IAC-CH-AP-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/34116/2013
IA/34120/2013
IA/34125/2013

THE IMMIGRATION ACTS

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Heard at Field House
On 31st October 2014

Decision & Reasons Promulgated
On 12th December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

MR SYED TAUQEER SHAH (FIRST APPELLANT)
MRS MAHRUKH SHAH (SECOND APPELLANT)
MISS RIJAH ALI SHAH (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr J Dhanji of Counsel instructed by M & K Solicitors
For the Respondent: Ms R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. This an appeal by the Appellants, against the decision of the First-tier Tribunal (Judge Nightingale), promulgated on 20th August 2014 in which she dismissed their appeals against the refusal of the Respondent, dated 16th July 2013, to refuse to grant further leave to remain as a Tier 4

(General) Student Migrant to the First Appellant and to the remaining Appellants as his dependants.

2. The Respondent had refused the application under paragraph 322(3) of HC 395, a discretionary general ground of refusal, because the First Appellant had worked when his visa was endorsed "no work".

3. The Appellant appealed on the grounds that the Respondent had not established that he had worked in breach of his visa and further, that the refusal breached family and private life rights under Article 8 ECHR.

4. Judge Nightingale dismissed the appeal, finding that the Appellant had worked in breach and rejecting his explanation that he had done so unwittingly. The judge considered the Article 8 rights of the family, and took into account the best interests of the child, born on 28th January 2007 in the United Kingdom, but concluded in the context of both the Immigration Rules and Article 8 ECHR with reference to relevant jurisprudence, the Immigration Rules and the 2014 Act that the child's removal in the context of her parents' return to Pakistan did not breach Article 8.

5. The Appellants sought permission to appeal on the basis that there had been insufficient consideration of the position of the child in the context of Article 8, as well as the length of residence of the First Appellant who was only just short of the necessary ten years' continuous residence required by paragraph 276B of the Immigration Rules. The First Appellant would have achieved the necessary length of residence on 8th September 2014, and the judge's determination is dated 13th August 2014.

6. Permission was granted on the basis that it was arguable that the judge may have failed to give adequate consideration to the child's position.

7. The points taken for the Appellants in the context of the best interests of the child are that inadequate account had been taken of the jurisprudence: in EA (Article 8 – best interests of child) Nigeria [2011] UKUT 00315 (IAC) to the point that the judge's findings that the ability of a child to adapt to a life in another country, in this case Pakistan, is not a conclusive factor against a claim to remain and further, in the case of Azimi-Moayed and Others v SSHD (Decisions affecting children: onward appeals) [2013] UKUT 00197 (IAC) the important factors of the child having been born here and having inevitably developed social, cultural and educational ties with the UK during her seven years of residence, and that educational stability meant that she should stay here. She is currently attending a British school and can only read and write in English, being unable to read or write in Urdu. This would adversely impact her ability to attend a school in Pakistan and her parents would be unable to afford private schooling so as to be able to provide schooling in the English language. The submission was to the point that the child's best interests would be served "only" by her remaining in the UK with her family.

8. In addition the overall Article 8 exercise was not couched in terms of the questions Razgar, and the judge, when assessing the position in the round, failed to take into account the length of residence of the First Appellant who if he had been here a few more months would have met the 10 year residence requirements for Rule 276B. Length of residence was a weighty factor which should have counted positively in the round.

9. In the context of parents who, as in this case it is conceded, have no basis to remain under the Rules, it is entirely reasonable to expect their child to go to Pakistan with her parents absent strong countervailing arguments concerning her best interests. The Judge correctly self directed, referring to both the cases relied upon before me. The conclusions the judge reached are not counter to either case. The issues were for her to decide. The judge found that it is plainly in the child's best interest to be with her parents and, whilst in broad terms, it can be said that this 7 year old child will suffer some disruption in her education as a result of the change, that was insufficient to undermine the overall position that she would be better off with her parents, wherever they were. The factors raised to militate against removal did not outweigh the strong weight to be given to the need to maintain immigration control. In the specific context of this case the Appellant had breached the conditions attached to his visa in a manner in which the judge concluded, meant that discretion should not be exercised in his favour. That was a matter that was bound to factor into the overall consideration of the position of these Appellants, indeed I note that it is also a matter which in the event that the Appellant had achieved the ten year residence may well still have militated against the grant of leave to remain on the basis of his long residence.

10. The Appellants' second and related point concerning paragraph 276B started from the incorrect premise that the only issues is length of residence, it is not, either in terms of the rules or Article 8 ECHR. The judge took into account the length of residence and no error of law is revealed by the ground.

11. I find that the judge has given an adequate consideration to the position of the child and the family and private life of the family unit as a whole. Although the case of EV (Philippines) and Others v SSHD [2014] EWCA Civ 874 was not before the judge, the judge's consideration and conclusions are entirely consistent with that jurisprudence.

Decision

12. The decision of the First-tier Tribunal reveals no material error of law requiring it to be set aside and the decision dismissing the appeal on all grounds stands.

13. No anonymity direction has been previously made, and no request for an order was made to me. I see no reason to make one.

Signed Date **11th December 2014**

Deputy Upper Tribunal Judge Davidge

TO THE RESPONDENT
FEE AWARD
I have dismissed the appeal and therefore there can be no fee award.

Signed Date **11th December 2014**

Deputy Upper Tribunal Judge Davidge