Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: IA/29990/2015**

IA/29987/2015

IA/29978/2015

IA/29989/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23rd November 2017	**On 4th January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellants

and

CSA (FIRST RESPONDENT/CLAIMANT)
MCCL (SECOND RESPONDENT/CLAIMANT)
JAJA (THIRD RESPONDENT/CLAIMANT)
JCSA (FOURTH RESPONDENT/CLAIMANT)
(ANONYMITY DIRECTION MADE)

Respondents/Claimants

Representation:

For the Appellant: Mr T Melvin, Home Office Presenting Officer
For the Respondents: Miss K Anifowoshe of Counsel instructed by Raj Law Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge O'Brien made following a hearing at Taylor House on 23rd November 2016.

Background

2. The claimants are all citizens of Mauritius. The first and second claimants are husband and wife and the third and fourth are their children.

3. The first claimant arrived in the UK in April 2004, accompanied by his family. He then applied for leave to remain as a student which was granted and subsequently extended until 2009. Thereafter the family overstayed. JAJA, who was born on 9th July 1999, arrived when he was 4 years old, and his brother JCSA, born on 20th July 2002, when he was nearly 2 years old. The couple also now have a 2 year old daughter.

4. JAJA suffers from spina bifida and neuropathic ulceration of both feet. He has complex medical needs and has been under treatment at Great Ormond Street for many years.

5. The judge set out the relevant law and reached the following findings:-

> "36. It is not argued that the Appellants satisfy Appendix FM or that the First and Second Appellant's (sic) satisfy paragraph 276ADE. Instead, it is argued that each of the Third and Fourth Appellants satisfy paragraph 276ADE(1)(iv). Each provided a signed witness statement but was not required to be called for cross-examination.
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> 37. It was their unchallenged evidence, therefore, that the Third and Fourth Appellants have been educated entirely in the United Kingdom, speak little Creole and cannot read or write in the language. They know nobody in Mauritius and remember little if anything of the country. I have no hesitation in finding that both boys are fully integrated into this country and that their best interests favour remaining here. Moreover, they each entered the United Kingdom on 4 April 2004 and had therefore lived in this country nearly 11 years at the date of the application. Even putting to one side J's medical condition, I would have considered it unreasonable to expect the boys now to leave the United Kingdom. However, J's medical situation makes it even more unreasonable.
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> 38. He suffers from spina bifida and has had a relatively recent spinal cord untethering. He remains under the care of tissue viability practitioners and under review by his consultant orthopaedic surgeon. I am not persuaded that J could not be treated in Mauritius or that he would necessarily be unfit to return there. However, I am persuaded that it would be unreasonable to

interrupt the care he has had from the present medical team since approximately 2009."

6. The judge allowed the appeal in respect of the first and second claimants on the basis that it would be manifestly contrary to the children's best interests for the family to be separated and there were therefore compelling reasons to consider their Article 8 rights outside the Rules. He allowed the appeal on human rights grounds.

The Grounds of Application

7. The Secretary of State sought permission to appeal on the grounds that the judge had materially erred in law in finding that the third and fourth claimants satisfied paragraph 276ADE(1)(iv). He made the finding without having regard to the fact that the family had been in the UK unlawfully since 2010. The consideration of the reasonableness test was inadequate and he had failed to properly balance the public interest. He also failed to have regard to the legal principles set out in MA Pakistan [2016] EWCA Civ 705 when the Court of Appeal observed that the principle that the sins of the father should not be visited upon the children was not intended to lessen the importance of immigration control.

8. Permission to appeal was initially refused by Judge Ford on 25th July 2017.

9. The Secretary of State renewed her grounds maintaining that the judge had materially erred in failing to consider the public interest in the consideration of the reasonableness test.

10. Permission was granted by Upper Tribunal Judge O'Connor on 27th September 2017. Judge O'Connor observed that there was no recognition of the ratio of the decision in MA in this decision, and whilst the proper application of paragraph 276ADE(1)(iv) might not have led to a different decision, it could not be said that the result would certainly have been the same.

Submissions

11. Mr Melvin relied upon his grounds and submitted that the judge did not consider the reasonableness test holistically. Mauritius was a fully functioning state and the situation of the family there had not been properly reviewed. There was no reason why the family could not access appropriate healthcare there.

12. Miss Anifowoshe defended the decision. The children have been in the UK for over three-quarters of their lives and are now 15 and 17. Their situation was properly considered by the judge who reached a decision open to him.

13. By way of reply Mr Melvin observed that there was no recognition of the economic detriment to the UK by this family remaining. He considered

that it may even have been that the family came to the UK in order to access care for JAJA. He maintained that the decision was flawed.

Findings and Conclusions

14. This decision would certainly have been less vulnerable to appeal if the judge had articulated in terms what the public interest was in the removal of the family. However in this case, the error is not material.

15. First, the judge set out the law correctly at paragraph 27, in particular Part 5A of the Nationality, Immigration and Asylum Act 2002 and Section 117B(1) which provides that the maintenance of effective immigration controls is in the public interest. He set out both the reasons for refusal and the Presenting Officer's submissions. There is no real basis for concluding that the judge did not properly bear in mind the significant public interest in removing those who overstay their visas and remain unlawfully, when reaching his decision.

16. Second, this is a case where the facts are not in dispute and are very unusual. The children in this case had been in the UK for some twelve years at the date of the hearing. The unchallenged evidence was that they speak little Creole having been educated entirely in the UK and remember little, if anything, of their country of nationality.

17. Most importantly, JAJA suffers from a difficult medical condition which has required extensive treatment at the leading children's hospital in the UK.

18. Mr Melvin's submission that treatment could be available for him in Mauritius is beside the point. The judge allowed the appeal on the basis that it would be unreasonable to interrupt the care which he has had from the medical team since 2009. Moreover his observation that the family may have come to the UK for medical treatment is simply not borne out by the facts. They came five years before they were referred to Great Ormond Street and until 2009 paid for JAJA's treatment privately.

19. Accordingly, whilst the judge's findings could have been no more detailed, the grounds do not disclose an error of law and amount to a disagreement with the decision.

Notice of Decision

20. The original judge did not err in law. The Secretary of State's 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 respondents/Claimants are granted anonymity. No report of these proceedings

shall directly or indirectly identify them or any member of their family. This direction applies both to the respondent/Claimants and to the appellant. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 1 January 2018

Deborah Taylor

Deputy Upper Tribunal Judge Taylor