Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/16410/2019**
HU/16412/2019
HU/16414/2019
HU/16417/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 December 2020	**On 26 January 2021**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

S K
M Y
A M
N M (A MINOR)
[ANONYMITY ORDER MADE]

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellants: Mr Abu Sadat Islam, solicitor with Fountain Solicitors
For the respondent: Mr Tony Melvin, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of S K, M Y, A M, or the child N M, who are the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of any of them or of any member of their family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and reasons

1. The appellants appeal with permission against the decision of the First-tier Tribunal dismissing their appeals against the respondent's decision on 20 September 2019 to refuse them leave to remain in the United Kingdom on human rights grounds, pursuant to paragraph 276ADE(1) and in the case of the third and fourth appellants, with regard to section 55 of the UK Borders Act 2007 and section 117B and 117D of the Nationality, Immigration and Asylum Act 2002 (as amended).

2. The appellants are all Pakistani citizens: the first appellant is the mother of the second, third and fourth appellants. The first appellant was born in 1972, so she is 48 years old now. The second appellant was born in 1995 and is 25 years old. The third appellant was born in 1999, so she is 21 years now and the fourth appellant, who is the youngest, was born in 2003 and is now 17 years old.

Mode of hearing

3. The appeal was heard by Skype for Business, there being no objection from either party to a remote hearing. There were no significant technical difficulties, although Mr Islam had difficulty with his received sound at times: on those occasions, I repeated what I had said and he heard it on the second repetition.

4. I am satisfied that this was a fair hearing.

Background

5. The appellants say they came to the United Kingdom from the Republic of Ireland on 1 March 2012, when the third and fourth appellants were still minors: the second appellant was 17, the third appellant was 13 and the fourth appellant was just 8 years old. The second appellant reached adulthood in 2013, the third appellant did so in 2017: neither of them has been in the United Kingdom as a child for 7 years. The fourth appellant became a section 117D qualifying child in March 2019, after 7 years in the United Kingdom as a minor. The second appellant, it seems, has a partner although they are not married: she says she does not want to marry him. The partner did not give evidence, save in a witness statement, at the First-tier Tribunal.

6. In these proceedings, the appellants say they arrived together from the Republic of Ireland, but it seems that, at least for a time, the third and fourth appellants were living with an aunt and their mother was not with them. In August 2012, the third and fourth appellants made an asylum application as unaccompanied asylum-seeking children, which was refused. As both were still minors, the respondent granted them 3 years' discretionary leave, expiring on 19 October 2015. In February, March and August 2016, all four appellants made joint applications for further leave to remain on private and family life grounds together, which were refused.

7. The appellants did not embark for Pakistan, nor did they return to the Republic of Ireland. Instead, they remained unlawfully in the United Kingdom and on 29 March 2019, they made a human rights claim based on their private life in the United Kingdom, which was refused on 20 September 2019. It is against that decision that they appealed to the First-tier Tribunal.

First-tier Tribunal decision

8. On 18 November 2019, the appellants' appeals were heard by First-tier Judge Thapar, sitting at Birmingham Civil Justice Centre. The First-tier Tribunal's decision was sent to the parties on 14 January 2020.

9. The core of the First-tier Judge's decision is at [24]-[27]:

> "24. I note that the evidence to demonstrate that the second appellant and the first appellant are living together are of some receipts for items sent. …The sender therefore has the option of including whatever name they wish when requesting delivery. The utility bills produced for the second appellant dated 2015, 2016, and in an undated letter, show him to be residing at a different address. The second appellant was additionally recorded as living at the alternative address as stated in the utility bills in November 2018, and the first appellant and fourth appellant living at another address at the same time. … Although the appellants state that they are living together, it would appear that the second appellant is living independently.
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> 25. I acknowledge that the fourth appellant has now been residing in the United Kingdom for over seven years and that she will, in the next months, be completing her GCSEs. I have found above that it would not be unreasonable to expect the first, second and third appellants to return to Pakistan and there are no significant obstacles to their integration in Pakistan. The fourth appellant has always lived with her mother and sister, and I do find them to be a close family unit. I accept that requiring the fourth appellant to return to Pakistan would cause disruption in respect of her studies, and potentially interfere with the friendships she has formed in the United Kingdom, however, I find that separating her from the family would caused greater distress, instability, and would not be in her best interests. The welfare and the best interests of the fourth appellant would be maintained by remaining with her mother and siblings, and family life can therefore continue in Pakistan. I find that the fourth appellant's mother and siblings would be able to continue to provide the emotional support

> and comfort to the fourth appellant in Pakistan, I have also found that the appellants do have extended family members who may assist and therefore the appellants would have available to them a support network in Pakistan. There is an educational system in Pakistan and the appellants have produced no evidence to show that the fourth appellant cannot continue her studies in Pakistan.
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> 26. I therefore find that there are no significant obstacles to the appellants' integration in Pakistan for the reasons provided above. I find that the appellants are unable to satisfy the relevant requirements under the Immigration Rules.
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> 27. I find that the private life established by the appellants during their residence in the United Kingdom does not outweigh the public interest in maintaining a firm and fair system of immigration control and therefore the decision of the respondent is a proportionate response. The appellants' appeal under human rights therefore fails."

