

**Upper Tribunal**

**(Immigration and Asylum Chamber)** Appeal Number: HU/03859/2016

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** |
| **On 8 June 2018** | **On 13 June 2018** |

**Before**

**UPPER TRIBUNAL JUDGE blum**

**Between**

**XF**

**(anonymity direction MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Chakmakjian, Counsel, instructed by Kilby Jones Solicitors LLP

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is a remade decision following the identification of a material error of law in the decision of Judge of the First-tier Tribunal A Kelly (the judge), promulgated on 7 February 2017, in which she dismissed the appellant’s appeal against the respondent’s decision dated 29 January 2016 to refuse her human rights claim. In an ‘error of law’ decision promulgated on 29 March 2018 I found that, while the judge properly identified a number of relevant factors in determining the best interests of AR, the appellant’s daughter who was 12 years old at the date of the hearing before the First-tier Tribunal, and in determining whether or not it would be reasonable to expect AR to leave the UK, it was not apparent that the judge adequately appreciated that there is “a very strong expectation that the child's best interests will be to remain in the UK with [her] parents as part of a family unit” (MA (Pakistan) & Ors, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Anor [2016] EWCA Civ 705, at [46]). Nor was it apparent that the judge approached the assessment of AR’s best interests and the question whether it was reasonable for her to leave the UK mindful that her starting point must be that leave should be granted in the absence of powerful reasons to the contrary (MA (Pakistan), at [49]). The judge’s assessment in paragraph 26 principally focused on the reasons why AR would be able to reintegrate in Bolivia, her country of origin and nationality, without sufficient appreciation or assessment of the nature and extent of the private life established by AR in the UK. While there was somewhat limited evidence of the extent of AR’s integration, and no independent evidence of the likely impact of her removal, she was a 12-year-old girl who has lived in the UK for most of her life and who would undoubtedly have established private life relationships outside the family unit, a point supported by the school reports which suggested that she was integrated within the school community and got on well with class members. I set aside the decision of the First-tier Tribunal and adjourned the remaking of the decision to allow further evidence to be provided given the passage of time since the First-tier Tribunal’s decision.

**Factual Background**

1. The appellant is a national of Bolivia, date of birth [ ] 1984. Her husband, JA, is also a Bolivian national, date of birth [ ] 1981. They have a daughter, AR, born in Bolivia on [ ] 2005. The appellant, her husband and AR entered the UK illegally in 2008 when AR was 3 years old. The appellant gave birth to a son, BR, on [ ] 2011 in the UK. AR and BR are both Bolivian nationals and, together with their father, are dependents on the appellant’s appeal.
2. On 14 August 2015 the appellant and her dependents applied for leave to remain in the UK based on the private lives they had established. The respondent considered the human rights claim under the immigration rules (paragraph 276ADE) and then outside the immigration rules in accordance with article 8 principles. The respondent did not consider that the immigration rules were met, and did not consider there to be any compelling circumstances outside the immigration rules warranting a grant of leave to remain on human rights grounds. In particular, whilst accepting that AR had continuously resided in the UK for at least 7 years, the respondent considered she could reasonably be expected to return to Bolivia together with her immediate family, with reference to paragraph 276ADE(1)(iv).

