Tribunals Service
Asylum and Immigration Tribunal

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/31934/2014 IA/31938/2014 IA/31912/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 22 June 2015	**On 4 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

MR MUHAMMED SADIQ
MS NASEEM BEGUM
MASTER MUHAMMED ZEESHAN

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Counsel instructed by Malik & Malik Solicitors
For the first respondent: Ms J Isherood Senior Presenting Officer

DETERMINATION

1. The appellants are citizens of Pakistan born on 1 January 1943, 1 January 1956 and 2 February 1998. They are mother father and son. The respondent in a decision dated 24 July 2014 decided to remove the appellants as illegal entrants/a person subject to administrative removal under Section 10 of the Immigration and

Asylum Act 1999 following refusal of their applications pursuant to paragraph 276 ADE of the Immigration Rules and their human rights claim.

2. First-tier Tribunal Judge Robinson dismissed the appellant's appeal under the Immigration Rules and Article 8 of the European Convention on Human Rights.

3. First-tier Tribunal Judge Garrett gave permission for the appellant to appeal in a decision dated 1 April 2015 stating that it is arguable that the Judge erred by failing to take into consideration the Court of Appeal's decision in **Edgehill [2014] EWCA civ 402** as specified in the case of **Khaled and Singh [2015] EWCA civ 74** in respect of the date of application and the date of decision in this appeal. The Judge stated that the second ground of appeal is not arguable as the circumstances of the third appellant were properly examined in the decision, particularly his ability to integrate into life in Pakistan.

The first-tier Tribunal's findings

4. The first-tier Tribunal made the following findings in dismissing the appellants' appeal which I summarise.

5. [32] The appellants are unable to meet the requirements of paragraph 276 ADE (iii) or (vi) of the Immigration Rules. It has not been suggested that the appellants qualify under the Immigration Rules in any other way. However, Mr Saleem submits that because the application was made in 2011, it should not have been considered under the new Immigration Rules. My understanding of the incomplete papers is that the respondent gave the appellants an opportunity to make a fresh application but because the Home Office file was not available (counsel was acting for the respondent) the background to this application was not clear.

6. The immigration history states that removal notices were served on 20 March 2012 and appeals were lodged on 11 April 2012. The appeal was struck out due to a preliminary issue on 16 May 2012 (no information is before the Tribunal about the reason for this but it is likely that there was no right of appeal). The immigration history notes that "on 4 June 2014 the appellant submitted his statement of additional grounds". This was done in a letter from Malik &Malik.

7. [37] The first appellant entered the United Kingdom in 2005. His purpose was to visit his brother. His visa expired on 30 September 2005 and he lived in the United Kingdom without leave for almost 10 years. He has had health problems which are

described in detail in his medical records. It is claimed that his family home was sold prior to their arrival here on visit visas.

8. The third appellant began his studies at Norwood School when he was 12 years old. He is now studying at South Thames College and hopes to qualify as an electrician. The family appears to have supported themselves from the first appellant's earnings. The first appellant has done some work as a butcher and at a stall selling fruit. It is claimed that the second appellant, Mrs Begum brought money from Pakistan from proceeds of sale of their property in that country.

9. [39] from the oral evidence given by the appellants, it is apparent that they do not wish to return to Pakistan for a number of reasons namely, the lack of adequate medical treatment for the appellant, the lack of appropriate educational provisions for the third appellant who is well integrated socially in the United Kingdom and the financial impact of moving back to a country where they have no work prospects.

10. [40] I accept that several aspects of private life exists. For the reasons given in the refusal, the respondent contends that the applicant does not meet the requirements of the Immigration Rules. I concur with this conclusion.

11. [41] As the appellants do not meet the requirements of the Immigration Rules, I take the view that the main issue to be decided turns on the proper answer to be given to the fifth questioning in **Razgar** namely whether the interference with the appellants' private life is proportionate to the legitimate public end sought to be pursued.

12. [42] I consider each appellant's private life in the context of his/her age, health and personal circumstances, his/her immigration status and immigration history. I also take into account the length of his/her stay in the United Kingdom, his/her links with the community is so for as they are known and the nature of his/her relationships with others."

13. [43] For the majority of the period the appellants have stayed in the UK, the appellants have lived here unlawfully, i.e. without leave. Although they came on visit visas the person or persons they claim to be visiting has not provided evidence for their appeal hearing. The appellant's brother who lives in Bristol has not written to the Tribunal in support of the appellants' applications.

14. [44] The first appellant has submitted letters from his son's friends. He has also submitted his son's academic references. I

accept that the third appellant has received education in the United Kingdom and according to the Deputy Headmaster of Norwood School, was a hard-working, popular and conscientious pupil. His friends who attended the hearing bear this out. He is now in the middle of a one-year course at South Thames College and would like to finish his studies here. Initially he did not want to leave school and friends in Pakistan. Now he has adapted to life in the UK, he does not want to return. He appears to like the lifestyle in London. He had a Polish girlfriend who was about his age. They have split up because it appeared that there was no future for them as a couple. The fact that she is pregnant has no bearing on this appeal as the girl has not suggested that the third appellant is the father of her unborn child.

