Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/13498/2018
HU/13499/2018
HU/13503/2018
HU/13504/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20 March 2019	**On 17 April 2019**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

DR
PR
SR
RR
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr J Richards, Counsel, instructed by Huneewoth Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008
Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. I have anonymised the Appellants in order to protect the identity of the child Appellant, SR.

2. The Appellants are citizens of Mauritius. DR's date of birth is 18 April 1976. He is married to PR. PR's date of birth is 16 January 1976. They have two children, RR and SR. Their respective dates of birth are 23 April 1999 and 17 October 2002. Thus, SR is a child. He is at the time of the hearing before me aged 16. The Appellants made an application on human rights grounds. This was refused by the Secretary of State on 29 March 2017. The Appellants appealed against that decision. Their appeal was dismissed by Judge of the First-tier Tribunal ("the FTT") Obhi in a decision that was promulgated on 4 January 2019, following a hearing at Taylor House on 17 December 2018. Permission was granted to the Appellants by Judge of the FTT C J Gumsley.

3. DR came here as a student in 2010. He was joined by the other Appellants that same year. They were granted entry as visitors. Their leave expired on 6 August 2010. That year they applied for permission to remain on human rights grounds and their applications were refused with no right of appeal. The applications were reconsidered following further submissions and again refused. They appealed against this decision. Their appeals were dismissed on 23 July 2015 by Judge of the FTT Egan ("the first judge"). An application for permission to both the FTT and the Upper Tribunal ("the UT") were refused. The Appellants became appeal rights exhausted on 29 December 2015. They made further submissions on 6 January 2016. These were considered and refused on 28 April 2016 by the Respondent under paragraph 353 of the Immigration Rules. They made a human rights application on 29 March 2017. This gave rise to the decision of 12 June 2018 which was the subject of the appeal before the FTT.

The decision of the FTT

4. The judge heard evidence from the adult Appellants. PR's evidence is set out at paragraphs 16 to 27 of the decision. PR adopted her witness statement as her evidence-in-chief. She told the judge that she did not return to Mauritius following the dismissal of her appeal in 2015 because she had left for a better life and had problems there as a result of her inter-caste marriage. She was integrated and did not wish to return. She gave evidence about how in 2010 she had managed to persuade the Entry Clearance Officer that she would return. She gave evidence that she sold the family house in Mauritius 2010 for over 1 million Mauritian rupees. They did not have bank accounts in Mauritius. She also said that she had a bank account in Mauritius, but she had no funds in it or access to it. She initially said that she did not have contact with anyone in Mauritius. She changed her account when asked about the evidence she gave in 2015. She said that the documents she relied on at that hearing were sent to her by the one and only friend in Mauritius called Mariana. She was questioned

about threats she claimed to have received from her family in Mauritius. She said her son had received a threat via a text message. She said that she does not have contact with her family there. Her evidence was that her husband's business collapsed in Mauritius and he had then decided to go abroad. She said that she was educated to A' level and she had worked in Mauritius for eight years. When she and her husband married in 1995 he was working in a factory. She confirmed that she had been working illegally in the UK. The family rents a house here which they share with others. They receive financial help from the church and a relative in the UK. Her sons attended school in Mauritius. They were taught in French. They speak French. They do not have health problems. She has not made enquiries about her eldest son attending university in Mauritius. When asked why her sons could not study there, she said that the system was not the same. The Respondent's case as put to the Appellant was that the education system is similar in Mauritius and her sons could do A levels and GCSEs there. In answer to this she stated that the schools are not computerised and the schools there are not the same.

