



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/20229/2018  
HU/20230/2018, HU/20233/2018  
HU/20237/2018

THE IMMIGRATION ACTS

Heard at Field House  
On 6 January 2020

Decision & Reasons Promulgated  
On 22 January 2020

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

KS

RK

GS

GIS

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Ms M Malhotra, Counsel, instructed by Shri Venkateshwara  
Solicitors

For the Respondent: Mr P Singh, Senior Home Office Presenting Officer

DECISION AND REASONS

### *Background*

1. The appellants are citizens of India, being father, mother, daughter and son. They were born on 20 May 1980, 16 July 1981, 28 November 2007 and 10 January 2014, respectively. The second appellant was granted leave to come to the UK as a student with leave from 10 October 2009 until 28 January 2011, arriving on 10 November 2009 with the other appellants having had leave as dependants.
2. On 25 January 2007 applications were made by the first and second appellants for leave to remain as parents under Appendix FM of the Immigration Rules (“the Rules”), with the application subsequently being varied on 29 May 2018 to an application for leave to remain on the basis of family life as partners and as parents, and also in terms of private life. That application was refused in a decision dated 19 September 2018. The appellants appealed against that decision and their appeal came before First-tier Tribunal Judge Easterman at a hearing on 1 August 2019, whereby the appeal of each appellant was dismissed.

### *Judge Easterman’s decision*

3. Judge Easterman set out the legislative framework within which his decision was to be based and referred in detail to the evidence and arguments before him. Similarly, he undertook a detailed assessment of the circumstances of each of the appellants, including in his decision an analysis of the expert evidence that was put before him.
4. He recognised that the essence of the appeals centred on the question of whether it was reasonable for GS to leave the UK and to return to India. Thus, at [65] he said this:

“... in reality all four appellants’ cases turn on whether it is reasonable for [GS] to be expected to return to her home country.”
5. He concluded that it was reasonable to expect her to do so. The grounds of appeal, in summary, complain that that assessment was flawed in terms of a failure to take into account relevant Home Office guidance and relevant caselaw. It is further argued that the decision is flawed for a failure to make specific findings in relation to GS’s particular circumstances and a failure to undertake a proportionality assessment. It is also contended that the decision fails to take into account psychiatric evidence in relation to the first and second appellants which was contrary to his conclusion at [62] that both of them are fit and healthy adults. That, it is argued, affected the assessment of whether there were very significant obstacles to their integration in India.
6. Judge Easterman made detailed findings of fact. He found that GS came to the UK when she was about 1½ years of age and then returned to India for a year or so before returning to the UK, where she has stayed ever since. It was not disputed that at the time of the application she had been in the UK for seven years and one day and such was accepted in the respondent’s decision.

7. He noted that she was in year 6 at the date of the hearing and the evidence was that she was doing well at school. He referred to a handwritten letter from her and a lengthy social worker's report written by a chartered psychologist which was a report in relation to all of the appellants. Judge Easterman gave a comprehensive summary of that report. The report included information about the relationships that GS had developed in the UK in various respects. Having assessed the report, however, Judge Easterman found that it was not "entirely unbiased", appearing to have been written solely from the point of view that both children should not go to India. He also expressed the view that the author of the report had simply taken the evidence of the parents (at face value), but who plainly have an interest in (obtaining) a report that suggests that the best interests of the children are to remain in the UK.
8. Again, in relation to GS, he said that she is beginning to make her own circle of friends and her own private life and that the most important part of her life is her life with her family. He found that there was about to be disruption in her school life in any event because of moving schools and he found that her and her brother's best interests are to remain with their parents.
9. He then made a number of findings in relation to the first and second appellants, including in terms of their health, noting that they both suffer from depression.
10. At [64] he noted that GS does not meet paragraph 276ADE(iv) of the Rules unless it was unreasonable for her to return to her home country. He referred at [66] to the decisions of *KO (Nigeria) and Others v Secretary of State for the Home Department* [2018] UKSC 53 and *JG (s 117B(6): "reasonable to leave" UK) Turkey* [2019] UKUT 00072 (IAC), going on to state that GS is about to move schools and that notwithstanding what are suggested as "possibilities" in the report to which he referred, her best interests are to remain with her parents and they have no basis of stay in the UK unless it was unreasonable to expect GS to leave.
11. At [67] he said this:

"I do not find it is unreasonable to expect GS to leave and accompany her parents to their home country. As a result, I find that none of the appellants in fact meet the requirements of paragraph 276ADE, or Appendix FM and as a result, they have no basis to remain in the United Kingdom. I discussed with Ms Malhotra whether there was any purpose in reviewing the matter separately under Article 8 outside the Rules but it seems to me that there are no additional features of this case that require that or that would bring about a different decision. As a result I am satisfied that any interference with any of the appellants' private life pursues a legitimate aim namely the maintenance of effective immigration control, is in accordance with the law and is proportionate and reasonable and as they would be removed as a family there is no interference with family life at all."

#### *Assessment*

12. I can express my conclusions shortly in the light of the position adopted on behalf of the respondent before me. It was conceded on behalf of the respondent that Judge

Easterman's decision must be set aside for error of law. That is because the conclusion that it would be reasonable to expect GS to leave the UK failed to have regard to what was said in *MA (Pakistan) & Ors, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Anor* [2016] EWCA Civ 705, in particular at [49], in terms of the starting point in relation to a child who has been in the UK for seven years being that leave should be granted (to a parent) unless there are "powerful reasons" to the contrary. It was accepted that on the basis of the evidence before Judge Easterman it could not lawfully be concluded that it would be reasonable to expect her to return to India.

13. I agree with that concession and would add that the reasoning in *MA (Pakistan)* in that respect was applied by the Upper Tribunal in *MT and ET (child's best interests; ex tempore pilot) Nigeria* [2018] UKUT 00088 (IAC).
14. At [49] of *MA (Pakistan)* the Court said as follows:

"... However, the fact that the child has been in the UK for seven years would need to be given significant weight in the proportionality exercise for two related reasons: first, because of its relevance to determining the nature and strength of the child's best interests; and second, because it establishes as a starting point that leave should be granted unless there are powerful reasons to the contrary."
15. It must be acknowledged that Judge Easterman did refer to relevant authority, in particular citing *KO (Nigeria)*, and he plainly had in mind the 'real world' scenario of the first and second appellants having no lawful basis of stay in the UK (on their own account). However, the error of law arises in the terms explained above and which the decision in *KO (Nigeria)* does not negate.
16. It is not necessary for me to express a concluded view about whether Judge Easterman also erred in law at [62] of his decision in stating that both the first and second appellants are fit and healthy adults, in circumstances where there was psychiatric evidence that they both had mental health problems, suffering from depression. Judge Easterman in fact made reference to that evidence on more than one occasion in his summary of the evidence and his conclusions elsewhere, for example at [49] and [60] and it could be said, therefore, that he had that evidence in mind in his analysis overall.
17. As regards the error of law in terms of the assessment of the reasonableness of GS returning to India, as conceded by the respondent the decision does need to be set aside and I do so. It was also conceded on behalf of the respondent that the appropriate course was for the decision on the appeal of each appellant to be re-made, allowing the appeal of each appellant. I agree, for the reasons explained above.

*Decision*

18. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside in respect of each appellant and I re-make the decision allowing the appeal of each appellant on Article 8 grounds.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Upper Tribunal Judge Kopieczek

16/01/20