shantae born on 24 May 2006 and therefore now aged nearly 15, and Shannoi born on the 21 April 2009 and therefore aged nearly 12, both British citizens.
13. It was confirmed in evidence before the Upper Tribunal that both children now attend the same secondary school and no longer require the appellant's assistance in getting to and from school.
14. It also emerged in evidence that during the time the appellant was undertaking studies at a local college, when the children were much younger, they would go to a breakfast club before school started and an after-school club afterwards until the appellant collected them and took them home.
15. Although the issue of Mrs White's leave restricting access to public funds was specifically raised with Mr Tan at the hearing there was no suggestion by him of any intention by the Secretary of State to remove the restriction on access to public funds, which would have enabled a submission to be made that the appellant's presence in the United Kingdom was no longer required as the children's mother will be able to give up her employment and care for them on a full-time basis.
16. The significance of the restriction upon Mrs White's access to public funds is not only does it mean that she has to undertake the employment she does to earn sufficient to pay the bills to enable the economic requirements of the family to be met, unless the appellant herself was able to work and make a financial contribution, but that if Mrs White was forced to have to give up work to care for the children she could not claim public funds. In such circumstances it is not clear how the family will be able to support themselves, leading to an inability to pay rent and face eviction, an inability to provide adequate food, heating and lighting leading to destitution, and possibly intervention of the statutory authorities to protect the welfare of the children.
17. Mrs White confirmed in her oral evidence that before the appellant came to the United Kingdom childcare was provided by a woman whom she paid to enable her to work but claimed that that person was no longer available. Mrs White stated that without being able to work she would not have the financial means to pay for replacement childcare although it was not made out the current level of Mrs Whites income will enable her to pay for suitable childcare to cover her working hours.
18. Two further pieces of relevant evidence have been provided. The first of these is a report from Immigration Quick Social Work Services dated 15 March 2020, which concludes that it would not be in the best interests of either Shantae or Shannoi, physically, emotionally, practical or educationally, to be separated from the appellant at this time. The reasoning for such a conclusion is set out in the report and includes a statement that in the opinion of the author as Shannoi has a diagnosis of Mild Learning Difficulties she will require long-term support with her presenting needs and, as she reaches key stages of her life, that these needs may increase over time

19. The second piece of evidence is a letter from 'Forward Thinking Birmingham' dated 22 July 2020, written by a senior mental health practitioner as part of the Forward Thinking Birmingham, Community Mental Health Team, in the following terms:

Re Shantae

Background

Shantae was referred to Crisis Resolution Urgent Care following an acute psychotic episode which happened about three months ago. She has been on prescribed medication since then, and seemed to have been fine up until this incident whilst out shopping with her mother. Shantae reported to have become very afraid (due to hallucinations and delusions) and which warranted her mother to take her home and tried to offer reassurance.

Current presentation

Shantae explained that she had become scared for no reason and she felt that something bad was going to happen. She said mum however reassured her and she was able to continue shopping.

She said she had not been scared like that in the past but suddenly became overwhelmed with the belief that something bad was going to happen to her. She has not been feeling paranoid over the past few weeks following onset of medication.

She has reported that she is not experiencing as many hallucinations since medication commenced. However, given the recent incident where she believed something bad was going to happen to her is has now become necessary for her to be monitored on a weekly basis by Forward Thinking Birmingham (FTB) Community Mental Health Team.

Shantae will be monitored and reviewed to manage symptoms of Psychotic disorder, monitor for side effects from prescribed medication and to prevent a deterioration of her mental state to avoid hospital admission.

Mental state: Shantae is preoccupied, overwhelmed and quite distressed about the pending court case to deport her older sister. As an illustration, her sleep has recently deteriorated affected, in addition to, her, appetite and overall ability to recover from her recent psychotic episode.

Unfortunately, this is having a detrimental effect upon Shantae's mental state. Shantae's psychosis is a long-term diagnosis and at present she is still vulnerable to having repeated episodes. Hopefully, with treatment, this may be managed adequately.

...

