Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/24020/2014
IA/24026/2014
IA/24039/2014
IA/24033/2014

THE IMMIGRATION ACTS

Heard at Field House
On 10 September 2015

Decision & Reasons Promulgated
On 24 November 2015

Before

UPPER TRIBUNAL JUDGE KOPIECZEK
DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

MVP (FIRST APPELLANT)
SMP (SECOND APPELLANT)
HMP (THIRD APPELLANT)
EAP (FOURTH APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms G Brown, Counsel instructed by Farani Javid Taylor Solicitors
For the Claimant: Ms R Pettersen, Senior Presenting Officer

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DECISION AND REASONS

1. The Appellants are citizens of India and a family of four. The first and second Appellants are the parents of the third and fourth Appellants. The first and second Appellants obtained visit visas on 27 March 2002 which expired on 27 September 2002. The first and second Appellants arrived in the UK on 20 April 2002 and have resided in the UK to date. The third Appellant was born on 10 June 2005 and is aged 10 at present, but was aged 9 at the date of his appeal before the First-tier Tribunal. The fourth Appellant was born on 26 October 2007 and was aged 7 at the previous and current hearing. Both children were born in the UK.

2. On 19 May 2009, an application was made by the first Appellant for leave to remain including his wife and two children as dependents. The application was refused on 3 May 2011 and following a reconsideration was maintained on 23 August 2011 and the Appellants were simultaneously served with removal papers. The Appellants appealed that decision. However their appeals were dismissed on 31 October 2011.

3. Thereafter, on 5 July 2012, the Appellants lodged a further application on the basis of their family and private lives. The application was refused on 25 July 2013. The Appellants challenged the refusal by way of judicial review on 6 December 2013 and on 27 February 2014, a consent order was sealed which ordered that the family's application of 5 July 2012 be reconsidered and removal directions be issued if the decision was maintained.

4. In a Refusal Letter, dated 22 May 2014, the Secretary of State reconsidered the Appellants' human rights applications in relation to their right to private and family life under the Immigration Rules and outwith those Rules pursuant to Article 8 ECHR. That Refusal Letter was served upon the Appellants alongside IS151Bs dated 27 May 2014 confirming removal directions for the Appellants' country of origin. The First-tier Tribunal promulgated its decision refusing the Appellants' appeal against that decision on 19 February 2015.

5. The Appellants appeals were dismissed by First-tier Tribunal Judge Watts under the Immigration Rules and on human rights grounds.

6. The Appellants appealed against the decision of Judge Watts and they were granted permission to appeal by First-tier Tribunal Judge Osborne on all grounds. The grounds upon which permission was granted may be summarised as follows:

(i) The judge erred in failing to take relevant evidence into account and performed a flawed best interests assessment;

(ii) The Article 8 ECHR assessment outwith the Immigration Rules was flawed;

(iii) The judge erred in failing to apply section 117B of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") adequately or at all.

7. We were provided with a 'Rule 24' response from the Respondent which was unable to take any stance as the determination of Judge Watts was not provided to the Respondent.

Error of Law

8. At the close of submissions, we indicated that we would reserve our decision, which we now give. In summary, we find that there was no error of law in the decision such that it should be set aside. Our reasons for so finding are as follows.

9. In relation to the first ground, we find that the judge adequately considered the evidence. In her submissions, Ms Brown referred us to a letter dated 29 January 2015 from the Headteacher of the school that the minor appellants attend, and highlighted the last sentence which stated that the removal from the UK will have a detrimental effect on the continuity of the children's education. However, this sentence does not carry any indication of the level or extent of suggested detriment, nor how that detriment might impact upon the children's development. Consequently, the judge's failure to refer to it explicitly could have made no difference to the outcome of the appeal.

10. Ms Brown further referred us to a letter dated 29 January 2015 from Dr Shah, a Dentist, who stated that it would not be in the family's best interests for the children in particular to be removed from the UK. Again, this opinion does not carry any indication of the level or extent of any detriment nor how that detriment might impact upon the children's development. Furthermore, there is no indication of how he is qualified to give such an opinion, not having explained the extent of his acquaintance with the children.

