



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/06298/2016**

**Appeal Numbers:**

**HU/06302/2016**

**HU/06309/2016**

**HU/06312/2016**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**Promulgated**

**On 3 November 2017**

**On 4 December 2017**

**Before**

**UPPER TRIBUNAL JUDGE O'CONNOR**

**Between**

**B M P**

**H B P**

**Y P**

**D P**

**(ANONYMITY DIRECTION MADE)**

**Appellants**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellants: Mr D Bazini, instructed by E2W UK Ltd

For the Respondent: Ms J Isherwood, 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 herein are granted anonymity. No report of these proceedings shall directly or indirectly

identify the appellants. Failure to comply with this direction could lead to contempt of court proceedings.

## **DECISION AND REASONS**

### **Introduction**

1. The first two appellants are husband and wife, born respectively in 1975 and 1983. The third and fourth appellants are their children – born in the United Kingdom in March 2008 and November 2011. The appellants are all citizens of India, the adult appellants having come to the UK as visitors on 24 June 2007 and thereafter having remained here unlawfully.
2. On 13 May 2013, the appellants each applied for leave to remain on Article 8 grounds, but such applications were refused on 20 June of the same year. On 5 January 2016 the appellants' legal advisers wrote a 'pre-action protocol letter' threatening judicial review proceedings and requesting the Secretary of State to withdraw her earlier decisions, reconsider the appellants applications for leave and, if refused, to provide the appellants with a right of appeal. The Secretary of State treated this letter as a human rights application and duly considered it. These applications were refused in a composite decision of 18 February 2016. This decision attracted a right of appeal to the First-tier Tribunal, pursuant to Section 82 of the Nationality, Immigration and Asylum Act 2002.
3. The appeal was duly heard by First-tier Tribunal Judge R Sullivan on 6 February 2017 and dismissed in a decision sent to the parties on 28 February 2017. Permission to appeal to the Upper Tribunal was subsequently granted, on 8 September 2017, by First-tier Tribunal Judge J M Holmes - thus the matter comes before me.

### **Decision and Discussion**

4. After reflecting on Mr Bazini's primary submission to the effect that the First-tier Tribunal had erred by failing to give consideration to whether it would be reasonable expect the third appellant to leave the United Kingdom, as required by section 117B(6) of the Nationality, Immigration and Asylum Act 2002, Miss Isherwood accepted that the Tribunal's decision disclosed such an error and that this error was so fundamental that the decision ought to be set aside.
5. Given this concession, I need do no more than summarise my reasons why I conclude it was appropriately made.
6. The third appellant, born in the UK and having lived here continuously since birth, was aged 8 years and 11 months as of the date of the hearing before the First-tier Tribunal. Section 117B(6) of the 2002 Act reads as follows:

“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.”

7. It is not in dispute that the adult appellants have a genuine and subsisting parental relationship with the third appellant. The First-tier Tribunal also accepted that the third appellant was a qualifying child, as defined in section 117D of the 2002 Act. Consequently, the issue that required determination by the First-tier Tribunal was whether it would be reasonable to expect the third appellant to leave the United Kingdom (as required by s117B(6)).
8. In MA (Pakistan) and Others [2016] EWCA Civ 705 the Court of Appeal gave consideration to the application of section 117B(6), ultimately following the approach taken by the Court in its earlier decision of MM (Uganda) v SSHD [2016] EWCA Civ 450, to the effect that wider public interest considerations must be taken into account when applying the reasonableness criterion.
9. The First-tier Tribunal failed to direct itself to either the terms of section 117B(6) or to the decision in MA (Pakistan). Indeed, nowhere in its decision did the First-tier Tribunal address the issue of the reasonableness of requiring the third appellant to leave the United Kingdom. Whilst there is reference in the First-tier Tribunal’s decision to the third appellant’s length of residence in the UK weighing heavily in favour of him being permitted to remain here, I concur with the parties that this is not sufficient to demonstrate that it undertook the specific task required of it by section 117B or, that if it did it undertake such task, it did so lawfully. Accordingly, I set aside the First-tier Tribunal’s decision.
10. Both parties submitted that this appeal should be remitted to the First-tier Tribunal. On the facts of this case I agree that this is an appropriate course. The factual matrix considered by the First-tier Tribunal is of now some vintage, given the nine months that has elapsed since its decision. The appellants wish to put in evidence relating to events that have occurred after the hearing before the First-tier Tribunal.
11. I make two further observations, which may be relevant to the listing date given by the First-tier Tribunal. First, the Secretary of State wishes to consider applications for British citizenship made by the third and fourth appellants. She hopes to do this prior to the appeal proceeding. Second, the Supreme Court is to consider the lawfulness of the decisions in MA (Pakistan) and MM (Uganda) in, or around April 2018.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside. The appeal is remitted to the First-tier Tribunal to consider afresh.

Signed:

A handwritten signature in black ink, appearing to read 'U.T. Judge O'Connor', written over a faint horizontal line.

Upper Tribunal Judge O'Connor