**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/07028/2016
HU/07033/2016
HU/07036/2016

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 02 July 2018** | **On 31 July 2018** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**NOELLA [M]**
**[R A]**
**[W A]**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**
For the Appellant: Mr D Eteko, Iras and Co
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The grounds of appeal relied upon at the First-tier related to family and private life and anonymity was not ordered and I see no reason to make an order now. The Appellant appeals with permission granted in the Upper Tribunal 03 May 2018, a decision of the First-tier Tribunal (Judge Cameron), promulgated on 7 August 2017, in which the judge dismissed

the Appellant's appeal finding the removal decision to the DRC does not place the UK in breach of international obligations under article 8 ECHR.

2. The appellant was granted permission to challenge the judge's assessment of the reasonableness of requiring the appellant's qualifying child to remove to the DRC.

3. By way of background the principal appellant has 35-year-old DRC woman born in 1980 who came to the United Kingdom with leave of the work permit holder in February 2007. Her leave expired in 2010 and she has remained here without permission ever since. The father of the children is also a DRC citizen, in the United Kingdom without leave, his application for regularisation under the legacy programme having been refused in 2012. The couple have 2 children both born in the UK, the eldest in 2009 and another in 2011. At the time of application and respondent's refusal neither were a "qualifying child" in the context of section 117 B of the Nationality, Immigration and Asylum Act 2002, however by the time of hearing on 7th of August 2017 the eldest child had achieved 7 years residence.

4. The grounds complain since that the judge has taken immigration control as his primary consideration rather than the best interests of the child. Following the case of *MA Pakistan v SSHD* [2016] EWCA alive LJ held that the factor 7 years residence must be given "significant weight" and there would need to be strong reasons for leave not be granted in such circumstances…". Before me Mr Eteko argued that immigration control, here represented by the adverse immigration history of the parents, is not a strong reason.

5. The grounds fail to recognise that the reasonableness of removal of a qualifying child has been decided to include public interest points arising from the parents' adverse immigration history. There is no "rule" that an adverse parental immigration history cannot amount to strong reasons for leave not to be granted to a qualifying child. The position is fact sensitive in every case.

6. I rejected Mr Eteko's submission that at paragraph 94 the judge has adopted the wrong test in the context of proportionality by referencing the absence of substantial difficulty, exceptional circumstances or unjustifiable harshness on removal to the DRC. The judge is not setting out the test or yardstick but referring to the effect of removal. The decision must be read in the round and [94] follows on correct self-direction and a detailed consideration of all the factors raised.

7. The judge correctly identifies the relevant test at [30] referencing the case of *Hesham Ali* [2016] UKSC 60 and *Agyarko* [2017] UKSC 11, to the point that the balancing assessment of proportionality must be struck in the context of the provisions concerning qualifying children at section 117B (6) including public interest matters, and correctly self directs at [89] that the

weight to be given to the public interest can be reduced where children are involved.

8. The judge accepts that there are problems in Kasai, finding that they fall short of international protection thresholds or constituting significant obstacles to reintegration to the DRC, because they are not issues that generally affect ordinary civilians. The judge finds that the family could return there. Alternatively, the judge finds that the family could return to the capital of the DRC, Kinshasa, where the mother was born and where she was immediately prior to travelling to the United Kingdom. The judge assesses the best interests of the children to be with their mother wherever she goes. The judge assesses the position in the United Kingdom accepting that the evidence is that the 8-year-old child is settled and doing well in school here and enjoys relationships outside of the family in particular in relation to his football. The judge factors in the length of residence of the qualifying child and his birth here, as well as the ability to adjust at his age with the support of his parents, his DRC nationality and exposure to the language, whilst recognising that integration may not be immediate or initially comfortable taking account that he does not read or write in his mother tongue and that living in the DRC will result in his quality of life being reduced to that that could be expected in the United Kingdom. Nonetheless the judge finds it reasonable to expect him to do so bringing forward the findings concerning the parents' ability to re-integrate in the DRC and the strong public interest in the removal of the family arising from the adverse immigration history.

9. The judge conducted a nuanced and complete balancing exercise taking into account all of the factors raised by the appellants. The reasons more than adequately explain to the appellants that the strong reasons making removal of the qualifying child reasonable is the adverse parental immigration history. That was a position which was open to the judge on the evidence and is not perverse.

**Decision**

10. The decision of the First-tier Tribunal dismissing the appeal reveals no error of law and stands.

11. Signed

Date 23 July 2018

Deputy Upper Tribunal Judge Davidge