Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: IA/23202/2015**

I

A/23199/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 June 2017	**On 19 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

JOSE UBIRAJARA SILVERIO (FIRST APPELLANT)
MARIA MARTINS NERY SILVERIO (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr E Wilford of Counsel instructed by M Reale Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of Maria and Jose Silverio. The Appellants are nationals of Brazil. The first Appellant, Mr Silverio, arrived in the United Kingdom on 2 February 2005 with six months' entry clearance as a visitor. His wife and their son arrived in the United Kingdom on 24 February 2006, also with six months' entry clearance as visitors. The family then overstayed

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and on 31 July 2014 the Appellants applied for leave to remain, a separate application being made by their son. The Appellants' application for leave was refused on 30 September 2014, however the application in relation to their son was granted with reference to paragraph 276ADE(1)(iv) on the basis that he was aged between 18 and 25 and had spent more than half his life in the United Kingdom and he was granted 30 months' leave to remain.

2. The Appellants' appeal against the Secretary of State's decision came before Judge of the First-tier Tribunal Swinnerton for hearing on 15 September 2016. In a decision promulgated on 3 October 2016 the judge dismissed the appeal. An application for permission to appeal was made in time on 14 October 2016. The grounds in support of the application asserted that the judge erred materially in law in that despite accepting at [24] that the Appellants and their son lived together as a family unit and that they enjoy family life together [25], the judge failed to engage with the central argument in the case and that is the manner in which the Article 8 rights of the Appellants' son fell to be considered in light of the jurisprudence, in particular that of the case of the judgment of Sir Stanley Burnton in Singh [2015] EWCA Civ 630.

3. Permission to appeal was granted to the Upper Tribunal by First-tier Tribunal Judge Saffer in a decision dated 26 April 2017 on the basis that:

"*It is arguable that inadequate consideration was given to the article 8 rights of the Appellants' adult son who resides with them and has leave to remain.*"

Hearing

4. At the hearing before me, Mr Wilford appeared on behalf of the Appellants and sought to rely on the grounds of appeal. He also responded to the Rule 24 response that had been submitted by the Secretary of State. His position essentially is that the judge had erred in separating the Appellants' son's family life from his private life. He also sought to rely on the decision of the European Court of Human Rights in AA v The United Kingdom and the fact that even if "*you have attained majority, a family life with your parents is found to exist, this is a very significant element of your private life and a holistic approach should be taken*".

5. On behalf of the Secretary of State, Mr Tufan relied on the Rule 24 response which submitted that the grounds failed to appreciate that the Appellants' son had finished secondary school and was embarking on tertiary education, that the Appellants' son was an adult, but the case does not appear to have been put on the basis that family life existed in Kugathas terms. The Rule 24 response submitted that the Appellants' son's position would in effect be no different to that of a foreign student coming to study in London and he could continue his tertiary education absent the Appellants, and this was a finding open to the judge on the evidence at [28].

6. Mr Tufan in addition to those points took issue with the fact that at [24] of the judge's decision there was no consideration of whether there were compelling circumstances to justify consideration of Article 8 outside the Immigration Rules. He also submitted and accepted that the statutory considerations under Section 117B of the Nationality, Immigration and Asylum Act 2002 were neither referred to nor spelt out by the judge in his decision, although at [25] by implication the judge referred to the precariousness of the stay by the Appellants. Ultimately, however, he agreed that these were material errors of law and that the decision of the judge could not stand.

7. In light of Mr Tufan's helpful concession, I agree that there are material errors of law in the decision for both the reason set out in the grounds of appeal, in respect of which permission to appeal was granted and the reasons referred to by Mr Tufan at [6] above.

Notice of Decision

8. I remit the appeal for a hearing *de novo* in the First-tier Tribunal before a judge other than Judge of the First-tier Tribunal Swinnerton.

9. No anonymity direction is made.

Signed Rebecca Chapman Date 16 June 2017

Deputy Upper Tribunal Judge Chapman