Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/22900/2018
HU/22904/2018, HU/22907/2018
HU/22911/2018, HU/22917/2018
HU/22922/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 November 2019	**On 15 November 2019**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MRS S B
MR A H
MASTER H A
MASTER R A
MISS A A
MISS A A
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr A Otchie, instructed by Burney Legal Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

This is the appellants' appeal against the decision of First-tier Tribunal Judge Roots promulgated on 18 June 2019 dismissing their appeals against the

decision of the Secretary of State dated 25 October 2018 rejecting their applications made on 12 December 2017 for leave to remain on human rights grounds.

First-tier Tribunal Judge Hollingworth granted permission to appeal on 16 September 2019, considering it arguable that the judge has set out an insufficient analysis of the degree of integration attained by the two older children across the social, educational and cultural spectrum of the United Kingdom in assessing the impact of deracination and the issues relating to reintegration. Judge Hollingworth considered it arguable that the application of Section 55 has been affected and the proportionality exercise in considering whether there would be a breach of Article 8 outside the Rules has also been affected.

Shortly prior to the hearing, the appellant sought an adjournment on the basis that she was unwell and submitted a doctor's certificate stating that she was suffering from joint pains and was having difficulty in walking. The certificate is to the effect she was not fit for work but makes no mention of attending court. No diagnosis nor prognosis is offered and it is not clear when she would be fit. The document was entirely unsatisfactory and insufficient to justify adjourning the appeal, which has been listed for some time. She has had ample time to prepare for the hearing and to give instructions. I noted that it was not clear that the appellant would need to give evidence as the hearing was listed initially for an error of law. I refused the application on the basis that, if necessary, a further application could be made, depending on the outcome of the error of law hearing. At the hearing, the second appellant did attend. The adjournment application was not renewed and I considered it consistent with the overriding objectives to deal with cases fairly and justly to proceed with the hearing.

For the reasons I have set out below, I find there was no error of law in the decision of the First-tier Tribunal such as to require it to be set aside.

It was agreed at the First-tier Tribunal appeal hearing that the main issue was Article 8 family and private life and the best interests of the children. The appellants' representative, Mr Aslam, suggested that paragraph 276ADE(1)(vi) was the starting point for the parents and it was agreed at the outset of the appeal that the children cannot meet that provision, as they had been in the UK less than seven years at the date of the application.

There was no argument that the appellants met the requirements of Appendix FM of the Immigration Rules. The appeal was purely on human rights grounds outside the Rules and it would appear that much of the argument before the First-tier Tribunal centred on Article 8 ECHR. The judge set out the relevant provisions, including paragraph 276ADE and Section 117B of the 2002 Act, from paragraph 7 of the decision. As the children had all lived in the UK less than seven years, they did not qualify under the provisions of paragraph 276ADE.

At the outset of the appeal in the Upper Tribunal Mr Otchie sought to argue that the Judge of the First-tier Tribunal had failed to consider the issue of very significant obstacles to integration under paragraph 276ADE(1)(vi). Whilst the judge has set that provision out at paragraph 7 of the decision, it does not appear from the judge's summary of the submissions and the discussion at the appeal that it was ever argued substantively that there were very significant obstacles to the children's integration in Pakistan. According to paragraph 30 of the decision, the appellants' representative's submissions turned on the children's best interests and their integration in the UK. There is no reference to any submissions or argument that there would be very significant obstacles in relation to the children. At paragraph 29 of the decision the judge noted the first and second appellants had raised arguments that there would be very significant obstacles to their integration into Pakistan. However, the judge recorded that this was not pursued with any real vigour at the hearing and provided cogent reasons there why there were not very significant obstacles, particularly given the length of time that they lived in Pakistan and their employment there. It does not appear to have been argued that there were very significant obstacles to the children's integration in Pakistan.

Mr Otchie focussed on the question of the extent of integration of the two older boys, who were then not yet 7 at the date of the application. However, notwithstanding Mr Otchie's submissions, it is clear from a reading of the decision that the question of the children's integration in the UK was adequately addressed under the heading 'best interests of the children'.

