Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/24139/2018
HU/24144/2018

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On 7th August 2019	**On 12th September 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) M S M
(2) M N M
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M Mohzam (Solicitor)
For the Respondent: Miss H Aboni (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge J L Bristow, promulgated on 12th February 2019, following a hearing at Birmingham on 4th February 2019. In the determination, the judge allowed the appeal of the Appellants,

whereupon the Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are nationals of Mauritius. They are siblings. The eldest, was born on 27th May 2000, and is the sibling sister of the second Appellant. She is 18 years of age. The youngest, born on 13th May 2003, is the sibling younger brother of the first Appellant, and is 15 years of age. Both applied for leave to remain in the UK on the basis of their family and private life, in an application made on 26th May 2018. They do so on the basis of their family life with their mother and siblings.

The Judge's Decision

3. The judge observed how the Appellants' mother came to the UK in August 2015, and acquired residence under the EEA Regulations, from June 2018. The eldest child of the mother was born on 13th February 1985 and she arrived in the UK on 9th December 2004, and has subsequently married in the following year, and acquired indefinite leave to remain in the UK. The next child, was born thereafter, and left for the UK in December 2012, and the following year married in the UK in 2013, and is now the family member of an EEA national. The two Appellants in this case, however, remained in Mauritius with their father.

4. The judge observed that the essence of the claim was that the father would disappear for several nights and then when he would return he would be physically and mentally abusive to the first and second Appellants because he would be intoxicated. The Appellants were often without food or money. They would eat cereal or rely upon food provided by friends.

5. The judge went on to say that the relationship of the two Appellants with their father "has deteriorated to such an extent that he is no longer interested in them. In the second Appellant's case, his father is no longer willing to care for him" (paragraph 26). This evidence was disputed by the Respondent, and the judge took that factor into account fully (at paragraph 27), before going on to conclude that the best interests of the children lay in being in the UK (paragraph 31) and that the account he had heard was truthful and reliable. If so concluding, the judge adopted a "balance sheet approach" weighing the public interest into the balance before a finding in favour of the Appellant's human rights to remain in the UK (paragraph 39 onwards).

6. The appeal was allowed.

7. The Grounds of Appeal state that the judge has wrongly accepted some elements of the account provided by the Appellants because there was no corroborating evidence of what was being asserted in terms of the abuse and the neglect that the Appellant suffered.

8. On 3rd May 2019, permission to appeal was granted by the Tribunal on the basis that the judge had arguably failed to look for corroborating evidence which might

recently have been expected in a case such as this. Moreover, it may also be unclear as to how the judge concluded that any test for success outside the Rules would be met, given that the Appellants could not succeed within the Rules.

9. A Rule 24 response was thereafter entered by the Appellant.

Submissions

10. At the hearing before me on 7th August 2019, Ms H Aboni, appearing as Senior Home Office Presenting Officer for the Respondent Secretary of State, submitted that the judge had failed to give adequate reasons when there had been no corroboration of the oral evidence given by the Appellants. This was important because the Appellants could not satisfy the Immigration Rules. Moreover, the judge failed to consider the public interest. He did not identify what the compelling circumstances were in a case such as this. Therefore, the matter should be remitted back to the First-tier Tribunal.

11. For his part, Mr Mohzam submitted that he would rely upon the Rule 24 response and upon his skeleton argument. He submitted that this was nothing more than a disagreement with the judge's finding below. This was the case for the following reasons. First, the judge considered the best interests of the youngest child to be to remain in the UK. This was a case where the mother had leave to remain under the EEA Regulations. The youngest Appellant was 15. The judge concluded that, "I find that he cannot live with his father. His father has no interest in caring for him. His father was abusive to him. His mother and sisters are in the UK and are willing to provide care for him" (paragraph 31). That was reason enough, submitted Mr Mohzam, and the decision could not be challenged other than as a disagreement with what the judge had concluded.

12. Second, he submitted that the judge had applied the law properly referring to **Razgar [2004] UKHL 27** (from paragraph 32 onwards). He had gone on to consider the issues of proportionality by reference to the leading authorities such as **Hesham Ali [2016] UKSC 60**, and the case of **MM [2018] EWCA Civ 28**. Indeed, the judge had then also considered the public interest in immigration control (at paragraph 40). Having done all of this, the judge then considered the position of the two Appellants towards the end of the determination before allowing the appeal. The conclusions the judge reached were open to him. Insofar as it has been said that there ought to have been corroboration of the father's abusive treatment of the Appellant children, this was difficult to comprehend, because the father was in Mauritius, and it was not readily apparent as to what kind of corroboration was being required, other than a police report, which assumed that the matter had gone to the police, which was not case put forward by the Appellants.

13. In a reply, Ms Aboni submitted that the judge had failed to show on what basis the children were neglected or abused by the father.

No Error of Law

14. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007), such that I should set aside the decision. I come to this conclusion bearing in mind the well-established legal threshold in cases of irrationality as set out by Lord Justice Brooke, in **R (Iraq) [1985]**, where His Lordship stated that rationality was a "high threshold" and that too often perversity was used by practitioners in an easy manner which was not justified (see paragraphs 11 to 12 of the judgment). This is a case where the judge has taken full account of the facts before him and concluded in a manner that was open to him. It was open to the judge to begin from the premise that, "I find the Appellants and the witnesses to be truthful and reliable. There evidence was consistent" (paragraph 18). Unless a proper challenge can be made to this finding, it is difficult to see why the evidence of the witnesses would then not be held to be credible.

15. Second, the evidence was that the father neglected the Appellant children, disappearing for several nights, and then, "he would be physically and mentally abusive to the first and second Appellants", after arriving back home "intoxicated" (paragraph 23).

16. Third, the judge is perfectly alive to the fact that the evidence of the Appellants is not accepted. Indeed, the judge sets out the three reasons that the Respondent gives for not believing the account of the Appellants (at paragraph 27). However, the judge then goes on to say that,

> "I am satisfied that the Appellants have now provided evidence to substantiate their claims. This is their oral testimony and that of their witnesses. This has been tested, with exception of the second Appellant's evidence, by way of cross-examination" (paragraph 28).

17. Fourth, the judge does consider why it is that the first Appellant, having come to the UK and then returned back to Mauritius, because she did so, "because the second Appellant was alone and she was awaiting her GCSE results, I find this an adequate explanation" (paragraph 28).

18. Fifth, the judge adopts a "balance sheet approach" (paragraph 39) weighing the public interest as against the human rights of the Appellants.

19. Finally, the judge then concludes that there were a number of factors that add weight to the first Appellant's claim, namely, that

> "She was 17 when she made the application for leave to remain. She is only 18 now. She has only been an adult for eight months. She experienced abuse from her father. Her father did not care for her and she was required to look after the second Appellant in Mauritius".

20. As a result her health was affected and it would now be "unfair to separate her from the second Appellant" because "she has been more than a sister to him" (paragraph 45). The judge also considered that there were a number of factors that were in the second Appellant's favour (see paragraphs 46 to 47) who was a minor at the time of

the decision, and with respect to whom the judge concluded that his "best interests" lay in remaining with his family in the UK. Insofar as any issue of corroboration is raised, I refer to the Rule 24 response, and conclude that this was not necessary in circumstances where the judge had found the witnesses to be credible and reliable. There is no requirement per se of corroboration in judicial proceedings of this kind.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall stand.

An anonymity order is made.

The appeals of the Secretary of State are dismissed.

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
Deputy Upper Tribunal Judge Juss	10th September 2019