Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/04135/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19th October 2017	**On 09th November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MASTER VISHAY UNAUTH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Spurling (Counsel)
For the Respondent: Mr C Avery (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge P J Carroll, promulgated on 2nd June 2017, following a hearing at Taylor House on 16th May 2017. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent Secretary of State subsequently

applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Mauritius, and was born on 23rd December 1997. He appealed against the decision of the Respondent dated 26th January 2016, refusing the Appellant leave to remain on the basis that he had been living in the UK for seven years and that requiring him to return back to Mauritius would not be reasonable given that he had spent the first ten years of his life in the UK.

The Judge's Findings

3. The judge, at the outset of the determination, recorded extensively the poor immigration history of the Appellant's parents (see paragraphs 2 to 6), noting that the Appellant himself travelled to the UK in April 2008 when he was 10 years of age, entering lawfully as a visitor, but then overstaying when his leave expired. Evidence in support at the hearing was given by his mother, Sooreka Unauth. A feature of the appeal before Judge Carroll was that there had been a previous determination in 2014, where the judge had concluded that "the very poor immigration history of the parents over the last decade" (paragraph 75) was such that it would outweigh the interests of the family (see generally paragraphs 71 to 76 of that determination). Accordingly the principles in **Devaseelan** applied, and were recognised as applying, by Judge P J Carroll.

4. Events, however, had moved on by the time that the appeal hearing of May 2017 was heard by Judge P J Carroll, which was three years thence from the earlier determination of 2014. As the judge now clearly recognised, there had been "two relevant changes which have altered the balance of competing interests so as to tip the proportionality assessment in the Appellant's favour ..." (paragraph 10). These were firstly, that the Appellant had been in the UK for seven years by the time of the application and that this was not the case in 2014. Secondly, that the Court of Appeal had in the case of **MA (Pakistan) [2016] EWCA Civ 705** clarified the significance of the seven year Rule principle and emphasised the proper approach to the Article 8 assessment.

5. What appears to have rendered the judge's eventual decision questionable, however, was the observation that after that, "the evidence falls very far short of demonstrating that it would be unreasonable to expect the Appellant to leave the United Kingdom" (paragraph 12). This was because the Appellant confirmed in his oral evidence that he was about to finish secondary school, had taken no steps to find out about the availability of university education in Mauritius, had made no applications to study in the United Kingdom itself, and he had other family members living in Mauritius still.

6. Having made these observations, the judge went on then to consider Article 8 in the context of the seven year Rule, which is now incorporated

in the Respondent Home Office's policy in Section 11.2.4 of the Immigration Directorate Instructions Family Migration: Appendix FM (Section 1.0(b)), which states that this principle "recognises that over time children start to put down roots and integrate into life in the UK, to the extent that being required to leave the UK may be unreasonable".

7. The judge then also applied the dicta of Elias LJ in **MA (Pakistan) [2016] EWCA Civ 705** at paragraph 46. The judge went on to further reflect upon the observations of Elias LJ that, in assessing the "best interests" of the child, "the fact that the child has been in the UK for seven years would need to be given significant weight in the proportionality exercise", and that this principle "establishes as a starting point that leave should be granted unless there are powerful reasons to the contrary" (see paragraph 47 of Elias LJ's judgment, quoted at paragraph 17 by the judge.

8. On this basis, the judge went on to note that the skeleton argument of Mr Spurling of Counsel (who appears in this Tribunal also) had explained the matter by pointing out that what the seven year Rule does is to show that the child has become so integrated into the national fabric of the UK that it would be unreasonable (absent strong or powerful countervailing factors) to rupture those social ties by requiring relocation to the country of origin (see paragraph 20 of the determination).

9. The judge concluded that in this case, "the Respondent failed to identify any strong or powerful reasons to displace the starting point ..." (paragraph 21).