At the present time, Shantae continues to experience symptoms of anxiety, hallucinations or delusions; however, this appears to be less frequent, in comparison to 3-4 months ago. On the positive side, Shantae has not voiced any thoughts of self-harm, suicidal ideation or plans and thoughts or plans to harm others.

Pamela and I discussed the contributing social and environmental factors to Shantae's mental health and she identifies that the ongoing stress that the families experiencing will delay her recovery.

Social: Shantae's main carers are both her mother and older sister Shanice. Shanice serves as the main carer whilst their mother is at work. Under those circumstances, Pamela currently has to

undertake two jobs a day to supplement the family's income, she cannot claim benefits for her three daughters.

Equally important, without the practical help and support that Shanice provides Pamela recognises that she would not be able to provide for her family.

Given these points, it is clear that Shanice's role in the family not only allows the family to function, but most importantly, provides Shantae with the emotional and practical support that she needs to remain safe in the community.

For this reason, I believe that Shanice serves as a very effective and important gatekeeper and a solid preventative measure for future hospital admissions. I recently spoke to Shantae and it is clear that the family has a close bond and the pending separation is having a negative effect upon Shantae and the rest of the family.

Mood: Shantae's mood is gradually improving, with the aid of medication (prescribed Aripiprazole) , which has been increased to 10mg. She no longer has periods where she is. Completely vacant and is able to interact with the family.

...

20. There was discussion before the Upper Tribunal regarding the role of the children's father who lives in Birmingham, but whom it was claimed by Pamela White is unreliable and who provides no maintenance for the children. It was also said by Mrs White in her evidence that if any issues arise concerning the children his view appears to be that as she is the mother, she should sort it out. Contact occurs between Shantae and Shannoi and their father at the house, but it is said to be infrequently and occurs whenever he decides to turn up. There is occasional telephone contact, which has to be through Mrs White as she is the only person in the household with a mobile telephone.
21. There is also within the bundle two letters written by the children themselves, expressing the feelings they have for their sister Shanice and expressing their wish that she be allowed to remain in the United Kingdom.
22. It is also accepted that there is an uncle and cousins living in Redditch, a small town about 15 miles to the south of Birmingham.
23. All the documentary evidence has been taken into account even if not specifically referred to in this decision.

Discussion

24. There remain two aspects of this appeal requiring detailed consideration, the first being whether the appellant is able to succeed by satisfying the freestanding provision of section 117B(6) Nationality, Immigration and Asylum Act 2002 which is applicable in non-deportation cases, where a person liable to removal has a genuine and subsisting parental relationship with a 'qualifying child' ('qualifying child' means a child under the age of 18 and who is a British citizen, or has lived in the United Kingdom for a continuous period of seven years or more), and it would not be reasonable to expect that child to leave the UK.

25. It is not disputed that Shante and Shannoi are qualifying children as they are both under the age of 18 years and British citizens. It is not disputed that it would not be reasonable to expect the children to leave the United Kingdom to live in Jamaica.
26. It is not disputed this is not a deportation case or that the appellant has a genuine subsisting relationship with the children.
27. The issue in relation to section 117B (6) is whether that relationship is a 'parental relationship'.
28. It is accepted a person can satisfy this definition even though they do not have "Parental Responsibility" as that term is defined in the Children Act 1989.
29. In the immigration context, this question was considered by the Upper Tribunal in a judicial review case reported as R (on the application of RK) (s.117B(6); "parental relationship") IJR [2016] UKUT 00031, upon which the parties place reliance. In that judgement it was held that:
 - (i) It is not necessary for an individual to have "parental responsibility" in law for there to exist a parental relationship;
 - (ii) Whether a person who is not a biological parent is in a "parental relationship" with a child for the purposes of s.117B(6) of the Nationality, Immigration and Asylum Act 2002 depends on the individual circumstances and whether the role that individual plays establishes he or she has "stepped into the shoes" of a parent;
 - (iii) Applying that approach, apart from the situation of split families where relationships between parents have broken down and an actual or de facto step-parent exists, it will be unusual, but not impossible, for more than two individuals to have a "parental relationship" with a child. However, the relationships between a child and professional or voluntary carers or family friends are not "parental relationships".
30. The Upper Tribunal reiterated in Ortega (remittal; bias; parental relationship) [2018] UKUT 298 that if a third party caring for a child claims to be a step-parent, the existence of such a relationship will depend on all the circumstances including whether or not there are others (usually the biological parents) who have such a relationship with the child also. It is unlikely that a person will be able to establish they have taken on the role of a parent when the biological parents continue to be involved in the child's life as the child's parents.
31. In this case the appellant claims to have "stepped into the shoes" of a parent. Although the children's father appears to have very little active involvement in the children's lives, he does see them for occasional contact, communicates with them on the telephone, and has an established relationship with them as their biological father, which satisfies the definition of a subsisting parental relationship in law.
32. I find of more significance is the fact that the primary carer of the children is their mother, with whom they have always lived and with whom they continue

