Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/03702/2018
HU/03703/2018, HU/03704/2018
HU/03705/2018, HU/03706/2018

THE IMMIGRATION ACTS

Heard at Birmingham Justice Centre	**Decision & Reasons Promulgated**
On 29 April 2019	**On 9 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

ABDUL [G] (1)
AYSHA [H] (2)
[S I] (3)
[R I] (4)
[F I] (5)
(NO ANONYMITY ORDER)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Mian, Counsel instructed by Bhavsar Patel Solicitors
For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

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1. The appellants appeal (with permission granted by Upper Tribunal Judge Bruce) the decision and reasons statement of First-tier Tribunal Judge JWH Law, that was promulgated on 9 April 2018. Judge Law decided the decisions refusing further leave to the appellants was not unlawful under s.6 of the Human Rights Act 1998.

2. The appellants are all citizens of Sri Lanka. The first and second appellants are married and the other appellants are their children, all of whom are under 18 years of age. The eldest child was born in the UK in April 2010 and it is accepted she has lived in the UK for more than seven years. The question in this appeal is whether Judge Law adequately considered her circumstances in the UK and the impact on her life should she have to relocate to Sri Lanka.

3. Although this appeal includes the rights of children, Judge Law was not asked and did not make an anonymity direction. There has been no request for the Upper Tribunal to make an anonymity order and there is no obvious reason why one should be made.

4. Mr Mian argued that Judge Law failed to address adequately the reasonableness issue in section 117B(6) of the Nationality, Immigration and Asylum Act 2002 and this undermined his decision. In addition, or in the alternative, Mr Mian argued that Judge Law failed to make adequate findings relating to the private life of the third appellant (who has lived in the UK for more than seven years) and therefore his article 8 ECHR proportionality assessment was fundamentally flawed.

5. Ms Aboni acknowledged these issues, and conceded that the Secretary of State accepted the third appellant is a qualifying child and that if her appeal were to succeed then the other appellants would have to treated in line because it would be disproportionate to split the family group.

6. Mr Mian argues the following evidence was overlooked or not adequately considered by Judge Law. The witness statement of the first appellant records at paragraph 8 that he believes his three children are settled in the UK and would find it difficult to adjust to life in Sri Lanka. Specifically referring to his eldest daughter, the third appellant, he describes her having many friends since starting primary school and that if the family left the UK he feared there would be a detrimental impact on her development because the education offered in Sri Lanka is of stark comparison to that which is received in the UK.

7. A letter and reports from Linden Primary School describes the third appellant's attitude to learning and behaviour in school. Her positive attitude is recorded, as is her good progress. The reports identify her working with friends in school and working in teams.

8. Mr Mian submitted that the evidence shows the third appellant is sociable and at a turning point in the development of her personality. He said a

move to Sri Lanka would be a shook to her because of the major change in schooling she would have to experience. Mr Mian reminded me that Judge Law found at [26] that it is possible the children cannot write Sri Lankan (sic), which would affect the third appellant's integration into the Sri Lankan education system.

9. I pause to point out that there is no "Sri Lankan" language. There are several languages spoken widely in Sri Lanka, including Sinhalese, Tamil and English. No issue has been taken by Judge Law's reference to the children not being able to write Sri Lankan and I presume he is referring to the ability of the children to write in Sinhalese or Tamil. I add that the two youngest children, who are twins, are not of school age and therefore are unlikely to be able to write in any language.

10. Mr Mian also sought to rely on evidence that there was violence in the part of Sri Lanka to which the family group was likely to return and that was a further factor that should have been considered. He relied on two reports.

11. I did not need to hear from Ms Aboni because the arguments presented by Mr Mian are insufficient to establish there is an error of law in Judge Law's decision.

12. I start with the second issue. Judge Law dealt specifically with the risk of violence disturbing the children at [26(v)]. I reminded Mr Mian that in relation to these appeals, which are not protection appeals, the standard of proof is a balance of probabilities and not the lower standard. As a result, the reports, which describe generalised and sporadic violence, would not be sufficient to establish a risk to the children's lives and freedoms. In other words, the evidence was weak and speculative that the children would be affected by the violence described. I add that Judge Law as a specialist Tribunal judge would be familiar with the country guideline cases relating to Sri Lanka and that he was also familiar with the first appellant's previous protection claim, which failed on appeal, which is recorded at [2] and [46].