With regard to the best interests of the children, the judge dealt with this at paragraph 30 and it is clear there that Mr Aslam's submissions turned on their best interests and their integration. Submissions were made and taken into account in relation to their schooling, their speaking of English at school and at home, and the fact that the children are not fluent in their native language. The judge noted all relevant facts, including that the youngest child were born in the UK but the two older children came to the UK, when they were aged just over 4 years, and that they have adapted well. The judge addressed the question of language at paragraph 32 and at paragraph 33 did not accept that the children would necessarily have to go into private education on return to Pakistan, there being no evidence to support that assertion.

The judge accepted that there was likely to be some effect on the children's education and development by returning to Pakistan. He accepted that they had been in the English educational system for quite some time and it was only to be expected that they will have built up their private lives, as it evidenced from the documents. However, the judge found that none of that was sufficient to establish that their best interests are to remain in the UK. What he found was that the best interests are to remain with their parents and, all things being equal, this would have been to remain in the UK, but that was not the case.

Essentially, applying the principles of Agyarko, the judge pointed out the parents have no right to remain in the United Kingdom and that is the starting

point. If this had been the case of the seven year threshold being crossed, then there would have been the reasonableness test which applies under Section 117B and also paragraph 276ADE, but that was not this case. Even if it was this case, the starting point was that the assessment of reasonableness of expecting the children to leave the UK had to be assessed in the 'real world' and that is that the parents had no right to remain in the United Kingdom, and that the children would return as a family unit with their parents to Pakistan, and have the support of their parents there. As stated above, at paragraph 33 the judge accepted there would be some effect on the children's education and development but he was not satisfied that there was evidence to show that this would be other than relatively short-term and he was confident it would eventually be overcome with love, attention and support of the parents.

At paragraph 34 the judge accepted that the family as a whole may well find it challenging and difficult to settle in Pakistan. It was pointed out that they may well have found it considerably easier had they returned in April 2017, when the children were two years younger and when the first appellant had an offer of a job in the Ministry of Foreign Affairs, which he had turned down because he wanted to stay in the UK. At paragraph 35 the judge accepted the respondent's submission that there is no obligation to respect the appellants' choice of where they would like to live; they had no legitimate expectation of being able to settle with their children in the UK.

It follows that leave can be granted outside of the Rules under Article 8 only if there are compelling circumstances, exceptionally, sufficient to make the decision disproportionate on the basis that it would create unjustifiably harsh consequences for any or all of the appellants. As the judge has pointed out at paragraph 36, this family accepted that they knew in 2013 that they were coming to the United Kingdom for a temporary period based on the first appellant's work for the embassy, and they knew that she might have to leave at the end of that period.

The judge concluded at paragraph 37 that it was not unjustifiably harsh to require them to return to Pakistan. Of course, they preferred to stay in the United Kingdom, but the judge concluded, having assessed the evidence as a whole, that their wishes did not outweigh the public interest in maintaining immigration control. The judge also pointed out the statutory factors arising from Section 117B that their immigration status was precarious and therefore in the proportionality balancing exercise little weight should be given to the private life of any of the appellants established in the United Kingdom.

At paragraph 38 the judge pointed out that the children are not qualifying children but did accept that the older two children had been in the UK for nearly six and a half years and that period would shortly become seven years, when they would then become qualifying children. Of course, they could make fresh applications at that point but what had to be considered was whether the children met the requirements of the Rules and if not, whether the decision was proportionate.

I find, looking at the decision as a whole, the judge has assessed all the relevant circumstances. He has assessed the best interests of the children. When pressed on the matter, Mr Otchie was unable to point to any specific matter the judge had not addressed. In reality, the submissions and the grounds in this case that there was an "insufficient analysis of the evidence" amounts to no more than a disagreement with the reasoning of the judge and the findings and conclusions.

In the circumstances, I find no error of law in this decision. The judge accepted at paragraph 34 that the family as a whole may well find it challenging to settle in Pakistan but there is nothing sufficient in their circumstances to outweigh the public interest in the proportionality balancing exercise, so that they, or any of them, should be allowed to remain, even taking into account the degree of integration of the children and in particular the two elder boys.

Decision

I find no error of law in the decision of the First-tier Tribunal.

I do not set aside the decision of the First-tier Tribunal.

The decision of the First-tier Tribunal stands, and the appeal of each appellant remain dismissed.

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.

Signed

Upper Tribunal Judge Pickup

Dated 13 November 2019

To the Respondent
Fee Award

I have dismissed the appeal and therefore there can be no fee award.

Signed

Upper Tribunal Judge Pickup

Dated 13 November 2019