- to live. The evidence given before the Upper Tribunal relating to an incident where one of the children had to be taken to hospital as a matter of emergency was that contact was made with the appellant's mother at work by the appellant, and that it was Mrs White who was the responsible person who attended the hospital and made all relevant decisions in relation to this issue.
33. It is also clear from reading the evidence that the appellant's mother has involvement with the children, including shopping with them and doing all that she can for them in the time that is available to her as a result of her work commitments. It is clear that Mrs White has and exercises parental responsibility over the children.
34. In *SSHD v VC (Sri Lanka)* [2017] EWCA Civ 1967 it was said that to have a "genuine and subsisting parental relationship" the parent must have a "subsisting" role in personally providing at least some element of direct parental care to the child. The Court of Appeal also held that each of the words "genuine", "subsisting" and "parental" referred to a separate and essential quality of the relationship.
35. The question of fact in this case is whether it is established on the evidence that the nature of the relationship the appellant has with her stepsisters is one of the right quality, in that rather than being a normal sibling relationship where the appellant provides additional support within the family unit to assist her mother and siblings as any older child would do as a result of parents working commitments, the appellants role is more substantial.
36. Whilst the appellant may cook for the children, help them with their homework if required, and also cook for her mother, I find these tasks are clearly done under the guidance and authority of Mrs White. It was not made out the appellant has 'stepped into the shoes of a parent'. I find Mrs White is the person with parental care responsibilities, with whom the children live, who has neither abdicated nor given over responsibility for making the major decisions in in the children's lives or for the care of the children at the required level to the appellant. The primary carer of the children is their mother who looks after them with the appellants help.
37. Whilst there is evidence from the school that both the appellant and Mrs White appear as named contacts in the event of an emergency, this does not establish the required degree of relationship as often neighbours or friends may be given as contact details if the parent cannot be contacted. This material is in accordance with the claim of the appellant that when the children were younger she assisted in getting them to school and back but that is not a situation that exists at this point in time now the children are much older.
38. I do not doubt the appellant's role in assisting her mother is invaluable, but I do not find the appellant has established on the evidence the existence of a 'subsisting parental relationship' and cannot therefore satisfy the requirements of section 117B(6) of the 2002 Act.
39. It was not made out there are any insurmountable obstacles to the appellant returning to Jamaica and re-establishing herself or that the appellant can succeed under paragraph 276ADE or any other provision of the Immigration Rules.