**The evidence before Upper Tribunal and submissions**

1. In addition to the respondent’s bundle I have been provide with the short bundle of documents produced by the appellant that was before the First-tier Tribunal, which includes witness statements from her and her husband, and school reports and certificates relating to the children. I have additionally been provided with a supplementary bundle that includes further statements from the appellant and her husband, a letter written by AR dated 20 April 2018, a letter written by her brother, BR, dated 28 May 2018, a letter of support from RLO dated 24 April 2018 (he previously provided a similar letter dated 18 January 2017), a number of letters of support from AR’s friends and supporting ID evidence, and a number of letters of support from friends of the appellant. The bundle additionally contains a letter written by pastor [FC], dated 26 March 2018, which is in similar terms to a letter previously written by the pastor dated 16 January 2017. The bundle additionally contains a tenancy agreement, council tax bills, water bill and mobile phone bill and TV licence. There is additionally a letter from Bessemer Grange Primary School relating to BR, dated 18 April 2018, a letter from the Charter School dated 18 April 2018, and a number of school reports relating to both AR and BR and various certificates and awards to both children. The bundle finally contains a number of photographs of AR and BR with their friends on various occasions including school trips, birthday parties, and carol singing.
2. In her to witness statements the appellant stated that the family were supported by relatives, friends and the church. AR has resided in the UK for 10 years and started secondary school on 5 September 2016. Both children have only been educated in the UK and know no other way of life. It was claimed that neither children speak much Spanish; AR could not write in Spanish but could speak simple phrases, and BR can say a few words in Spanish. If returned to Bolivia both children would need to restart the education from the beginning, would have to learn a new language and would struggle with being behind in school as they would not be able to adapt to the new surroundings. The culture in Bolivia was very different to that in the UK and the children would struggle to adapt and adjust to Bolivian life.
3. There was no examination in chief of the appellant. In cross-examination the appellant’s attention was drawn to AR’s 2011 school report which indicated that, as her 1st language was not English, she needed to make sure she re-read her writing to make sure she had not missed out any words and that it made sense. The appellant said that, although she and her husband spoke Spanish to each other, they spoke English in front of the children. Although her husband gave evidence through an interpreter he understood English. The appellant’s attention was drawn to a school report relating to BR stating that he was a child with English as ‘an additional language’. The appellant explained that when he started school the teacher asked what BR’s first language was and she said it was Spanish. BR experienced some problems speaking and began to speak a little later, although a GP said this was normal. AR was currently studying French and Mandarin. In addition to her mother the appellant’s brother and sister in law lived in Bolivia. Her husband had his mother and brother in Bolivia. The appellant and her husband were in contact with their relatives in Bolivia. The children see their relatives using Skype but they did not talk much. The appellant’s mother in law liked to listen to them speaking English and she or her husband would translate.
4. The appellant left school at the age of 18 and undertook a secretarial course but did not finish it. Her husband had no fixed job in the UK but did some work with friends. The appellant also sometimes did jobs for her friends in exchange for their help. The appellant and her family also received help from the church and from friends. The appellant was taken through the families’ outgoings and explained that they rented out a room in their flat. It was correct that they entered the UK illegally in order to have a better life for the family. No investigation had been made into educational facilities in Bolivia available accommodation. The appellant borrowed money from her aunt and uncle when they 1st came to the UK and this was being paid back a little by little. The economic situation in Bolivia was worse than when they left. The appellant had not had any medical treatment and was not asked for money when her son was born. She said she paid for some medicines and had paid the NHS surcharge in respect of their applications.
5. The appellant’s husband, JA, adopted his statements, which were substantially similar to those of the appellant. He voluntarily played guitar in the church and helped in the local community. He spoke to his children in English. When AR went to school he and his wife told the school that her 1st language was Spanish. He and his wife learnt English along with their children. They had a number of friends of different nationalities including Bolivian friends. He confirmed that he had no fixed employment and that he sometimes did gardening work. He described how much money he earned from non-fixed employment and confirmed that the family also received money from friends and the church. It was suggested that he had an additional form of income that was not disclosed.
6. In his submissions Mr Clarke relied on the Reasons For Refusal Letter. He accepted that AR was a qualifying child in terms of both the immigration rules and s.117B(6) of the Nationality, Immigration and Asylum Act 2002, and that BR was also a qualifying child within the terms of s.117B(6). He also accepted that it was in the children’s best interest to remain in the UK. My attention was drawn to the factors relevant to an assessment of a child’s best interest, as detailed in paragraph 35 of EV (Philippines) & Ors v Secretary of State for the Home Department [2014] EWCA Civ 874. It was not credible that the two children would have unlearned Spanish, especially given that it was spoken by their parents in their home. It was submitted that they had not become distant from the language and culture in Bolivia and that they retained strong connections with their parents’ families in Bolivia. Neither child had any medical issues and, although it would not be without difficulty, both children would be able to re-adapt to life in that country with the support of their parents. Both parents entered the UK illegally in 2008 and made no attempt to regularize their immigration status. There had been illegal employment and the Tribunal had not been given the full picture surrounding their employment. There was said to be little evidence that they receive money from the church or friends. There had been some reliance on NHS and educational resources. Overall, these countervailing factors outweighed the children’s best interests and rendered it reasonable to expect them to return with their parents to Bolivia.
7. Mr Chakmakjian submitted that the children’s best interests were a primary consideration and that there must be ‘strong reasons’ to depart from the starting point that leave should be granted. With reference to MT and ET (child’s best interests; *ex tempore* pilot) Nigeria [2018] UKUT 00088 (IAC), it was submitted that the appellant’s immigration history was not so bad as to constitute the kind of “powerful” reason that would render reasonable the removal of a 13-year-old girl who entered the UK the age of 3 to her country of origin, as was the finding in MT and ET in respect of a 14-year-old girl who entered the UK aged 4. The appellant and her husband had never disputed their immigration history and the reality was that they would have had to undertake illegal work in order to support their children. There was, in any event, evidence given by the pastor in the First-tier Tribunal hearing that the church did provide financial support. I was invited not to conflate the families’ familiarity with the Spanish language with familiarity with Bolivian culture. I was reminded that AR has remained in the UK in excess of 10 years and that 9 of those years were after she attained the age of 4 (with reference to Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 00197). My attention was drawn to the various documents confirming the nature and extent of the children’s integration into life in the UK.

