Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/00188/2015**
IA/00193/2015
IA/00198/2015

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**
On 06 January 2016 **On 16 February 2016**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

R N
(AND TWO CHILD DEPENDENTS)
T S A
E O T A A
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr L. Tarlow, Home Office Presenting Officer
For the Respondent: Mr A. Alexander, Counsel instructed by DF Solicitors

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the

original appellant has two young children. For this reason I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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.

DECISION AND REASONS

1. For the sake of continuity I will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.

2. The appellant appealed against the respondent's decision to refuse leave to remain on human rights grounds. First-tier Tribunal Judge Aujla ("the judge") allowed the appeal in a decision dated 15 July 2015.

3. It appears that there was no factual dispute between the parties as to the appellant's immigration history and personal circumstances. The judge recorded that the appellant's representative conceded that she did not meet the strict requirements of the immigration rules [31]. As such the judge went on to consider whether removal would nevertheless engage the operation of Article 8 outside the immigration rules. His self-direction on the law referred to the relevant principles including the tests set out in *R v SSHD ex parte Razgar* [2004] 3 WLR 58 and *Huang v SSHD* [2007] UKHL 11 [35]. The judge was satisfied that removal would interfere with the appellant's private life given her length of residence in the UK [39]. In assessing the proportionality of removal he took into account the public interest factors contained in section 117B of the Nationality, Immigration and Asylum Act 2002 ("NIAA 2002"). He made clear that he was required to give little weight to a private life established when she had no lawful leave to remain and concluded that the public interest considerations required removal from the UK [42].

4. The judge went on to weigh the public interest factors against those relating to the appellant's personal circumstances in order to assess whether there were any exceptional or compelling circumstances that would nevertheless render removal disproportionate [43-48]. He took into account the fact that the appellant and her husband entered the UK when they were children and noted that no steps were taken to remove them before they began a family despite the opportunity to do so [43]. The judge also noted that, in the absence of evidence to the contrary, there was no evidence to show that the appellant or her husband would be admissible into each other's respective country of origin (Uganda and Nigeria) [44]. The judge took into account the fact that the appellant and her husband had both lived in the UK during an important developmental period. Her parents and siblings were settled in the UK and formed an important part of her private life. The judge took into account the fact that

there was no evidence of countervailing factors such as criminal convictions. He also noted that they both spoke English and were "fully integrated into society" in the UK. He observed that there was no evidence to suggest that they had claimed public funds or become a burden on tax payers [45].

5. The judge went on to consider the best interests of the children. He took into account the fact that they were not British nationals. He considered their age, educational circumstances and the fact that they could not "be blamed for the ills of their parents". The judge concluded that it was in the best interests of the children to remain in the UK. Although the judge did not purport to allow the appeal with reference to the immigration rules he went on to consider elements of the private life requirements contained in paragraph 276ADE. Having considered the appellant's length of residence, the looseness of her ties to her country of origin and her lack of family connections there he concluded that there were likely to be "very significant obstacles" to her reintegration. This seemed to form part of his assessment of the overall proportionality of removal [47]. The judge concluded that the overall circumstances were such that they could properly be described as 'exceptional' and that removal would be disproportionate [48].

6. The respondent seeks to appeal the decision on the following grounds:

   (i) The First-tier Tribunal erred in finding that there were no countervailing factors when the appellant had remained without lawful leave. The lack of a criminal record did not add anything to the strength of the appellant's private life in the UK.

   (ii) The First-tier Tribunal failed to give adequate reasons for concluding that the appellant was not a burden on the taxpayer.

   (iii) The judge erred in apparently seeking to reverse the burden of proof when he stated that he could not assume that the appellant or her husband would be granted a visa to live in the other's country.

   (iv) The First-tier Tribunal failed to give adequate consideration to the best interests of the child with reference to the relevant principles outlined in *EV (Philippines) v SSHD* [2014] EWCA Civ 874.

Decision and reasons

7. After having considered the grounds of appeal and oral arguments I am satisfied that the First-tier Tribunal decision did not involve the making of an error on a point of law.

8. The grounds of appeal concentrate on fairly minor points, which in my assessment would not have made any material difference to the overall

outcome of the appeal. The judge quite clearly took into account all the relevant factual circumstances, gave due weight to the public interest considerations and weighed them against the personal circumstances of the family.

9. The judge did not appear to give any particular weight to the fact that the appellant did not have a criminal record but merely noted that there was no such record. This could only be a factor that would add weight to the public interest. Throughout the decision it is quite clear that the judge bore in mind the appellant's unlawful status in the UK and gave it due weight with reference to the relevant public interest considerations outlined in section 117B. While the judge noted that there was no evidence to show whether the appellant was a burden on the taxpayer there is no evidence to suggest that he gave any particular weight to the matter. The judge appeared to treat it as a neutral factor whereby the absence of evidence simply didn't add anything to the public interest considerations.

10. It was open to the judge to have some regard to the fact that there was no evidence to suggest that the appellant or her husband would be admitted to the other's country of origin. I do not consider that this amounts to a reversal of the burden of proof. Even if this was considered to be an erroneous approach I find that it clearly didn't form a central part of the judge's reasoning. The main focus of the judge's findings regarding the compelling circumstances of this case was the appellant's young age on arrival, length of residence and strength of ties to the UK as well as the best interests of her children.

11. It was not necessary for the judge to make specific reference to *EV (Philippines) v SSHD* [2014] EWCA Civ 874 if, as a matter of fact, he took into account the relevant factors. While his findings relating to the best interests of the children are brief he considered their age, nationality, length of residence and stage of education, which is consistent with the guidance outlined by the Court of Appeal in *EV (Philippines)*.

12. If the decision is read as a whole it becomes clear that the judge took into account all of the relevant factors and weighed them carefully with reference to the correct legal framework. His findings were open to him on the evidence and could not be described as irrational. Another judge might have come to a different decision on the same facts but I conclude that the decision does not disclose errors of law that would have made any material difference to the overall outcome of the appeal.

DECISION

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

The First-tier Tribunal decision shall stand

Signed Date 11 February 2016

Upper Tribunal Judge Canavan