10. The appeal was allowed.

Grounds of Application

11. The grounds of application state that it was incongruous for the judge to have stated at paragraph 12 of the determination that, "the evidence falls very far short of demonstrating that it would be unreasonable to expect the Appellant to leave the United Kingdom", but then also to have concluded that the Respondent had failed to identify any strong or powerful reasons to displace the starting point that seven years' residence normally pointed to the grant of leave to remain because significant weight would have to be attached in the proportionality exercise to this fact.

12. On 14th August 2017, permission to appeal was granted.

13. On 28th September 2017, a Rule 24 response was entered by the Appellant, acting through Mr Spurling of Counsel once again.

Submissions

14. At the hearing before me on 19th October 2017, Mr Avery, on behalf of the Respondent, made two submissions. First, that the judge had abrogated his responsibility in not conducting a proper balancing exercise given that the family as a whole would be required to relocate back to Mauritius.

Second, that, although the immigration history of the family is set out at the outset by the judge at paragraphs 2 to 6, one had to note that the family had overstayed since 2006 when they lost their appeal to remain, and thereafter lost another human rights appeal in 2014, and the reference to **MA (Pakistan)** was to no avail given that in that case also the family applying for leave to remain had lost out in the end.

15. For his part, Mr Spurling submitted that he would have to accept that the judge's observation at paragraph 12 that "the evidence falls very far short of demonstrating that it would be unreasonable to expect the Appellant to leave the United Kingdom" was an error of law, but the question was whether it was a material error of law, and that it was not, because the judge had eventually carried out the balancing exercise in the context of the clarification of the law by the Court of Appeal in **MA (Pakistan)** in 2016, and had rightly required the Respondent Secretary of State to show that there were "strong" or "powerful" reasons to displace the starting point that, on the basis of the Appellant's seven years' residence, the Appellant should be granted leave to remain.

16. The judge here had not overlooked the poor immigration history of the Appellant's family (see paragraphs 2 to 6) and had conducted the overall assessment in the context of the Court of Appeal's clarification in **MA (Pakistan)**, and this could not be said to be an error that was material to the judge's decision. The Appellant was socially integrated into the fabric of UK society and the judge properly gave significant weight to that. The fact remained that there was a very strong presumption established by the seven year Rule.

17. In reply, Mr C Avery submitted that the poor immigration history of the Appellant's family (at paragraphs 2 to 6) was a matter that weighed heavily with the last judge in 2014 and, applying the principles in **Devaseelan**, with the great passage of time since then, the public interest in favour of immigration control would weigh even more heavily now.

No Error of Law

18. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and re-make the decision. My reasons are as follows.

19. First, it is right that the conclusion at paragraph 12 is not sustainable. But, it was not sustainable only in the sense that the judge was not there entitled to conclude that the removal would be reasonable, when in the conclusion, it was stated that the Secretary of State had not given any strong or powerful reasons to justify removing a child with seven years' residence, who had come to the UK at the age of 10, and had remained here thereafter. It is true that there had been a poor immigration history. However, this is amply recorded by the judge at paragraphs 2 to 6 right at the outset.

20. Nor, does the judge ignore the findings of the previous Tribunal. What is expressly stated, however, is that two relevant changes have taken place since 2014 and these are set out. This was also not a case where either parent or child had criminal convictions so that there could be said to be powerful or strong reasons for maintaining immigration control.

21. Neither, was it the case that the Appellant child had only spent seven of his earlier years in the UK. What he had done was to have spent the most formative part of his life in the UK after the age of 10. He had become integrated into UK life and had cast down roots here.

22. As against that, the judge properly applied the strictures in **MA (Pakistan)** and took as his starting point the position that leave should be granted unless there are powerful reasons to the contrary, recognising that significant weight in the proportionality exercise needs to be given to a child who has been in the UK for seven years of his life.

Notice of Decision

23. There is no material error of law in the original judge's decision. The determination shall stand.

24. No anonymity direction is made.

25. This appeal is allowed.

Signed Date

Deputy Upper Tribunal Judge Juss 8th November 2017