



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: PA/04175/2016  
PA/05408/2016  
PA/05410/2016

**THE IMMIGRATION ACTS**

**Heard at City Centre Tower Decision & Reasons Promulgated  
Birmingham On 8<sup>th</sup> May 2017 On 14 June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RENTON**

**Between**

**S S  
M M  
E M**

**(ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Miss A Bhachu, Counsel instructed by J M Wilson Solicitors  
For the Respondent: Mrs M Aboni, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellants are all citizens of Gambia. The first Appellant was born on [ ] 1985 and is the mother of the remaining two Appellants born on [ ] 2007 and [ ] 2009 respectively. The Appellants have something of an

immigration history. Suffice it to say that the first and second Appellants first came to the United Kingdom on 17<sup>th</sup> December 2008 when they were given leave to enter as the dependants of the first Appellant's husband, a Tier 1 (Student) Migrant, until 8<sup>th</sup> April 2013. On 28<sup>th</sup> March 2013, after the birth of the third Appellant in the United Kingdom, they all applied for leave to remain in the same capacity which after a successful appeal was granted until 15<sup>th</sup> December 2017. However, following the separation of the first Appellant and her husband, on 12<sup>th</sup> March 2015 all the Appellants applied for asylum. Those applications were refused for the reasons given in the Respondent's letter of 14<sup>th</sup> April 2016. The Appellants appealed, and their appeals were heard by First-tier Tribunal Judge Row (the Judge) sitting at Birmingham on 26<sup>th</sup> October 2016. He decided to dismiss the appeals for the reasons given in his Decision dated 29<sup>th</sup> October 2016. The Appellants sought leave to appeal that decision, and on 29<sup>th</sup> November 2016 such permission was granted.

### **Error of Law**

2. I must first decide if the decision of the Judge contain an error on a point of law so that it should be set aside. The Judge dismissed the appeals on asylum and humanitarian protection grounds because he was not satisfied that the Appellants were at risk on return. That decision has not been contested in this appeal. The Judge also dismissed the appeal under the Immigration Rules and in particular paragraph 276ADE of HC 395 and Appendix R-LTRP of Appendix FM of HC 395 because he found that there were no significant difficulties to the first Appellant integrating on return to Gambia and that it was in the best interests of and reasonable to expect the remaining Appellants to accompany their mother there. Finally, the Judge dismissed the appeal on Article 8 ECHR grounds outside of the Immigration Rules because although he was satisfied that the Appellants had a family and private life in the United Kingdom, any interference thereto would be proportionate.
3. At the hearing before me, Miss Bhachu referred to her Skeleton Argument and submitted that the Judge had erred in law in coming to these conclusions as the Judge had erroneously not accepted the report of Ticky Monekosso as being that of an expert and had therefore attached no weight to his report. Further, the Judge had failed to make his decision on reasonableness in accordance with the decision in **MA (Pakistan) v SSHD [2016] EWCA Civ 705**. The Appellants, and in particular the third Appellant, had satisfied the requirements of Section 117B(6) of the Nationality, Immigration and Asylum Act 2002, and therefore there was no need to consider the other requirements of Section 117B. Further, the Judge had made no findings as to the nature of the private life of the Appellants, particularly that of the third Appellant who was autistic. The Judge had failed to engage with the contents of the letters concerning the third Appellant nor of the first Appellant's statement. The Judge had failed to consider properly the disruption to the life of the third Appellant of his removal from the UK. The Judge had come to an unbalanced and unsubstantiated decision.

4. In response, Mrs Aboni referred to the Rule 24 response and argued that there were no such material errors of law. The Judge had given adequate reasons for his decision to attach little weight to the purported expert report at paragraphs 40 and 41 of the Decision. It was up to the Judge to decide what weight to attach to this evidence. As regards the issue of reasonableness, the Judge had considered all the relevant evidence in the round and in particular the length of residence of the second and third Appellants in the United Kingdom. He had made findings as to the impact upon them of their removal. The Judge had accepted the evidence of the third Appellant's GP as to the extent of his autism. This evidence and that of the school revealed no significant problems. The third Appellant only required teaching assistance which was available in Gambia.
5. I find no material error of law in the decision of the Judge which therefore I do not set aside. As regards paragraph 276ADE and Appendix FM, the Judge correctly found that it was in the best interests of the minor Appellants that they remain with their mother. It was only the youngest Appellant who had any sort of medical problem. The Judge was satisfied that that problem could be handled effectively in Gambia. The Judge was also satisfied that all the Appellants would not be at risk of harm on return to Gambia, and the Judge correctly considered all of the factors set out in Section 117B of the 2002 Act. The Judge carried out a thorough analysis of the Appellants' situations from paragraphs 50 to 64 inclusive of the Decision and came to a conclusion which was open to him on the evidence before him and which he explained satisfactorily. The Judge's decision that it would be reasonable for all of the Appellants to return together to Gambia cannot be faulted. The Judge made no error in her treatment of the report of Ticky Monekosso. The Judge considered this person's curriculum vitae and it was open to the Judge to be satisfied that the author of the report was not to be treated as an expert. In any event at the conclusion of paragraph 41 of the Decision the Judge described some of the conclusions of this evidence as not controversial. The Judge engaged with and dealt with all of the relevant evidence in the appeal including the statement of the first Appellant and the correspondence from the third Appellant's school which is referred to at paragraph 37 of the Decision. It was open to the Judge to prefer the evidence of the third Appellant's GP.
6. For these reasons I find no error of law in the decision of the Judge and I dismiss the appeal to the Upper Tribunal.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal in respect of all the Appellants did not involve the making of an error on a point of law.

I do not set aside those decisions.

The appeal to the Upper Tribunal is dismissed.

**Anonymity**

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

Signed

Date 13<sup>th</sup> June 2017

Deputy Upper Tribunal Judge Renton