13. Turning to the first issue, having reviewed the evidence available to Judge Law I find there is no merit in Mr Mian's argument that he overlooked or failed to adequately consider that evidence. His conclusions at [26] and [42] are made by properly applying the relevant jurisprudence to the facts found.

14. The evidence of the first appellant was found to lack credibility (see [16]), which meant the assertions in his witness statement were insufficient to discharge the burden of proof. The other evidence relates solely to the behaviour of the third appellant at school. Case law indicates that the ECHR does not guarantee a particular standard of education, as noted by Judge Law at [22]. Although friends and teams are mentioned in the school documents, they do not identify any particular relationships and there is no evidence of any close relationship that would be severed by the

third appellant moving to Sri Lanka. The school documents are not evidence the third appellant is at a crucial stage in her development. The comments that she is developing well are merely evidence that she is developing as expected for a child of her age. No independent evidence has been provided regarding the impact relocation to Sri Lanka might have on the third appellant. In this context there was no need for Judge Law to refer to the assertions and school documents because they contained no relevant evidence.

15. I find the analysis undertaken by Judge Law at [26] to be adequate and that there is no error in his failure to mention the father's assertions or the school documents.

16. Judge Law found the evidence provided established that the best interests of all the children were to remain as part of the family group. That decision was open to him and I find no legal error in that decision because the evidence provided was insufficient to make out the claim now pursued.

17. Although not available to Judge Law, Judge Bruce referenced the Supreme Court's judgment in *KO (Nigeria) and others v SSHD* [2018] UKSC 53. Lord Carnwarth at [18] and [19] said:

> "18. On the other hand, as the IDI guidance acknowledges, it seems to me inevitably relevant in both contexts to consider where the parents, apart from the relevant provision, are expected to be, since it will normally be reasonable for the child to be with them. To that extent the record of the parents may become indirectly material, if it leads to their ceasing to have a right to remain here, and having to leave. It is only if, even on that hypothesis, it would not be reasonable for the child to leave that the provision may give the parents a right to remain. The point was well-expressed by Lord Boyd in *SA (Bangladesh) v Secretary of State for the Home Department* 2017 SLT 1245, [2017] ScotCS CSOH_117:
>
> > "22. In my opinion before one embarks on an assessment of whether it is reasonable to expect the child to leave the UK one has to address the question, 'Why would the child be expected to leave the United Kingdom?' In a case such as this there can only be one answer: 'because the parents have no right to remain in the UK'. To approach the question in any other way strips away the context in which the assessment of reasonableness is being made …"
>
> 19. He noted (para 21) that Lewison LJ had made a similar point in considering the "best interests" of children in the context of section 55 of the Borders, Citizenship and Immigration Act 2009 in *EV (Philippines) v Secretary of State for the Home Department* [2014] EWCA Civ 874, para 58:
>
> > "58. In my judgment, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does, that is the background against

> which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?"
>
> To the extent that Elias LJ may have suggested otherwise in *MA (Pakistan)* para 40, I would respectfully disagree. There is nothing in the section to suggest that "reasonableness" is to be considered otherwise than in the real world in which the children find themselves."

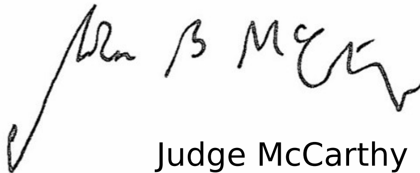
18. On the facts of these appeals, in relation to the third appellant, the evidence points to her best interests being best served by remaining as part of the family group. If her parents leave the UK, then it is reasonable to expect her to leave with them and her siblings, because the evidence relating to her own private life is not sufficient to make it disproportionate to expect her to leave the UK.

19. Because there is no legal error, the appeal to the Upper Tribunal fails.

Decision

There is no legal error in the decision and reasons of Judge JHW Law and I uphold his decision.

The appellant's appeal to the Upper Tribunal is dismissed.

Signed  Date 1 May 2019

Judge McCarthy
Deputy Judge of the Upper Tribunal