



IAC-FH-AR-V1

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

Appeal Numbers: IA/37266/2014
IA/37271/2014
IA/37274/2014
IA/37277/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 6 October 2015**

**Decision & Reasons Promulgated
On 9 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS GLADYS MERCEDES TAPIA HERRERA
MR CESAR GUILLERMO MENDOZA LAGOS
MASTER JAYDEN ARIEL MENDOZA TAPIA
MASTER NATHANAEL ASAF MENDOZA TAPIA
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mr. T Wilding, Home Office Presenting Officer

For the Respondents: Mr. T Bobb, Solicitor, Aylish Alexander Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decisions of First-tier Tribunal Judge Quinn promulgated on 7 May 2015 in which he allowed the appeals of Mrs. Herrera, Mr. Lagos and their two sons

against the decisions of the Secretary of State to refuse leave to remain.

2. For the purposes of this decision I refer to the Secretary of State as the Respondent and to Mrs. Gladys Herrera, Mr. Cesar Lagos, Master Jayden Tapia and Master Nathanael Tapia as the Appellants, reflecting their positions as they were before the First-tier Tribunal.
3. Permission was granted by Designated First-tier Tribunal Judge Zucker. He states:

“The grounds focus on the Decisions in relation to the children but submit that the errors contended for affect each of the Decisions. The grounds include the submission that there has been insufficient weight given to the immigration rules and therefore to the public interest criteria; in the case of the Fourth Appellant it is submitted that the judge erred in conflating what was in his best interests with the question of whether it was reasonable for him to leave with his parents; further it is submitted that in the case of the Fourth Appellant that the judge has considered the issue of insurmountable obstacles in the context of paragraph 276ADE(iv) when such forms no part of that rule.”
4. At the hearing I heard submissions from both representatives. I announced that I considered that the decision involved the making of a material error of law. I set out my reasons below.

Error of law decision

5. The judge produced a separate decision for each Appellant. There are therefore four separate decisions relating to the same family. This is an unfortunate and unsatisfactory approach, given the nature of the appeals. Although the judge has stated in the decision relating to Mrs. Herrera that her case is the lead case and that much of what is said in her statement is relevant to the decisions relating to the other Appellants, [7], none of the decisions contains a full set of findings in relation to the family as a whole. None of the decisions treat the family as one unit, which has led to the result that there are incomplete findings across the board in respect of all four Appellants.
6. Jayden is the only Appellant who could have satisfied the requirements of paragraph 276ADE of the immigration rules given his age and the amount of time that he has spent in the United Kingdom. It was accepted that neither Jayden’s parents nor his younger brother could satisfy the requirements of paragraph 276ADE, given their ages and the amount of time that they have spent in the United Kingdom. However, as the judge decided that Mrs. Herrera’s decision should be the lead decision, Jayden’s circumstances are not the judge’s starting point.

7. In paragraph [17] of Jayden's decision the judge states:

"I accepted that Jayden satisfied paragraph 276ADE(iv) and that there were insurmountable obstacles to him returning to Ecuador."
8. As submitted by the Respondent, I find that the judge has applied the wrong test. There is no test in paragraph 276ADE(iv) relating to "insurmountable obstacles". The test to be applied under paragraph 276ADE(iv) for someone in Jayden's position who is under the age of 18 and has spent seven years in the United Kingdom is whether or not it is reasonable to expect that person to leave the United Kingdom.
9. Further, having stated the wrong legal test, there is no assessment of whether or not it is reasonable to expect him to leave the United Kingdom and return to Ecuador. In paragraph [12] the judge refers to the very significant obstacles to his reintegration into Ecuador, but this is not the test. At paragraph [13] the judge considers whether Jayden could easily integrate back into society in Ecuador, but this is not the same as a consideration of whether it is reasonable to expect him to return.
10. I find that the judge has made an error of law in failing to apply the correct test under the immigration rules to Jayden, and that this error is capable of affecting the outcome of the decisions in respect of all of the Appellants.
11. Further, I find that the best interests of Jayden and Nathanael are not considered in any detail in any of the decisions. In Jayden's decision at paragraph [22] the judge states:

"In short, the best interests of Jayden were served by allowing him to remain with his parents and I had already decided both of his mother and father should be allowed to remain in the UK as to remove them would breach their Article 8 rights."
12. The judge finds that it is in Jayden's best interests to allow him to remain in the United Kingdom with his parents by reference to the fact that their appeals have already been allowed under Article 8. It was accepted by Mr. Bobb that it was "unfortunate" that Jayden's decision hinged upon that of his mother. In paragraph [35] of Mrs. Herrera's decision the judge states:

"Rather than look at whether parents were at fault I had to look at whether removal of the children would be in their best interests. If it was not, my view was that the children should remain with their mother. The family should not be split up as that was not in the best interests of the children."
13. However there is no assessment of the best interests of the children without reference to their removal. There has been no separate assessment of what is in the best interests of Jayden or Nathanael

prior to an assessment of whether it is reasonable for them to return to Ecuador.

14. I was referred by Mr. Wilding to paragraph [29] of Nathanael's decision. This states:

“Having given Jayden right to remain in the UK I decided that it would not be proportionate or appropriate to separate Nathanael from his brother.”

15. I find that it is not a question of whether Jayden has the “right to remain”, but whether or not he satisfies the requirements of the immigration rules, and the incorrect test has been applied to the consideration of Jayden's appeal under the immigration rules. At paragraph [30] the judge states that he refers to the findings in the appeal concerning Jayden, but this decision does not contain any assessment of what is in the best interests of either child. Nowhere in the decisions has the judge given any reasons why the children could not return to Ecuador with their parents.

16. The eldest daughter of Mrs. Herrera and Mr. Lagos was granted limited leave to remain by the Respondent but there has been no holistic assessment of the effect of this on the decisions in respect of the rest of the family.

Notice of Decision

The decisions of the First-tier Tribunal involved the making of a material error of law. All four decisions in respect of all four Appellants are set aside.

The appeals are remitted to the First-tier Tribunal for rehearing.

No anonymity direction is made.

Signed

Date 8 October 2015

Deputy Upper Tribunal Judge Chamberlain