Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: IA/32758/2015**
IA/32760/2015
IA/32766/2015
IA/32763/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 June 2017	**On 13 July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

MR N P
MS KP
MR EP
MISS EP
(ANONYMITY DIRECTION MADE)

Respondents

and

TEH SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Representation:

For the Appellant: Mr N Bramble, a Senior Home Office Presenting Officer
For the Respondents: Mr D O'Callagan of Counsel

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellants. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. This is an appeal by the Secretary of State for the Home Department. To avoid confusion I will refer to the Secretary of State throughout and to Mr NP, Ms KP, Mr EP and Miss EP as the appellants as they were before the First-tier Tribunal.

3. The appellants are all nationals of Albania and comprise a single family unit. The first and second appellants are husband and wife respectively and the third and fourth appellants are their children.

4. The first, second and third appellants all travelled to the United Kingdom from Greece in 2007 on a six month visa. They had lived in Greece since 1998 and could travel to and from Albania having been given temporary residence in Greece at that time. The third appellant was born in Greece in 1999. At the time of the hearing before the First-tier Tribunal he was aged 17. The appellants remained in the United Kingdom unlawfully when their six month visa ran out in 2008. The fourth appellant was born in the United Kingdom in February 2009. On 6 February 2015 the appellants applied for leave to remain in the United Kingdom on the basis of their private and family life. On 5 October 2015 the Secretary of State refused the appellants' applications. The Secretary of State considered that the appellants did not meet the requirements of the Immigration Rules and that there were no exceptional circumstances to consider the grant of leave to remain outside the Immigration Rules.

The appeal to the First-tier Tribunal

5. The appellants appealed against the Secretary of State's decision to the First-tier Tribunal. In a decision promulgated on 21 November 2016 First-tier Tribunal Judge Barber allowed the appellants' appeals. The First-tier Tribunal focused on the third appellant, Master EP, as it was accepted by the representatives that all appeals would stand and fall on the basis of the outcome of the third appellant's appeal. The judge found that if the third appellant were to have to return to Albania this would have a catastrophic outcome which would significantly undermine his social and educational development. The judge accordingly found that it would not be reasonable to expect the appellant to leave the United Kingdom. The judge found that if the third appellant is to remain in the United Kingdom it follows that for the rest of the family to leave would be a disproportionate interference with his and their rights to family life as he would be separated as a child from his parents and sister and they would be separated from him.

6. The Secretary of State applied for permission to appeal against First-tier Tribunal decision. On 4 May 2017 First-tier Tribunal Judge Page granted the Secretary of State permission to appeal.

The hearing before the Upper Tribunal

7. The grounds of appeal assert that the First-tier Tribunal Judge erred by failing to take into account all the factors required when considering the

'reasonableness test' in respect of the third appellant. Reliance is placed on the decision of the Court of Appeal in **MA (Pakistan) and Ors, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) and Another [2016] EWCA Civ 705** at paragraphs 22 and 45 in particular. It is asserted This case makes it clear that the public interest considerations need to be considered when considering paragraph 276ADE and the same test in Section 117B(6) of the Nationality, Immigration and Asylum Act 2002. The Secretary of State asserts that the judge's assessment is flawed because he failed to consider the public interest considerations, specifically the unlawful status of the appellants in the UK over a considerable period of time. Reliance is also placed on the fact that the judge did not engage with other public interest considerations such as financial independence and maintenance of immigration controls.

8. Reference is made to paragraph 40 of the decision in **PD and Others [2016] UKUT 00108** where it sets out that the application of the reasonableness test involves a balance of all material facts and considerations. It was further submitted that the judge failed to give any adequate consideration to the mandatory public interest consideration in Part 5A of the 2002 Act when considering Article 8 outside the Rules in respect of the first, second and fourth appellants when finding the interference disproportionate.

9. Mr Bramble relied on the grounds of appeal. He invited me to give an indication as to my preliminary view regarding on the error of law grounds in this case. I indicated to Mr Bramble that, subject to Mr O'Callagan's submissions, there appeared to be an error of law in that the First-tier Tribunal had not factored in the public interest considerations as relevant factors when determining whether or not it would be reasonable to expect the third appellant to leave the United Kingdom. However, I indicated that the question to be addressed was, if it was an error of law, was it a material error of law given the findings of the judge with regard to the negative effect that removal would have on the third appellant's development when considering whether it would be reasonableness to expect him to leave the UK. Mr Bramble submitted that once it was accepted that the third appellant would be significantly disadvantaged by being removed from the United Kingdom it was clear that the Secretary of State would struggle to find something of sufficient significant weight to outweigh the effects on the third appellant as found by the judge.