**Discussion**

1. Although the appellant in this appeal is a 33-year-old Bolivian woman, the principle issue in contention, as agreed by the parties at the outset of the hearing, is whether or not it is reasonable to expect her daughter, AR, to return with the family unit to Bolivia given that she has continuously resided in the UK for over 10 years and is now 13 years old. Paragraph 276ADE(iv) of the immigration rules seeks to incorporate and give effect to article 8 private life considerations with respect to children in the UK.
2. Paragraph 276ADE reads, in material part,

276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

(i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and

…

(iv) is under the age of 18 years and has lived continuously in the UK for at least seven years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK

1. Section 117B of the 2002 Act provides:

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

1. There is no suggestion that AR falls foul of any of the Suitability requirements in Appendix FM. There is no dispute that AR is a qualified child within the terms of both paragraph 276ADE and s.117B(6), and that BR is a qualified child within the terms of s.117B(6).
2. I must ascertain AR’s best interests pursuant to s.55 of the Borders, Citizenship and Immigration Act 2009. I remind myself that, while her best interests are a primary consideration, they are not a paramount consideration and that even though it is in her best interests to remain in the UK (a point accepted by the Presenting Officer) this can be outweighed by opposing public interest factors.
3. In *EV (Philippines) & Ors v Secretary of State for the Home Department* [2014] EWCA Civ 874 (at [35]) the Court of Appeal explained that a decision as to what is in the best interests of children will depend on a number of factors such as (a) their age; (b) the length of time that they have been here; (c) how long they have been in education; (c) what stage their education has reached; (d) to what extent they have become distanced from the country to which it is proposed that they return; (e) how renewable their connection with it may be; (f) to what extent they will have linguistic, medical or other difficulties in adapting to life in that country; and (g) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens.
4. The first head note of *Azimi-Moayed and others (decisions affecting children; onward appeals)* [2013] UKUT 00197 reads, “*As a starting point it is in the best interests of children to be with both their parents and if both parents are being removed from the United Kingdom then the starting point suggests that so should dependent children who form part of their household unless there are reasons to the contrary*.” Headnote (ii) reads, “*Lengthy residence in a country other than the state of origin can lead to development of social cultural and educational ties that it would be inappropriate to disrupt, in the absence of compelling reason to the contrary. What amounts to lengthy residence is not clear cut but past and present policies have identified seven years as a relevant period.*” Headnote (iv) of the same case indicates, “*Apart from the terms of published policies and rules, the Tribunal notes that seven years from age four is likely to be more significant to a child that the first seven years of life.*”
5. I consider and apply the principles enunciated in the above decisions in assessing AR’s best interests. AR has lived in the UK since she was 3 years old and is now 13 years old. She has spent the formative years of her life in the UK. The uncontested evidence, as detailed in the various witness statements and letters from her friends and supported by reference to the documents issued by AR’s school, indicate that she is currently in her second year at secondary school and has only been educated in the UK. It is clear from the various school reports that she is a bright and popular student who is firmly integrated within the school community and the local community. AR is not however at a critical stage of her education. Although she will choose her subjects to study at GCSE in her current year (Year 9), she will not commence her GCSE studies until year 10.
6. Although she is a young teenager, AR’s letter indicates that she has formed social networks with peers outside her family, including those from school, clubs and church, at a time when she had no control over her immigration status. Her letter indicates that she wishes to remain in the UK, that she enjoys school and the time she spends with her extended family and friends, and is fearful of the losing those relationships. The letter, read in conjunction with the school reports and the letters from her friends, identify her as someone who has adopted a British lifestyle.
