Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/02676/2016
HU/03273/2016
HU/02677/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 29 November 2017	**On 12 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

I. T.
A. I.
A. I.
(ANONYMITY DIRECTION MADE)

Respondents

Representation:
For the Appellant: Mr Wilding, Home Office Presenting Officer
For the Respondents: Mr Mustafa, Counsel instructed by Solicitors Inn

DECISION AND REASONS

1. The Appellant before me is the Secretary of State for the Home Department and the Respondents to this appeal are a family consisting of father, mother and eldest son. However, for ease of reference, in the course of this determination I shall adopt the parties' status as it was before the First-tier Tribunal ["FtT"].

2. The members of the family applied for leave to remain in the UK and those applications were refused in January 2016. Their appeals against those refusals came before Judge Clark in Taylor House on 25 January 2017 and by a decision promulgated on 9 February 2017 he allowed their appeals on Article 8 grounds.

3. The Respondent has challenged that decision with relatively lengthy grounds which, as indeed Mr Wilding has summarised them this morning before me, amount to the assertion that the judge misdirected himself in law, and despite a lengthy analysis of the evidence before him, and reference to a large number of decided cases on the point, nevertheless mis-formulated the true question that he had to answer in the course of paragraph 43 of his decision. The result, it is asserted, is that he inevitably failed to start from the correct position in asserting the proper balance of proportionality. The grant of permission to the Respondent was made by First-tier Tribunal Judge Lambert on 4th September 2017 on all grounds.

4. The family consist of a married couple with three children, although only the parents and eldest child had appeals before the FtT. The inevitable focus of the appeal was upon the position of the eldest child. The parents could not succeed under the Immigration Rules and their own Article 8 appeal depended upon the success of any appeal by their eldest child, as indeed did the cases of their two younger children. As Mr Wilding accepts before me this is one of many cases that could have gone either way given the facts.

5. The judge looked at the position of the eldest child who was 9 years at the date of the hearing, and who had lived his entire life in the UK. He was well settled in school and his local community to the point that the judge accepted that when his parents wanted to move house, and did in fact move house, he had insisted on remaining in his existing school even though he had moved to the catchment area of other schools. So it was that his parents had to accommodate his wishes by arranging for him to travel out of his catchment area to his original school. His argument, as his father had accepted, had been that he was well settled with a good group of friends, and also with his teachers. His parents after some reflection had accepted that argument, and thus accommodated that desire. The judge accepted that this was in no way a device being used to prop up an appeal and that this was something that had happened well before the hearing of the appeal. She accepted all of that evidence placed before her by the Appellants as true. She reminded herself that at the age of 9 this child was not yet of an age where he was at critical point in his education, or about to undertake key examinations. She reminded herself of the evidence as to his fluency in languages. He was fluent in English, both spoken and written, but his fluency in Urdu was only as a second spoken language and the judge accepted that he could neither read, nor write it. There is no challenge to that finding.

6. The judge reminded herself of the public interest in Section 117B and particularly the test in Section 117B(6). She also reminded herself of the guidance to be found in the decision of Treebhawon & Others (Section 117B(6)) [2015] UKUT 00674 (IAC) and also in the decision of MA (Pakistan) [2016] EWCA Civ 705. She did not set out passages from either of those decisions at length but it is clear in my judgement that when her decision is read as whole (as indeed she is entitled to have it read) she took into account the proper test and the relevant evidence, and applied the correct principles. What the Judge was faced with was a "qualifying child" as defined in s117D. Indeed this child was well beyond the threshold definition of one who had lived for seven years in the UK, and the Judge had accepted that this child was going to have difficulties if he was required to go into education in Pakistan because he did not have the tools to be able to prosper from that education by way of fluency in written Urdu. The Judge took into account the precariousness of the position of the adults, but also she was right to take into account as she did the fact that whilst the parents held lawful but precarious status in the UK, there was no additional feature to suggest either any criminal conduct on their part, deceptive conduct, or, abuse of the immigration system in any way. So the public interest that she took into account was what one might describe as the standard, rather than one in which there was any enhanced public interest in the removal of the adults. All of that as I say was right and proper.

7. Ultimately I have reached the conclusion, as Mr Wilding very fairly has accepted is the case, that this was one of many appeals that could have gone either way. It was open to the judge to reach the conclusion that she did, even if many other judges would not have reached that same conclusion on the basis of those findings. It is moreover perfectly plain from the decision that there was a careful analysis of all of the relevant evidence. There is no suggestion that any irrelevant evidence was taken into account, or that any relevant evidence was omitted, and it is clear from the decision that the judge has fully set out her reasons. In those circumstances I am not satisfied that there is any material error of law disclosed by her decision, and in the circumstances that decision must be confirmed.

Notice of decision

The appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date

Deputy Upper Tribunal Judge J M Holmes