5. DR gave evidence which is recorded at paragraphs 28 to 36 of the decision. He confirmed the sale of the property in Mauritius. He said that it had been sold for 1.4 million Mauritian rupees. He said that the money had been used by his wife and children to come to the UK. He said that he was not working here and they received support from the church and his cousin. In his witness statement he said that he had been working. He said he did not have a bank account here. When it was put to him that his wife's evidence was at odds with his on this issue, he accepted that he did have a bank account here. He said he did not know whether he had savings. His evidence was that the family does not have contact with anyone in Mauritius. He could not find employment in Mauritius. He has a basic education. He had an upholstery business for four years in Mauritius. He said it would be difficult for him to start again if returned. It would be difficult for him to find a job. He said the church would not be able to assist them to re-establish themselves in Mauritius.

6. The judge heard submissions from the representatives which she recorded at paragraphs 37 and 38. Both representatives made submissions in relation to the decision of the first judge in 2015. Both accepted that the first judge's findings were the starting point. The first judge did not accept that the family did not have ties to Mauritius. He found that there was nothing to prevent them from returning. The first judge found that it was in the children's best interests to return to Mauritius with their parents. Mr Metzer, who represented the Appellant before the FTT, made lengthy oral submissions accepting that the first judge's decision was the starting point. However, he submitted that at that time the children had not been in the UK for seven years and they were not qualifying children. The first judge accepted that the children had integrated into UK society, but he concluded there were no obstacles to reintegration as the parents could assist them in learning Creole and they were not at a crucial stage of their

education. Mr Metzer submitted that they were now at a crucial stage of their education. SR was about to sit his GCSEs and RR was due to commence university. The case was advanced on the basis that there were insurmountable obstacles to the family returning to Mauritius and that it was in the children's best interests to remain here in the UK.

7. The judge made findings which he set out at paragraphs 39 through to 50. He found that the decision of the first judge was his starting point. He considered the evidence of DR and PR that their respective families disapproved of their relationship and following their marriage they were victims of threats and harassment. However, the judge noted that they had not sought protection from the authorities in Mauritius and had not applied for protection. The judge referred to the decision of the first judge and the reference to PR having made a complaint to the police when in Mauritius and being told that it was a family dispute and they would not get involved. The first judge did not accept that the authorities were unwilling or unable to assist. The judge took into account the evidence of the adult Appellants about how they had had to move around, however noted that DR's evidence was that they had lived in the same house for seven years before coming to the UK and he found that PR had "tried to downplay that and said that it had been four-five years". The judge found that it was difficult to know which of the Appellants can be relied upon and he was not able to form a view that the Appellants were credible, reliable or honest in their dealings with the Home Office or the Tribunal.

8. In respect of PR the judge found as follows:-

> "[PR] was not forthcoming with information which she perceived may undermine her case and had to be pushed: the first Appellant [DR] made a statement, which he then immediately retracted when told by Ms Sreramaan that his wife had said something different."

The judge said that their evidence "has to be seen in the context of their behaviour". The judge found that their move from Mauritius was "a deliberate and conscious action to evade the immigration laws of the UK". The judge found they were aware they could not come to the UK through legal channels so therefore DR came illegally via Ireland having secured entry and then arranged for his wife and children to join him. The judge found that PR had signed a false declaration telling the Entry Clearance Officer that she and her children would return to Mauritius and that they were entering the UK for the purpose of a holiday. The first judge in 2015 taking their case at the highest found that there were no insurmountable obstacles to the children returning to live in Mauritius and that it was in their best interests for the children to return with their parents and that there were no exceptional circumstances.

9. The judge made findings at paragraph 40 in relation to the children as follows:-

> "40. It is now some three years since that decision. In the meantime [RR] has completed his A-Levels and is now a young adult. He was born in April 1999 and is now 19 years of age. He has a girlfriend, he has almost established independence. He is no longer a child. He has benefitted from being educated through the state school system and could now attend university either in his native Mauritius or as any young foreign adult who wishes to study in the UK by applying for permission to do so, once he is back in Mauritius through the Points Based System. The younger child was born in October 2002 and is now aged 16 years. I am told that he is about to embark on his GCSEs. The second appellant, his mother confirmed that she had studied to A-Level standard in Mauritius so it is possible for him to continue his studies in Mauritius too. They are taught in English or French, languages that these young people speak fluently. There is no need for them to speak Creole. In respect of the older son there will be no disruption as he is not currently studying, there is no impact on him of the move. In the case of the younger son, the move could be managed by his parents in the same way that they managed their move to the UK, there will be initial disruption but the first and second appellants have the wherewithal and the resources to achieve a transition back to Mauritius."

