



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/08349/2016  
HU/08354/2016  
HU/08357/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 21<sup>st</sup> May 2018

Decision & Reasons Promulgated  
On 19<sup>th</sup> June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

KMP (FIRST APPELLANT)  
NKP (SECOND APPELLANT)  
BKP (THIRD APPELLANT)  
(ANONYMITY DIRECTIONS MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Ms N Bustani, Counsel, instructed by Connaughts  
For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellants are a family of Indian citizens, comprising KMP born on 2<sup>nd</sup> January 1980, his partner NKP born on 30<sup>th</sup> August 1978, and their son BKP born on 29<sup>th</sup> March

2008 in the UK. KMP and NKP arrived in the UK on 5<sup>th</sup> April 2006 when they were given leave to enter for a period of six months as visitors. They did not embark, and eventually on 13<sup>th</sup> January 2016 the family applied for leave to remain on Article 8, ECHR grounds. Those applications were refused for the reasons given in Reasons for Decision documents dated 1<sup>st</sup> March 2016. All the Appellants appealed, and their appeals were heard by Judge of the First-tier Tribunal Moan (the Judge) sitting at Birmingham on 14<sup>th</sup> June 2017. She decided to dismiss the appeals for the reasons given in her Decision dated 18<sup>th</sup> June 2017. The Appellants sought leave to appeal that decision and on 2<sup>nd</sup> January 2018 such permission was granted.

### **Error of Law**

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge dismissed the appeals under the provisions of paragraph 276ADE(iv) of HC 395 having considered the factors set out in Section 117B of the Nationality, Immigration and Asylum Act 2002 and in particular those mentioned at Section 117B(6). The Judge took into account the best interests of the child Appellant as a primary consideration but concluded that it was not unreasonable for BKP to be expected to leave the UK with his parents.
4. At the hearing, Ms Bustani argued that the Judge had erred in law in coming to this conclusion. She referred to the grounds of application and explained that the appeals of all the Appellants depended on the success or otherwise of the appeal of the child Appellant. The Judge had erred in law in dismissing that appeal because, amongst other things, she had failed to take into account the policy of the Respondent set out in her published guidance of August 2015 in the form of the IDI entitled “family life (as a partner or parent) and private life: ten year routes”. The child Appellant was born on 24<sup>th</sup> March 2008 and whereas those instructions were not in force when the applications of the Appellants were considered, they were in force at the time of the hearing before the Judge at which time the child Appellant was 9 years and 2 months of age. The policy was that “strong reasons” for refusing leave to remain were necessary once the seven years’ residence requirement was satisfied.
5. In response, Mr Tufan argued that there was no such error of law. As regards the main argument of Ms Bustani, Mr Tufan argued that the test was whether the removal of the child Appellant was reasonable. The Judge had made such an assessment applying the factors set out in Section 117B of the 2002 Act, and was correct to find that the best interests of the child Appellant were not determinative. It had been decided in **AM (Pakistan) and Others v SSHD [2017] EWCA Civ 180** that a blatant disregard for immigration law of parents was sufficient in itself to decide the reasonableness question.
6. I find a material error of law in the decision of the Judge which I therefore set aside. The Judge carried out a thorough and careful consideration of whether it was reasonable for the child Appellant to be removed from the UK. She identified the

factors against removal and found that it was in the best interests of the child Appellant not to be removed. She then balanced those factors against the public interest which she found to carry the most weight. She did take account of the length of time which the child Appellant had resided in the UK, and at paragraph 33 of the Decision took that as her starting point. She wrote that the child Appellant's length of residence in the UK was a factor which carried considerable weight. However, the starting point of the Judge should have been the Respondent's policy referred to by Ms Bustani which in effect states that a balancing exercise between the circumstances of the child Appellant and the public interest is not the right approach. The correct approach is to consider whether there were any strong reasons why the child Appellant should not be granted leave to remain. The Judge's failure to use this approach is in my view an error of law requiring the Judge's decision to be set aside. The Judge set out at paragraphs 34 to 47 inclusive of the Decision her reasons for finding that the public interest carried most weight. But at no time in this analysis did the Judge refer to the Respondent's policy and she did not describe any of those reasons as being strong reasons. In particular, the Judge did not state that she found the immigration history of BKP's parents to be a strong reason. The policy of the Respondent is not law, but it is a factor to be considered and in not considering it the Judge erred in law.

7. For these reasons I find a material error of law in the decision of the Judge which I therefore set aside. As I reserved my decision at the hearing before me, I did not proceed to remake the decision in the appeal. That decision will be remade by the First-tier Tribunal in accordance with paragraph 7.2(b) of the Practice Statements. As this is an Article 8, ECHR case further judicial fact-finding will be necessary to cover the period between the hearing before the Judge and the hearing to eventually dispose of this appeal.

### **Notice of Decision**

8. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

The decision in the appeal will be remade in the First-tier Tribunal.

### **Anonymity**

9. The First-tier Tribunal made an order for anonymity which I continue for the reasons given by the First-tier Tribunal.

### **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

Dated 12 June 2018

Deputy Upper Tribunal Judge Renton