7. AR is nevertheless a young teenager who is neither independent nor self-sufficient, and remains reliant on her family, with whom she lives. There was no suggestion that she did not have strong bonds of love and dependency with her family. I find the appellant and her husband have embellished the extent to which AR is not proficient in Spanish. Spanish is her first language, it is the language she learnt as a toddler and is the language spoken in the family home by her parents to each other. I am nevertheless prepared to accept that her parents do try to speak English to her and her brother and that she may feel more comfortable reading, speaking and talking English rather than Spanish. I find that, if returned to Bolivia, her Spanish is likely to improve rapidly as she would be surrounded by Spanish speakers and would have the support of her parents, although she is likely to encounter some difficulty in adjusting to Spanish as the language of instruction and this is likely, at least initially, to inhibit her academic progress. There was little evidence before me one way or the other as to whether AR has become distanced from Bolivian culture, although I note that she had not returned to the country since leaving as a 3-year-old, and the assertions from her parents that she would be unfamiliar with the culture in Bolivia, which is said to be very different. She does however have maternal and paternal grandmothers in Bolivia, and maternal and paternal uncles, who could assist with any reintegration. Although the economic satiation in Bolivia may well be worse than the family left, neither parent has any medical issues and there appears to be nothing preventing them from seeking some sort of employment on return.
8. Although the starting point in considering AR’s best interest is that she should remain with her parents and return with them, in light of her age, her length of residence in the UK, her establishment of relationships outside her immediate family, her adoption of a British outlook on life I find, pursuant to my duty under s.55, that her best interests are to remain in the UK with her family. As I have already stated, this is a point accepted by the respondent.
9. Having identified AR’s best interests, I must now consider whether it would be reasonable for her to leave the UK. I proceed on the basis that she would be accompanied by her immediate family and that the nuclear family unit will remain intact. In assessing the issue of reasonableness, I have to take into account all relevant public interest considerations, including those relating to the conduct of her parents (*MA (Pakistan*). In assessing the relevant public interest factors, I take account of those identified in s.117B of the 2002 Act. I note that the public interest in the maintenance of effective immigration controls. I note, pursuant to s.117B(2) and (3) that the appellant is proficient in English (she started giving her evidence in English, although then relied on the interpreter given the nature of the cross-examination). Although her husband used the interpreter he initially spoke in English and, through his reactions to questions asked in English, appeared to understand what he was being asked. This was consistent with his claim to understand English. The appellant and her husband appear to undertake informal work in the UK when they are not entitled to do so. In the First-tier Tribunal he stated that he had a degree in accounting but had struggled to find work in Bolivia and supported his family by doing odd jobs. Both are potentially capable of financial self-sufficiency, although they are not currently self-sufficient and rely on funds from friends and the church. Pursuant to *Rhuppiah v Secretary of State for the Home Department* [2016] EWCA Civ 803 and *AM (S 117B) Malawi* [2015] UKUT 0260 (IAC) both these factors would, at best, be neutral factors. Given the absence however of any independent assessment of the husband’s proficiency in English and their current economic circumstances, I hold both against these factors against the appellant in my proportionality assessment and my assessment of reasonableness. AR is clearly fluent in English, although this constitutes a neutral factor in my assessment.
10. I take into account as a relevant public interest factor the fact that the appellant and her family have resided in the UK without lawful leave and that their private lives have been established when their immigration status was precarious. This is of greater relevance to the appellant and her husband as AR and her brother have always been minors and have no control or influence over their immigration status or the unlawful nature of their residence. I attach little weight to the private lives established by the appellant and her husband in the UK. I note in particular that they entered the UK illegally with the intention of settling here and that they never had any intention of leaving the UK, which demonstrates a significant disregard for immigration control and the laws of this country. I note however the absence of any aggravating feature of their illegal presence. There is, for example, no suggestion that they used assumed identities or multiple identities, made frivolous applications, and they have not been charged with or conviction of any criminal offence. In identifying and considering the relevant public interest factors I additionally take into account the use of NHS resources and the drain on the public purse of educating AR and her brother.
11. In *MA (Pakistan)* Lord Justice Elias stated, at [46],

