IAC-AH-CO-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/08645/2015
IA/08647/2015
IA/08651/2015
IA/08653/2015
IA/08657/2015

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 25th November 2015	**On 10 December 2015**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

FAREED AHMED
MOUNEEB AHMED
FARKHANDA FAREED
RUKSHSANA FAREED
SANA FAREED
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr Afsal of the International Immigration Advisory Services
For the Respondent: Mr A McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellants' appeal against the decision of Judge Caswell made following a hearing at Bradford on 21st May 2015.

Background

2. The appellants are father, son and daughters, Pakistani nationals who have lived in the UK since, in the principal appellant's case 2005, and his family from 2006.

3. The family's immigration history is as follows.

4. Mr Fareed Ahmed arrived in the UK on 15th February 2005 as a work permit holder with leave to 13th January 2009. His wife and children came in September 2006. In 2009 Mr Ahmed made a number of applications for leave to remain which were refused and he overstayed.

5. In 2012 he applied for leave to remain outside the Rules and was refused. In 2013 he applied on the basis of family and private life and again was refused. In February 2014 he asked for the application to be reconsidered. The reconsideration resulted in another refusal in February 2015 which was the subject of the appeal before the Immigration Judge.

6. It was accepted that the appellant and his family have had no leave to be here since 2009 and since then they have been in the UK without leave. As at the date of decision the children were all adults, although the youngest, Sana, was under the age of 18 at the time of application.

7. The judge found that the family had relatives in the UK including adult children who would be prepared to support them if they had to return to Pakistan. She acknowledged that the house in Pakistan may well have been sold and there may be few if any relatives still there. On the other hand there was no suggestion that the principal appellant had attempted to secure employment in Pakistan, or that the adult children could not find work there or indeed not apply to return to the UK as students.

8. She assessed the medical evidence. The appellant and his wife are diabetic and he suffers from a kidney condition. His wife is depressed. The judge found that he would be able to access treatment in Pakistan if needed.

9. The family all speak Punjabi and, at the date of the hearing, were all adults and potentially able to work. She specifically considered the position of the youngest child, Sana, in relation to paragraph 276ADE and concluded that she could not meet the relevant sub-paragraph 6 which provides that she must show that there would be very significant obstacles to her integration into Pakistan. The judge accepted that Sana was culturally adapted to life in the UK and has friends here and enjoys the freedom of living in a liberal country. On the other hand she has always lived in a

family with Pakistani origins, is of Pakistani heritage herself, speaks some Punjabi and there was nothing to suggest that she was not healthy or not of at least average intelligence. She concluded that a young adult with these qualities returning to the country of her nationality with her elder siblings and parents would not face very significant obstacles to integration.

10. The judge also considered Article 8 outside the Rules. She accepted that there was family life between the appellant and his wife and their dependent children and also family life between the appellants and the members of the household where they were living, including the appellant's grandchild and his mother. She found that the family could keep in touch with the UK relatives through modern means of communication.

11. She concluded as follows.

> "I also find that the respondent has shown that the decisions to remove are proportionate. The younger appellants all speak English. I accept they have been supported financially by relatives, but they have all utilised the educational and medical facilities of the UK without being entitled to them. The family chose to live in the UK even when all their applications to stay were rejected. The fact they developed ties to this country and to family and friends here was a matter which they (or at least the appellant and his wife) must have taken into account when deciding to take that course.
>
> There are no children under the age of 18. The younger appellants have all been educated through secondary schools, speak English, are in good health and able to work or to study. They could apply from their country to return to study in the UK if they meet the requirements. The appellant and his wife have health issues but these are not life threatening and there is treatment for them available in their country. All the private life which the appellants have built up in this country since 2009/2010 has been done at a time when they had no entitlement to be here and their position was precarious."

12. On that basis she dismissed the appeal.

The Grounds of Application

13. The appellant sought permission to appeal on the grounds that the judge had not considered the correct rule when dealing with the youngest child. She was under 18 when the application was made and paragraph EX.1 applied to her. The judge therefore should have asked herself the question whether it would be reasonable to expect her to leave the UK. He relied on recent Article 8 case law for the proposition that, in the absence of countervailing factors, residence of seven years or more is likely to make removal not proportionate.

14. Second, it was argued that the judge did not make any findings about the testimonies of the witnesses other than the principal appellant and finally did not make any findings about the Article 8 rights of the grandchild.

Submissions

15. Mr McVeety accepted that the judge had erred in law in not looking at EX.1, which was applicable because Sana was under 18 at the date of application. However, there was no proper alternative outcome to the appeal.

16. Mr Afsal relied on his grounds and submitted that the judge had erred not only in failing to apply the correct rule but also in not considering the rights of the grandchild who was very young when making her assessment of proportionality.

Findings and Conclusions

17. It is correct that the judge should have considered paragraph EX.1 and therefore considered whether it would be reasonable to expect Sana to leave the UK, although it is not at all clear whether those submissions were made to her at the hearing.

18. However, the error is immaterial.

19. None of the findings of facts are in dispute and indeed not challenged in the grounds. Sana has been in the UK since she was nine years old, but, for the last six years, has been here unlawfully. During that period the family made a series of unsuccessful applications in order to try to delay their removal.

20. Sana would be returning to the country of her nationality with her parents and three of her siblings. She speaks Punjabi and has gained skills here which will be of assistance to her on return to Pakistan. The judge found that the family here would continue to assist, and there is no challenge to that finding in the grounds.

21. Sana has friends here, and has developed closer ties with family members who do have leave to be here. She has obviously developed a private life, but that aside, there is nothing in her particular circumstances which could render it unreasonable to expect her to leave.

22. There are countervailing factors here, in particular the lengthy period of overstaying. The principal appellant was informed in 2009 that he had no basis to remain in the UK and instead of leaving made a series of fruitless applications. The fact that, inevitably, during that period, Sana's private life developed and deepened does not mean that it would not be reasonable to expect her to leave with the remainder of her family and

return to her country of nationality. As the judge stated, if she wished to return here to study, and can meet the relevant requirements of the rules, she is free to make that application. The case law cited in the grounds is not determinative in her favour.

23. So far as the grandchild is concerned, the judge did refer to the family life which he enjoys with his grandparents and uncle and aunts. He is not dependent upon them, because his own parents look after him. She clearly took his position into account. The grandparental relationship can continue with future visits.

24. Mr Afsal properly did not pursue any argument in relation to Article 3 and health grounds.

Decision

25. The judge did not materially err in law. The decision stands. The appeals are dismissed.

No anonymity direction is made.

Signed Date

Upper Tribunal Judge Taylor