40. The key issue in this appeal is that highlighted by Mr Pipe in his submissions, in that even if section 117B(6) is not satisfied the Tribunal still has to consider the proportionality of the decision, see *Runa v Secretary of State for the Home Department* [2020] EWCA Civ 514.
41. It is not disputed that the appellant has family life recognised by Article 8 ECHR as Mrs White is her natural biological mother, she lives in her mother's household and is dependent upon the family and financial support of her mother and has as yet to form an independent unit of her own. I also find the relationship the appellant has with her siblings will engage Article 8 ECHR.
42. The primary consideration and a starting point for assessing the proportionality of the decision is the best interests of the children. The appellant has lived in the United Kingdom for seven years, her British half-sisters are 14 and 11 years old respectively, and the appellant has been part of the family unit for most of their lives.
43. As noted above, Shantae suffers from mental health problems and is on medication and in the opinion of the author of the letter from Forward Thinking Birmingham and the Independent Social Worker, the appellant's support is vital for Shantae to cope and move forward.
44. The appellant's half-sister, Shannoi, has Mild Learning Difficulties and Special Educational Needs and there is an identified need for the child to continue to receive support.
45. The appellant fulfils a very practical role in the care of her sisters under the direction of her mother which the evidence shows allows the family to function.
46. There is also further evidence by way of a letter from Dr Mohammed Hakim, Locum Consultant Psychiatrist, which stresses the importance of the appellant being present to support Shantae.
47. The appellant's mother works very long unsociable hours as noted above in order to support the family and the prohibition on her making any claim upon public funds means without such financial resources the family will not be able to cope, leading to destitution and a situation contrary to the child's best interests at every level. Although Mr Tan in his submissions argued that the prohibition did not prevent Mrs White from seeking alternative employment, which is correct, there was insufficient evidence or detailed cross-examination to establish that Mrs White's qualifications or personal abilities mean she is able to secure a position at a level other than that of the jobs she currently undertakes.
48. At this stage, although the children are getting older and may not be far away from being independent and able to care for themselves as 'latchkey kids' if their mother worked a normal 9-to-5 job as many do, this is not Mrs White's work pattern and I find the children having to be without proper support in such an environment at this time would have a significant detrimental impact upon them.
49. I accept the submission of Mr Pipe that on the facts this is a case where the compelling circumstances of the appellant's case means that weight can be given to her private and family life following *Rhuppiah v Secretary of State for the Home Department* [2018] UKSC 58.

50. In *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74 Lord Hodge stated at [10-11]:

10. In their written case counsel for Mr Zoumbas set out legal principles which were relevant in this case and which they derived from three decisions of this court, namely *ZH (Tanzania) (above)*, *H v Lord Advocate* 2012 SC (UKSC) 308 and *H(H) v Deputy Prosecutor of the Italian Republic* [2013] 1 AC 338. Those principles are not in doubt and Ms Drummond on behalf of the Secretary of State did not challenge them. We paraphrase them as follows:

- (1) The best interests of a child are an integral part of the proportionality assessment under article 8 ECHR;
- (2) In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;
- (3) Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;
- (4) While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play;
- (5) It is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations;
- (6) To that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment; and
- (7) A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent.

11. These principles arise from the United Kingdom's international obligations under the United Nations Convention on the Rights of the Child, and in particular article 3.1 which provides:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

That general principle of international law has influenced the way in which the Strasbourg court has interpreted the ECHR: *Neulinger v Switzerland* (2010) 28 BHRC 706, para 131.

51. I accept that the weight of evidence supports a finding that it is in the best interests of the two minor British citizen children that the care and support provided to them by the appellant at this time should be allowed to continue in the absence of viable alternatives.

52. The best interests of the children are not, however, the determinative factor. It is a very important matter and, as noted above, a primary consideration. The appellant can only have a limited expectation of being able to remain in the United Kingdom and the mitigating factors relied upon by Mr Tan against the weight that could be given to the children's best interests included the children's father's presence in the United Kingdom, the support they could receive from the school, mental health professionals, possible family cover including from the

family in Redditch (although there is no evidence this is the case in reality or that such care would be sufficient), and the theoretical ability of Mrs White to change her work pattern.

53. When weighing these competing arguments together, including giving appropriate weight to the public interest, I find the best interests of the children do carry greater weight especially in light of the substantial negative impact upon them of the appellant being removed in combination with Mrs White’s working pattern which it has not been established she is able to realistically change. Accordingly, I allow the appeal.

54. It is for the Secretary of State to consider the nature and duration of any leave granted to the appellant. This appeal is allowed on the basis of current needs at the date of the hearing. As the children get older they will become far more independent and able to meet their own needs and exist safely within the family unit. The eldest child is already a ‘young person’ (age group 14-17) and the youngest is already 11 years of age. That is, however, not a matter for this Tribunal.

Decision

55. I allow the appeal.

Anonymity.

56. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

57. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson

Dated: 30 March 2021