15. [45] The appellants held positions thoroughly described in the documents before the Tribunal and it is apparent that the third appellant is receiving treatment from the NHS which meets his needs. The respondent has produced documentation which indicates to me that appropriate treatment and medication is available in Pakistan. The disadvantage for the appellants is that they would have to pay for it.

16. [51] I have carefully considered the appellants connection with their country of origin. They have family members there. Mrs Begum has referred to her sisters. I accept that they would be unlikely they would be able to provide financial support for the appellants but there are extended family members and the appellant speaks to them by telephone. It appears to me that they would be in a position to provide some emotional and practical support in the event the appellants return to Pakistan.

17. [52] I conclude from all the available evidence that it would not be unreasonable to expect the appellants to return to Pakistan where they have family connections and they are familiar with the language, culture and environment. Objective evidence shows that the appellant would be able to access appropriate medical care in any of the major cities. The third appellant is an intelligent young man with qualifications which would assist him to obtain gainful employment. I take the view that he has benefited from education in the UK and has learned some useful practical skills.

Grounds of appeal

18. The Judge failed to take into account the findings of the Court of Appeal in **Edgehill [2014] EWCA civ 402,** where it was held by the Court of Appeal that where an application was made prior to 9 July 2012, the Secretary of State was bound to consider the Immigration Rules in effect prior to 9 July 2012. The Judge

misdirected himself in law by failing to take into account that the Secretary of State had applied the wrong Immigration Rules to the appellant's applications.

19. This is the only ground that permission to appeal was granted.

Decision on error of law

20. The Judge stated that the appellants are unable to meet the requirements of paragraph 276 ADE (iii) or (vi) of the Immigration Rules. He went on to say that "It has not been suggested that the appellants qualify under the Immigration Rules in any other way. Mr Saleem who represented the appellant at the First-tier Tribunal had submitted that because the application was made in 2011, it should not have been considered under the new Immigration Rules. The Judge stated that his understanding of the incomplete papers is that the respondent gave the appellants an opportunity to make a fresh application but because the Home Office file was not available at the hearing as counsel was acting for the respondent the background to this application was not clear.

21. There is no dispute, however that the removal notices were served on 20 March 2012 and appeals were lodged on 11 April 2012. The appeal was struck out due to a preliminary issue on 16 May 2012. The Judge noted that there was no information before the Tribunal about the reason for this but speculated that it is likely that there was no right of appeal. The immigration history however notes that "on 4 June 2014 the appellant submitted his statement of additional grounds in a letter from Malik &Malik.

22. It is clear that in the case of **Edgehill,** the Court of Appeal settled the question of whether the new human rights rules introduced on 9 July 2012 apply to applications made before that date and held that they do not. Specifically, it is unlawful to apply rule 276ADE on long residence to applications that were already outstanding at the date the new Immigration Rules came into force.

23. The background of this appeal is not entirely clear from the determination but it would appear that the appellants made their applications on 9 July 2012 under the old Immigration Rules. The Judge found that the appellant's did not meet the requirements of paragraph 276 ADE of the current Immigration Rules which came into effect after the date of the appellants' applications and while their applications were still pending.

24. The appellant's evidence is that he came to this country in 2005 on a visitor visa which expired in September 2005. This means that the first appellant has been unlawfully in the country since 2005. The other two appellants joined him in this country later. It is now September 2015 and therefore the first appellant could only have been resident in this country for 10 years, subject to proof.

25. Therefore I find that the appellant would not be able to satisfy the old Immigration Rules with required that the appellant demonstrate that he has had continuous residence in the United Kingdom for 14 years. The grounds of appeal do not outline how the appellant would have satisfied the old Immigration Rules.

26. The Judge's approach to the question of whether the appellants in their particular circumstances met the requirements of the new paragraph 276 ADE is erroneous. I find however that it is not a material error of law because the Judge would have come to the same conclusion even if he had applied the old Immigration Rules.

27. On the evidence, I find that the Judge made proper and sustainable findings of fact on the evidence available in respect of the appellants' Article 8 rights. I find that the all three appellant's cases were properly considered pursuant to Article 8. The Judge was entitled to find that the appellants circumstances do not raise or contain any exceptional circumstances which, consistent with his right to respect for private and family life in respect of Article 8 of the European Convention on Human Rights.

28. The permission Judge stated that the second ground of appeal is not arguable as the circumstances of the third appellant were properly examined in the decision, particularly his ability to integrate into life in Pakistan. These are sustainable findings on the evidence.

29. I therefore find that there is no material error of law in the determination such that it should be set aside.

30. In the alternative, I set aside the determination and remake the decision and dismiss the appellant's appeal pursuant to paragraph 276 of the old Immigration Rules. I find that the appellant has not demonstrated that he has lived in this country continuously for 14 years as required by the old Immigration Rules which are applicable to the appellant.

31. In the circumstances, the appellant's appeal must be dismissed.

Appeal dismissed

Signed by,

A Deputy Judge of the Upper Tribunal

Mrs S Chana

Dated this 31st day of August 2015