



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

Appeal Numbers: HU/02118/2016
HU/02121/2016
HU/02125/2016

THE IMMIGRATION ACTS

Heard at Field House

On 19 April 2018

**Decision &
Promulgated
On 2 May 2018**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**TVY
BSO
EAO**

(ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Mr. D. Clarke, Home Office Presenting Officer

For the Respondents: Mr. H. Anyiam, Counsel instructed by Universe Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Shore, promulgated on 21 August 2017, in which he allowed Ms TVY, Mr. BSO and Master EAO's appeals against the Secretary of State's decision to refuse to grant further leave to remain.

2. For the purposes of this decision I refer to the Secretary of State as the Respondent, and to Ms TVY, Mr. BSO and Master EAO as the Appellants, reflecting their positions as they were before the First-tier Tribunal.
3. Permission to appeal was granted as follows:

“It is arguable that in assessing the “reasonableness test” in section 117B(6) of the 2002 Act, the Judge erred in law due to failure to take into account the public interests consideration, including the immigration history of the parents (MA (Pakistan) [2016] EWCA Civ 705).”
4. The Appellants attended the hearing. I heard brief submissions from Mr. Clarke, following which I stated that, although the decision involved the making of an error of law, this error was not material.

Error of law

5. Paragraphs [19] to [21] of the decision contain the totality of the Judge’s consideration of whether or not it is reasonable to expect the third Appellant to leave the United Kingdom. At [20] the Judge states:

“It is not reasonable to expect the Third Appellant to leave the United Kingdom, where he was born and has lived his entire life and that the public interest therefore does not require the removal of the First and Second Appellants.”
6. There is no consideration of the best interests of the third Appellant with reference to the evidence. There is no consideration of the factors set out in section 117B of the 2002 Act, including the public interest. The Judge simply states that because the third Appellant was born here, and has lived his entire life here, it is not reasonable to expect him to leave. There is no consideration of the wider circumstances of the Appellants. I find that this failure to consider the overall circumstances of the Appellants with reference to the factors set out in section 117B, is an error of law.
7. However, as accepted by Mr. Clarke at the hearing, the Respondent’s own guidance indicates that, given that the third Appellant is a British citizen, this error is not material. He referred to the case of SF and others (Guidance, post-2014 Act) Albania [2017] UKUT 00120 (IAC).
8. Further, Mr. Clarke stated that he was at a loss as to why the grounds relied on a caution which the first Appellant had received, given that it had not been raised in the reasons for refusal letter, was not raised at the hearing, and in circumstances where the Respondent’s own bundle was not served on the Tribunal until after the hearing ([11] of the decision). I do not attach any weight to this.
9. Given that the third Appellant is a British citizen, and given that the Respondent’s own guidance therefore indicates that it is not reasonable to expect him to leave the United Kingdom, his parents, who are his carers, should be granted leave to remain in accordance with this guidance. The

case of SF stresses the importance of consistency between those cases which come before the Tribunal, and those which do not.

10. I therefore find that, although the Judge should have carried out a full assessment of the Appellants' circumstances, including the factors set out in section 117B, his failure to do so is not material, as was accepted by Mr. Clarke on behalf of the Respondent.

Decision

11. The decision of the First-tier Tribunal does not involve the making of a material error of law and I do not set it aside.
12. The decision of the First-tier Tribunal stands.

Signed

Date 27 April 2018

Deputy Upper Tribunal Judge Chamberlain