10. Mr O'Callagan submitted that the issue was whether or not if the judge had had in mind the public interest considerations it would have made or could have made a material difference to the outcome of the appeal. He submitted that it could not have made a material difference. He referred to paragraph 7 of First-tier Tribunal decision where the judge found that it would have a catastrophic outcome if the appellant were to have to return to Albania. He submitted that even if the public interest in effective immigration control and the unlawful status in the United Kingdom had

been taken into account it could not have made a material difference on the facts of this case as found by the judge.

Discussion

11. First-tier Tribunal Judge at paragraph 7 set out:

> 7. I heard much evidence from the third appellant and two of his friends. The third appellant has integrated well into UK society and whilst I have no doubt that he is reasonably proficient in the Albanian language (having spoken this language as the first language for at least the first seven years of his life), I am almost certain, having heard evidence from him, that were he to have to return to Albania this would be a catastrophic outcome which would significantly undermine his social and education development. ...

12. This is a significant finding that has not been challenged by the Secretary of State. From paragraph 14 the judge set out:

> 14. The third appellant has lived for the majority of his life in the UK. He came here as a young boy and he has integrated very well into UK life. He has been educated to a high level in the UK, he has made very good friends in the UK and he has a clear aspiration to get on in the UK by furthering his education or perhaps embarking on skills based training. He impressed me as a sensitive and well mannered young man who was well liked by his peers. The third appellant was clear that the UK is his home and that he could not view anywhere else as his home. He told me that he considered himself British; that his friends are an important part of his life in the UK and that he sees his future in the UK.
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> 15. On the other side of the balance is the issue of his return to Albania. I was told and I accept that the third appellant has no memory of Albania and has never resided in Albania. He told me that he does not know anyone well in Albania and would have to start his life afresh there. As mentioned above, he told me that his knowledge of the Albanian language is poor and that when his grandparents call on Skype he is unable to interact with them. I suspect that the third appellant was attempting to play down his ties to Albania by reference to his language skills and family there but in any event, even if he told me that he was fluent in the language and spoke regularly to his grandparents, my decision would have remained the same, so I could discount this aspect of his evidence. I accept that notwithstanding his abilities in the language he would find it very difficult to integrate into Albanian society, a country he has never visited within his memory and where the culture and social environment is perhaps strikingly different to that in the UK. I also accept that he would lose contact with the close friends he has developed here and though he would be returning to Albania with the rest of his family, he would probably face isolation and a considerable degree of distress in having to go to live there.
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> 16. Accordingly, I accept that the third appellant's enforced return to Albania at such a significant and important point in his life would have a significant and highly detrimental impact on his educational and emotional development

and that in the circumstances of this appeal it would not be reasonable to expect him to leave the UK.

13. The findings of the judge when undertaking the assessment required to reach a conclusion as to whether or not it would be reasonable to expect the third appellant to leave the UK did not take into consideration any of the factors that the judge was required to take into account including the unlawful status in the UK and the public interest in effective immigration control. Whilst this amounts to an error of law I do not consider that this would have made a material difference to the outcome of this appeal. There are factors that might be sufficient to have outweighed the judge's finding on reasonableness such as criminality. It is clear that the judge did not simply take the evidence of the third appellant at face value but approached the evidence with a degree of circumspection, for example in relation to the third appellant's ability to speak Albanian. Given the very strong findings made by the judge as to the adverse effect of removal on the third appellant, described as a "catastrophic outcome", the judge would not have arrived at a different conclusion had he factored in the public interest consideration and unlawful status.

14. The decision of the First-tier Tribunal did not contain a material error of law.

Notice of Decision

The decision of the First-tier Tribunal did not contain a material of law. The appeal of the Secretary of State is dismissed. The decision of the First-tier Tribunal stands.

Signed P M Ramshaw Date 11 July 2017

Deputy Upper Tribunal Judge Ramshaw