Even on the approach of the Secretary of State, the fact that a child has been here for seven years must be given significant weight when carrying out the proportionality exercise. Indeed, the Secretary of State published guidance in August 2015 in the form of Immigration Directorate Instructions entitled "Family Life (as a partner or parent) and Private Life: 10 Year Routes" in which it is expressly stated that once the seven years' residence requirement is satisfied, there need to be "strong reasons" for refusing leave (para. 11.2.4). These instructions were not in force when the cases now subject to appeal were determined, but in my view they merely confirm what is implicit in adopting a policy of this nature. After such a period of time the child will have put down roots and developed social, cultural and educational links in the UK such that it is likely to be highly disruptive if the child is required to leave the UK. That may be less so when the children are very young because the focus of their lives will be on their families, but the disruption becomes more serious as they get older. Moreover, in these cases there must be a very strong expectation that the child's best interests will be to remain in the UK with his parents as part of a family unit, and that must rank as a primary consideration in the proportionality assessment.

1. At [47] of *MA (Pakistan)* Lord Justice Elias stated,

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.

1. AR’s removal would undoubtedly have a deleterious impact on the life she has established in the UK. Although established when she had no lawful right to remain she cannot be held accountable for the behaviour of her parents and her private life was rooted through no fault of her own. It is quite apparent from the unchallenged evidence contained in the appellant’s supplementary bundle that AR has established an extensive private life in the United Kingdom outside her immediate family unit. By way of brief example, a 12-year-old friend stated that she and her sister have shared great experiences with AR including going to beaches together during their summer holidays, undertaking various activities together including dancing, ice skating, swimming and acrobatics, and celebrating each other’s birthdays. AR was described as a great person and fun to be with. Another school friend described how she meets AR every Thursday at an arts academy and how they normally spend weekends playing and eating together, and how they went to caravans near beaches last year. Another child described how AR was her best friend and that they had known each other for 10 years, how AR taught her to be confident in swimming, and how they shared many memorable moments together during sleep overs, holidays and family gatherings. Another letter of support from a 17-year-old friend describes how AR is like a little sister and is smart, caring, enthusiastic, very well behaved and full of joy. Other letters scribe how AR and her brother are ‘settled and thriving in their education’ and ‘so intertwined in the British way of life and education system, with strong bonds at school and locally.’ The letter from AR’s secondary school, dated 18 April 2018, indicates that she is a well behaved and punctual student with an excellent record of attendance and is progressing well in line with expectations. This was supported by her school reports covering both her primary school and secondary school. The school reports show that she is progressing well academically, and gets on well with class members. The supplementary bundle also contains a number of certificates and awards confirming the range of AR’s after-school activities.
2. Based on the evidence before me, including her letter, the letters of her friends, her school reports and awards and certificates, I find that she has adopted an English lifestyle and is fully integrated into her local community and British society. The evidence before me, unchallenged, indicates that, having resided in the UK throughout the formative years of her life, AR has enveloped herself in a British way of life, and that it is the only life she has ever known. She has no experience of life in Bolivia. Her removal would effectively severe the friendships, relationships and social activities that form the core of her private life and, while she may be able to retain some contact with her friends through remote means, the impact on her cultural and social integration and her adoption of a British lifestyle is likely to be significant. While I accept that AR will eventually be able to establish new friendships in Bolivia, the evidence before me describes a bright and happy 13-year-old child who is firmly settled in the UK. While AR will ultimately overcome the significant disruption to her private life this is likely to entail considerable distress and will have a considerable impact on a young teenager on the cusp of womanhood.
3. In assessing whether it would be reasonable to expect AR to leave the UK I draw together the strong public interest factors identified above, and weigh them against the impact of removal on AR and the degree of disruption to her private life. I note once again that her best interests are a primary but not a paramount consideration, the illegal presence of her family in the UK, that some family members remain in Bolivia, and her stage of education. The evidence that I have carefully considered indicates that the daily social and cultural experience and expectations of this 13-year-old girl have been moulded by her residence to such an extent that now removing her will be highly disruptive to her private life, despite having the support of her parents and extended family members in Bolivia. The extent of her integration and the solidity of AR’s relationships established in the UK are such that to uproot her from all that she has known and grown up with over a 10-year period would render her removal unreasonable and, consequently, disproportionate. I am satisfied that her parents’ adverse immigration history is not so bad as to constitute the kind of powerful reason that would render reasonable her removal to Bolivia. I consequently find that AR does meet the requirements of paragraph 276ADE(1)(iv). Given that she meets the requirements of the immigration rules for leave to remain on the basis of her private life, I find that her removal would constitute a disproportionate interference with her article 8 rights.
4. I turn to the position of the appellant, her husband and BR. They cannot succeed under the immigration rules. BR only turned 7 after the application was made. There is evidence that BR has established a private life in the UK, albeit more limited than that of his sister. The letter from his primary school indicates that he is an “integral part” of the school and “sets a fantastic example to his peers.” He has “settled really well” into the school and made many positive friendships within his year group. He has a high level of attendance and is on track for national expectations for his age. However, as a 7-year-old he has not established any significant relationships outside his family unit, and is evidently not at a critical stage of his education. I find it would not be unreasonable to expect him to relocate to Bolivia with his parents. I note again that AR is not independent or self-sufficient and remains living with her parents and sibling. She clearly has a close and loving relationship with her parents and sibling and any separation would have a very significant detrimental impact on the parental/child/sibling relationship. I must consider the position of the appellant, JA and BR outside the immigration rules and determine whether there are compelling or exceptional reasons for finding that their removal would be disproportionate under article 8 (*SSHD v SS (Congo) & Ors* [2015] EWCA Civ 387; *MF (Nigeria) v Secretary of State for the Home Department* [2013] EWCA Civ 1192, at [42]*).*
5. I am satisfied that the appellant and her husband have established private lives in the UK given that they have resided her for over 10 years although, pursuant to s.117B(4), I must attach little weight to that private life. BR has lived in the UK for all his life and, although he primarily looks to his parents, he attends primary school and had made friends. Given the relatively low threshold for establishing a breach of article 8 I am satisfied that article 8 is triggered in respect of the appellant, JA and BR. I find that their proposed removal is in accordance with the law and in pursuit of a legitimate aim.
6. In assessing the proportionality of the proposed removals, I consider and apply the factors identified in s.117B of the 2002 Act. I adopt my assessment carried out above with reference to s.117B (1) to (5) and to the disregard and breaches carried out by the appellant and her husband in respect of the immigration laws of the UK.
7. In *MA(Pakistan)* the Court held, at [17],

