Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/13131/2016
HU/13135/2016, HU/13140/2016
HU/13144/2016, HU/13148/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22nd March 2018	**On 26th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

GLECIA [O] (FIRST APPELLANT)
[G O] (SECOND APPELLANT)
[P F] (THIRD APPELLANT)
[N F] (FOURTH APPELLANT)
[H F] (FIFTH APPELLANT)
(ANONYMITY DIRECTIONS NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr C Yacoobali of Waltham Forest Immigration Bureau Limited
For the Respondent: Mr A Kotas, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellants comprise the first Appellant, Glecia [O], a female citizen of Brazil born on 13th August 1984, and her four children who are either of Brazilian citizenship or are dual Portuguese and Brazilian citizens born respectively on 4th November 2002, 22nd September 2009, 28th November 2010, and 31st August 2012. The first Appellant attempted to enter the United Kingdom on 30th January 2012 along with her then partner, a Portuguese citizen named Manuel [F] and the third and fourth Appellants. They were given temporary admission of one week's duration. On 16th April 2012 the first Appellant separated from Manuel [F], but on 31st August 2012 she gave birth in the United Kingdom to the fifth Appellant, Manual [F] being the biological father. On 14th December 2012 the second Appellant arrived in the United Kingdom with her grandmother and was given six months' leave to enter as a visitor. After various unsuccessful applications for leave to remain, on 31st March 2016 all the Appellants applied for leave to remain on human rights grounds. Those applications were refused for the reasons given in a Letter of Refusal dated 10th May 2016. The Appellants all appealed, and their appeals were heard by Judge of the First-tier Tribunal Onoufriou (the Judge) sitting at Hatton Cross on 1st August 2017. He decided to allow the appeals on Article 8 ECHR grounds for the reasons given in his Decision promulgated on 18th August 2017. The Respondent sought leave to appeal that decision, and on 25th January 2018 such permission was granted.

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.

3. The Judge allowed the appeal on the grounds that the decision of the Respondent amounted to a disproportionate breach of the Appellants' Article 8 ECHR rights on the basis that, as regards the fifth Appellant, the provisions of paragraph 276ADE(1)(iv) of HC 395 applied as there were very significant obstacles to her returning to Brazil with her family. Further, as regards the third and fourth Appellants, it was contrary to their best interests that they be removed from the United Kingdom. Finally, the Judge considered it disproportionate for the family to be split up and therefore allowed all the appeals on the basis of their Article 8 ECHR rights.

4. At the hearing before me, Mr Kotas submitted that the Judge had erred in law by failing to attach sufficient weight to the public interest when carrying out the balancing exercise necessary for any assessment of proportionality. The first Appellant had a poor immigration history and the Judge had failed to take this factor into account. He had given undue weight to the best interests of the children. The second Appellant had been brought to the United Kingdom with a visit visa although it had always been the wish for this child to settle in the United Kingdom. The family had always been supported by public funds. The best interests of the children were not a "trump card" as established in **EV v SSHD**

(Philippines) [2014] EWCA Civ 874. It was decided in **Patel and Others v SSHD [2013] UKSC 72** that Article 8 was not a "general dispensing power".

5. In response, Mr Yacoobali argued that there had been no such error of law and that the arguments of the Respondent amounted to no more than a repeat of the submissions made to the Judge at the First-tier Tribunal. This was a complex case involving the first Appellant who had been resident in the United Kingdom for ten years, and four minor children, three of whom had been born in the United Kingdom. One of the minor Appellants was severely autistic. The Judge had referred to the report relating to this Appellant and had been right to attach significant weight to it. It was true that the Judge had not referred to any detail of the public interest, but he had referred to it throughout the Decision and it could not be said that the Judge had ignored the public interest in the balancing exercise.

6. I find no error of law in the decision of the Judge which I do not set aside. The Judge had the task of balancing the public interest against the circumstances of all the Appellants when carrying out his proportionality assessment. It has been argued that in that exercise he failed to attach due weight to the public interest, but I do not find that to be the case. As Mr Yacoobali argued, the Judge referred to and took into account the public interest throughout the Decision. At paragraph 30, he referred to the fact that all the Appellants were a "burden on the social assistance system of the United Kingdom", and at paragraph 33 he also referred to the fact that it was clear that the first Appellant had arranged for the second Appellant to come to the United Kingdom in breach of the Immigration Rules. The Judge was aware of the immigration history of the first Appellant as described in paragraphs 3 to 5 inclusive of the Decision, and when discussing the best interests of the children the Judge set them against the public interest as stated at paragraphs 34 and 36 of the Decision. The Judge was entitled to find that the best interests of the children outweighed that public interest, particularly in view of the fifth Appellant's autism. The Judge was also right to conclude that the family should not be split up and that that consideration outweighed the public interest. For these reasons I find no error of law in the judgment of the Judge.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so and indeed find no reason to do so.

Signed Date 24th April 2018

Deputy Upper Tribunal Judge Renton