10. The judge found that there was no risk to the children from family in Mauritius. The judge stated as follows at paragraph 42:-

> "42. The third and fourth appellants have always lived with their parents. There is no suggestion that they should not, although the older son, [RR] could live independently if he chose. Their best interests were comprehensibly considered by the Tribunal in 2015 and I see no reason to depart from that decision. I have considered the letter written by [RR] on pages 6-7 of the court bundle, the letter from [SR] on page 8 and the handwritten letter of Courtney Anais Hicks. I have also considered the letters from friends from the Pentecostal Church, the letters from Leisure Plan and the school information relating to the children."

The judge went on to find that the evidence of DR an PR was not credible (see paragraph 43).

11. The judge considered Mr Metzer's submissions in relation to the child Appellants. He said that they were both qualifying children. He said the following:-

> "45. Paragraph 276ADE(iv) states that even in the case of a child who has been in the UK for 7 or more years, consideration needs to be given to whether it is reasonable to require that child to return. The interests of the child cannot be seen in isolation of the interests of the parent. The most recent and authoritative case on the issue of best interests in relation to children whose parents have a poor immigration history is that case of KO and others, a decision of the Supreme Court of the 24 October 2018. The court at paragraph 6 of the decision set out the question which was 'in

determining whether it is 'reasonable to expect' a child to leave the UK with a parent (under section 117B(6)), ... the tribunal is concerned only with the position of the child, not with the immigration history and conduct of the parents, or any wider public interest factors in favour of removal. By contrast the Secretary of State argues that both provisions require a balancing exercise, weighing any adverse impact on the child against the public interest in proceeding with removal or deportation of the parent'. The Supreme Court considered a number of cases, including that of NS, where the child had been in the UK for 10 years, the Supreme Court did not disturb a decision of the Upper Tribunal that where the parents behaviour had been appalling and it would be wrong to permit them to remain, the fact was that the parents were being deported and so the child had to go with them. The Court emphasised the need to consider the best interests of the child in the real world and not in isolation.

46. Hence in the present case the issue as in all other cases is one of reasonableness. Is it reasonable for the third and fourth appellants to leave the UK if their parents are required to do so. In my view it is reasonable for them to do so. The impact on them has been exaggerated. The fourth appellant may have a girlfriend, but there is nothing to stop them meeting up, or him applying to come to study in the UK legally; the chances of him being able to do that successfully are enhanced if he returns to make the application.

47. In assessing parents' case, I need to do apply the law. The first and second appellants have deliberately sought to evade the Immigration Law, but it is under those provisions that their appeal must be determined. They do not meet the requirements of paragraph 276ADE, as there are no insurmountable obstacles to them returning. I accept they do not want to, but that those not amount to insurmountable obstacles when considered on an objective basis. I do not accept their evidence in relation to the sale of their home and the proceeds of sale and what has happened to them. If what they say is true, then there is no reason why they cannot rent when they return. I also do not accept the evidence of the first and second appellants that they have no contact with anyone in Mauritius. They had a business there and worked for many years, it is inconceivable that they have no connections as they claim. In relation to the children it is reasonable for them to return to a country in which they have family and are lawful nationals of. The obstacles that they have encountered in the UK, such as [RR] not being able to pursue higher education, his parents not being able to work legally, are obstacles they will not have in their own country."