Subsection (6) falls into a different category again. It does not simply identify factors which bear upon the public interest question. It resolves that question in the context of article 8 applications which satisfy the conditions in paragraphs (a) and (b). It does so by stipulating that once those conditions are satisfied, the public interest will not require the applicant's removal. Since the interference with the right to private or family life under article 8(1) can only be justified where there is a sufficiently strong countervailing public interest falling within article 8(2), if the public interest does not require removal, there is no other basis on which removal could be justified. It follows, in my judgment, that there can be no doubt that section 117B(6) must be read as a self-contained provision in the sense that Parliament has stipulated that where the conditions specified in the sub-section are satisfied, the public interest will not justify removal.

1. The appellant and JA have a genuine and subsisting parental relationship with AR, and I have already concluded that it would be unreasonable to expect AR to leave the UK. I consequently find that the public interest does not require their removal even having regard to the various public interests considered above. Having regard to the assessment conducted outside the immigration rules in *PD and Others (Article 8 – conjoined family claims) Sri Lanka* [2016] UKUT 00108 (IAC), at [43], I am satisfied that the effect of dismissing the appellant’s appeal would be to frustrate my decision that AR qualifies for leave to remain in the United Kingdom under the rules. Undertaking the s.117B(6) balancing exercise, and in light of my previous analysis and findings, I am satisfied that the test of compelling or exceptional circumstances is satisfied.
2. I need deal only briefly with the position of BR. He is 7 years old and an integral part of his family. Having found that AR meets the requirements of the immigration rules, and that there are exceptional circumstances rendering it disproportionate to remove her parents, it follows that there are also exceptional circumstances rendering removal of BR disproportionate. The appellant’s appeal is therefore allowed outside the immigration rules in accordance with article 8.

**Notice of Decision**

**The First-tier Tribunal’s decision contains a material error of law and is set aside. The decision is remade, allowing the appeal on human rights grounds.**

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

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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.

 12 June 2018

Signed Date

Upper Tribunal Judge Blum