11. Accordingly, the judge's failure to refer explicitly to Dr Shah's letter similarly could have made no difference to the outcome of the appeal.

12. Finally, we were also referred to a letter from a Mr and Mrs K whose child is studying in the same class as the third Appellant. Whilst this letter mentions that the third Appellant is a brilliant student, this of itself is insufficient to establish that his best interests would outweigh the countervailing factors of the public interest, even assuming that the judge was required to refer explicitly to that letter.

13. As a general principle, we also bear in mind that it is not encumbent on a judge to refer explicitly to every piece of evidence. We also note the judge's summary of the evidence before him, recorded at paragraph 21 of the determination.

14. In relation to the second ground, we find that the judge did not err in relation to the assessment of Article 8 outwith the rules. Ms Brown highlighted that the third Appellant had acquired 7 years residence and that their bests interest should be gauged individually and it not be assumed that it would be in the child's best interests to remain with their parents and leave the UK. However, we have been unable to find any evidence put before the First-tier Tribunal, and none was drawn to our attention, which would indicate that it would not be in the children's best interests to remain with their parents and maintain the status quo of a family unit. There was also no evidence from that minor appellant before the First-tier Tribunal which might indicate their wishes on this topic. As stated by Lady Hale in *ZH (Tanzania) v SSHD* [2011] UKSC 4, it might be that the child's best interests would not lie with remaining with their parents or the child might voice their opinion or wish confirming the same, which might surprise one. However as Ms Brown confirmed, there was no written evidence from the children as to their wishes and the oral evidence from their parents confirmed that the children do not want to go but gave no more detail than that plain statement. Therefore, in the absence of evidence demonstrating that the children's best interests would be best served remaining in the UK as opposed to remaining in the care of their parents, it is clear that the judge did not fall into error by not looking at this issue separately, merely presuming that the children ought to remain with their parents. We find that the judge considered the children's best interests as a primary consideration.

15. Finally, in relation to the third ground, although we agree with Ms Brown that there could be said to be a tension between the decisions in *AM (S.117B)* [2015] UKUT 260 (IAC) and the decision of the President in *Forman (ss 117A-C considerations)* [2015] UKUT 412 (IAC), we cannot see that any perceived or actual difference between those decisions could have affected the outcome of this appeal. As stated in *Forman*, the tribunal concerned has no choice and must have regard to the listed considerations. However, whilst the determination in the appeal before us would have benefitted from express reference to s.117 of the 2002 Act, this omission is not material to the outcome of the appeal. The s.117B considerations in the instant appeal in favour of the appellants are that they are financially independent. Regarding English-speaking ability, both the first and second Appellants gave evidence in Hindi at the appeal and so it is not clear that they would have gained much if any 'credit' for their English-speaking ability, even if it could be counted in their favour, as it were. Therefore, in terms of the family's financial independence not being weighed against the appellants with reference to the public interest, in our view any error in

this regard is not material as it could not have resulted in a decision in favour of the appellants in terms of proportionality.

16. We should mention that Ms Brown raised a point that the third Appellant turned 10 years of age on 10 June 2015 and since then has been entitled to apply for British Citizenship pursuant to section 1(4) of the British Nationality Act 1981. She argued that this must weigh in the child's favour. However, she also acknowledged that this point was not raised before the First-tier Tribunal, nor in Grounds of Appeal to the Upper Tribunal. Nor have the third Appellant's representatives acted upon the entitlement to British Citizenship despite the passage of several months since that entitlement accrued.

17. Consequently, these new facts not having been raised before the First-tier Tribunal, it cannot be said that the First-tier judge erred in law in failing to consider them.

18. In summary, we are not satisfied that there is any error of law in the decision of the First-tier Tribunal, or any that could have affected the outcome of the appeal. Accordingly, the decision to dismiss the appeals is to stand.

Decision

19. The decision of the First-tier Tribunal did not involve the making of an error on a point of law.

20. The decision to dismiss the appeal of each Appellant therefore stands.

Anonymity

21. In order to preserve the anonymity of the children referred to in this decision, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, this determination identifies the children and those associated with them by initials only.

Deputy Upper Tribunal Judge Saini 20/11/15