12. Having found that the Appellants could not meet the requirements of the Rules the judge went on to consider proportionality, taking into account Section 117B of the 2002 Act and reached the following conclusions:-

"49. It is significant that the private lives of these appellants have been established almost wholly during a period when they were

unlawfully in the UK. They have repeatedly ignored decisions of the respondent and the Tribunal. Section 117B(1) provides that it is in the public interest to maintain effective immigration controls. To allow these appeals would be to condone the behaviours of the first and second appellants in entering the UK illegally or through a misrepresentation of intention as the second appellant did, and to totally disregard the immigration controls which have been put in place to ensure that everyone who seeks to make their life in the UK does so on the basis of the same rules and that those who seek to evade them do not get an advantage over those that do not. There would have to be truly exceptional circumstances for these appellants to be given preferential treatment. I accept that the children are not to blame for the actions of their parents. However the decision in relation to them, particularly the fourth appellant (as the third appellant is an adult and for the purposes of considering his rights outside the rules, the relevant date is the date of the hearing) is based on his best interests and the impact on him of his return to Mauritius even if his parents' poor history is completely ignored.

50. I am satisfied that the first and second appellants can return to Mauritius and re-establish their private and family lives there. I am satisfied that the third and fourth appellants should return with their parents as it is not unreasonable to expect them to do so. In the case of the fourth respondent there is an advantage to him returning in that he can access her education which he cannot in the UK. In the case of the third appellant, he will be able to undertake his GCSEs in that country instead of the UK, the reasons given by his mother (they don't use computers in Mauritius and use big books) are not sufficient to make it unreasonable, particularly bearing in mind that her knowledge comes from her own experience of education some twenty years ago."

The grounds of appeal

13. The grounds of appeal are lengthy and repetitive. However, the thrust of them is that the judge erred in respect of SR when assessing his best interests and that the conclusions reached were irrational and contrary to the judgment in MA (Pakistan) [2016] EWCA Civ 705.

The Legal Framework

Best Interests of Children

14. By virtue of Section 55 of the Borders, Citizenship and Immigration Act 2009, in making decisions on deportation, the SSHD must have regard to the need to safeguard and promote the welfare of children who are in the UK.

15. The House of Lords in ZH (Tanzania) v Home Secretary [2011] 2 AC 166, held that in the application of Article 8(2), the children's best interests

should be treated as "a primary consideration", to give effect to Article 3.1 of the UN Convention on the Rights of the Child. Nationality and the rights of citizenship are of particular importance in assessing the best interests of any child. Thus, the decision maker must ask whether it is reasonable to expect the child to live in another country, and to be deprived of the opportunity to exercise the rights of a British citizen. However, even if it is found to be in the best interests of the child to remain in the UK, that factor can be outweighed by the strength of "countervailing considerations" in favour of removal (per Lady Hale at [29]–[33]).

16. In Zoumbas v Secretary of State for the Home Department [2013] UKSC 74 Lord Hodge, delivering the judgment of the court, summarised the principles to be applied, at [10]:

> "(1) The best interests of a child are an integral part of the proportionality assessment under Article 8 ECHR;
>
> (2) in making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;
>
> (3) although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;
>
> (4) while different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play;
>
> (5) it is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations;
>
> (6) to that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an Article 8 assessment; and
>
> (7) a child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent."

17. The headnote of the case of Azimi-Moayed and Others (Decisions affecting children; onward appeals) [2013] UKUT 197 reads as follows:

> "(1) The case law of the Upper Tribunal has identified the following principles to assist in the determination of appeals where children are affected by the appealed decisions:
>
> i) As a starting point it is in the best interests of children to be with both their parents and if both parents are being removed from the United Kingdom then the starting point suggests that so should dependent children who form part of their household unless there are reasons to the contrary.

ii) It is generally in the interests of children to have both stability and continuity of social and educational provision and the benefit of growing up in the cultural norms of the society to which they belong.

iii) Lengthy residence in a country other than the state of origin can lead to development of social cultural and educational ties that it would be inappropriate to disrupt, in the absence of compelling reason to the contrary. What amounts to lengthy residence is not clear cut but past and present policies have identified seven years as a relevant period.

iv) Apart from the terms of published policies and rules, the Tribunal notes that seven years from the age four is likely to be more significant to a child than the first seven years of life. Very young children are focused on their parents rather than their peers and are adaptable.

v) Short periods of residence, particularly ones without leave or the reasonable expectation of leave to enter or remain, while claims are promptly considered, are unlikely to give rise to private life deserving of respect in the absence of exceptional factors. In any event, protection of the economic well-being of society amply justifies removal in such cases."

Paragraph 276ADE(1)

18. The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

"(iv) is under the age of 18 years and has lived continuously in the UK for at least seven years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or

(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than twenty years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."

Article 8 of the ECHR: Public Interest Considerations

19. "117A **Application of this Part**

(1) This Part applies where a court or Tribunal is required to determine whether a decision made under the Immigration Acts –

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under Section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or Tribunal must (in particular) have regard –

(a) in all cases, to the considerations listed in Section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in Section 117C.

(3) In subSection (2), 'the public interest question' means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2)."

"117B **Article 8: public interest considerations applicable in all cases**

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic wellbeing of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic wellbeing of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to –

(a) a private life, or

(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom."

20. The Supreme Court in KO [2018] UKSC 53 engaged with 276ADE(1)(iv) and Section 117B(6) of the 2002 Rules and the court said as follows:

> "16. It is natural to begin with the first in time, that is paragraph 276ADE(1)(iv). This paragraph is directed solely to the position of the child. Unlike its predecessor DP5/96 it contains no requirement to consider the criminality or misconduct of a parent as a balancing factor. It is impossible in my view to read it as importing such a requirement by implication.
>
> 17. As has been seen, section 117B(6) incorporated the substance of the rule without material change, but this time in the context of the right of the parent to remain. I would infer that it was intended to have the same effect. The question again is what is 'reasonable' for the child. As Elias LJ said in MA (Pakistan) Upper Tribunal (Immigration and Asylum Chamber)[2016] EWCA Civ 705, [2016] 1 WLR 5093, para 36, there is nothing in the subsection to import a reference to the conduct of the parent. Section 117B sets out a number of factors relating to those seeking leave to enter or remain, but criminality is not one of them. Subsection 117B(6) is on its face free-standing, the only qualification being that the person relying on it is not liable to deportation. The list of relevant factors set out in the IDI guidance (para 10 above) seems to me wholly appropriate and sound in law, in the context of section 117B(6) as of paragraph 276ADE(1)(iv).
>
> 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 Department2017 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."

Submissions

21. I granted the Appellants an adjournment to enable Counsel Mr Jonathan Metzer to attend the hearing at 2pm on the basis that he was engaged with another hearing at Hatton Cross. However, he was unable to attend the Tribunal for 2pm and in his place was Mr J Richards, Counsel instructed by Huneewoth Solicitors, attended to represent the Appellants. A few minutes before the hearing I received an eighteen page "skeleton" argument prepared by Mr Metzer dated 14March 2019. Mr Richards relied on this document.

22. Ms Everett submitted that read in isolation, the decision with reference to paragraph 42, may be problematic but she submitted that the judge in his overall assessment took into account material factors such as SR now being a qualifying child and that he was at a critical stage of his education. She drew my attention to the absence of challenge to the findings that SR could resume his studies in Mauritius.

Error of law

23. The grounds concern the way in which the judge engaged with SR's best interests. The judge's assessment of his best interests is in my view flawed. There was a significant change in circumstances since the decision of the first judge in 2015. SR was at a critical stage in his education. He was, at the date of the decision, over halfway through a GCSE course. He is due to sit exams in May/June 2019. He had become a qualifying child which is, as the statutory regime acknowledges, of significance. He had been here since the age of 7. The judge at paragraph 42 concluded that

there was no reason to depart from the decision of the judge in 2015. This is not a sustainable decision. In my view, the judge did not make a careful examination of all relevant factors in relation to SR. It is my view that had he done so the only rational conclusion on the evidence before the judge is that there had been a material change since 2015. It was necessary for him to decide SR's best interests on the evidence that was before him.

24. For this reason the decision of the judge is materially flawed. I set aside the decision to dismiss the appeals. There is no challenge to the primary findings of fact. It is only the assessment of the child's best interests and therefore the assessment of proportionality which is affected by the error.

Conclusions

25. I heard submissions from the parties. In respect of the remaking of the decision Ms Everett confirmed that she relied on the submissions that were made by the Presenting Officer at the hearing before the FTT. Mr Richards addressed me briefly with reference to the skeleton argument.

26. I must now consider SR's best interests. In the light of his age and the stage in his education, I conclude that his best interests are overwhelmingly to remain here with his family to complete exams. From KO we know that reasonableness must be assessed without reference to the conduct of SR's parents, but that it also must be made on the facts as they are in the real world. In this case the Appellant's parents (and RR) do not have a right to remain here. The question is whether it is reasonable to expect SR to follow his parents who do not have a right to remain here. I conclude that it would not be reasonable. It is in SR's best interests to remain here with his family to enable him to complete his GCSE course. It would be unreasonable to expect him to leave at this stage in his education. I would go as far as to say that to uproot him now, a matter of weeks before his exams, would be cruel; notwithstanding the "real world" facts in this case. Whilst there is a natural expectation that SR would go with his parents to Mauritius as they have no right to remain here, he is at a critical stage in his education. He is a qualifying child who has a significant private life here by virtue of the length of time that he has been here and his age when he came here. SR may be able to resume studying in Mauritius but it is far from clear that he would be able to complete the same GCSE course which he has started here and is soon to complete.

27. For the above reasons I conclude that it would be unreasonable to expect SR to follow his parents to Mauritius. SR meets the requirements of paragraph 276ADE(iv) of the Rules. Thus, his appeal is allowed under Article 8. His parents' appeals are similarly allowed under Article 8 with reference to S117B(6).

28. RR was born on 23 April 1999.He is now 19. The application was submitted on 29 March 2017, one month before his 18th birthday. His case was advanced before the FTT on the grounds that removal is unreasonable in

the context of para 276ADE(1)(iv). The grounds of appeal before me relate to SR. There is no independent challenge to the decision in respect of RR. However, I accept that the outcome of the appeal of his family members is a material consideration when assessing RR's rights under Article 8. In contrast to his brother, [RR] has completed compulsory education. The determinative issue in SR's appeal was the stage in his education. This was the thread running through the grounds of appeal. RR's intention is now to study at university. It is significant that he has been here for in excess of 7 years prior to his 18th birthday. He has been in the UK since he was aged 10. He has a significant private life here by virtue of the length of time he has been here. There was no evidence before the FTT or me that would establish dependency in the *Kugathas* sense (Kugathas v SSHD [2003] EWCA Civ 31). However, I accept that there would be an interference with his rights under Article 8. However, I conclude that it is reasonable to expect him to return to Mauritius. There would be nothing to prevent RR making an application from Mauritius to return to the UK and study at university. I accept that it will be difficult for him to return on his own to Mauritius, but I do not find that it is unreasonable to expect him to do so. It is open to the family to join him on the conclusion of SR's GCSE course in May/June 2019. His parents have not been straightforward about their ties to Mauritius. It can be reasonably inferred that there will be some support available to him pending their return or until he can return independently to study here, should that be his wish.

29. I allow the appeals of DR, PR and SR.

30. I dismiss the appeal of RR.

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 Joanna McWilliam Date 15 April 2019

Upper Tribunal Judge McWilliam