10. The human rights appeal was dismissed and the appellants appealed to the Upper Tribunal.

Permission to appeal

11. The grounds of appeal relate only to the fourth appellant. The first, second and third appellants have not challenged the findings in relation to them, though Mr Salam said frankly that he would expect, should the fourth appellant succeed on her challenge to the First-tier Tribunal decision, that all four appellants would be given appropriate leave.

12. Four categories of error of law were posited. The appellants contend, in relation to the fourth appellant, that the First-tier Tribunal erred by:

    (1) Failing properly to apply paragraph 276ADE(iv): at [25], they argue that insufficient weight was given to her upcoming GCSE examinations; at [29] they accept that it is factually correct that the fourth appellant could resume her studies in Pakistan, but did not have regard to the subjective effect on the fourth appellant if she were to be returned before taking her exams; and the appellants contend that the fourth appellant's 8 years' residence in the United Kingdom had not been adequately considered, given that she had been to primary school, junior school and secondary school here.

    (2) Failing properly to assess the fourth appellant's section 55 best interests, given the potential disruption to her studies by removal to Pakistan and the interference with friendships formed by her in the United Kingdom. It would not be reasonable to expect her to leave the United Kingdom until her education was complete, and if she were allowed to remain, the first appellant as her mother would also need to be given leave to remain too.

    (3) Failing to consider the family unit holistically; it would not be reasonable to expect the second or third appellants to return to Pakistan, as they had established substantial privately life in the United Kingdom over the last 8 years and enjoyed family life together

during that period. If the second and third appellants had to return to Pakistan without their mother and sister, that would be an unreasonable and disproportionate breach of their family life. The appellants had not been considered on an individual basis; and

(4) Failing properly to apply the proportionality test and to strike a fair balance between the competing interests of the state and the individual: see *GM (Sri Lanka) v Secretary of State for the Home Department* [2019] EWCA Civ 1630 and the relevance of the insurmountable obstacles case. The facts had not been evaluated in a 'real world' sense. Permission should be granted.

13. First-tier Judge Keane granted permission, on the basis that there was a *Robinson* obvious point: the First-tier Judge had failed to make a finding as to whether it would be reasonable to expect the fourth appellant to leave the United Kingdom, with her GCSE examinations coming up, and all the educational disruption which would occur.

Rule 24 Reply

14. The respondent did not file a prompt Rule 24 reply, but on the evening before the hearing, Mr Melvin provided written submissions to stand as such a reply. He argued that it was reasonable to expect the fourth appellant to leave the United Kingdom. Her personal circumstances had been considered at [21], in particular her good knowledge of the main Islamic beliefs and practices, on which she could express herself clearly. He relied on the findings in [25] and following. While it was right to say that the requirements of section 117B had not been set out, the question of section 117B(6) reasonableness had been properly considered and the decision should be upheld.

15. That is the basis on which this appeal came before the Upper Tribunal.

Evidence concerning the fourth appellant

16. The evidence about the fourth appellant's private and family life in the United Kingdom comprises a statement made on 4 November 2019, in which she says she is studying for her GCSE examinations, and wants to study Law, Criminology and Health and Social Care at 'A' Level. The fourth appellant says she lives with her mother, brother and sister, but has no contact with her father. She has many friends here from school and would like to develop her career and continue living her life in the United Kingdom. She has few memories of life in Pakistan, having left there aged 8.

17. The documents at 137 and following are the fourth appellant's birth certificate, her 2012 biometric residence card for the period of discretionary leave, and many documents from her various schools, showing that she is working hard and progressing well, together with a number of photocopied photographs, presumably of the fourth appellant and her friends. There are no witness statements from her friends.

Upper Tribunal hearing

18. At the hearing, Mr Islam confirmed that the complaint in these proceedings related solely to the treatment of the fourth appellant's private and family life rights. He then began to make submissions about the third appellant. I asked whether he was seeking to vary the grounds of appeal: Mr Islam confirmed that he was not and that, as previously stated, it was the fourth appellant's circumstances with which the Tribunal should be concerned.

19. Mr Islam relied on the documents which begin at page 137 of the First-tier Tribunal bundle, and which set out the fourth appellant's educational attainments since arriving in the United Kingdom, and to which he referred as demonstrating that she has a substantial private life here. He confirmed that the fourth appellant had successfully completed her GCSE examinations in the summer of 2020 and had now embarked on a college course to continue her education. He did not give details of that course and we are not concerned with it unless this decision is set aside and remade.

20. Mr Islam relied on paragraph 276ADE(1)(iv) of the Immigration Rules: the fourth appellant had lived continuously in the United Kingdom for at least 7 years and it would not be reasonable to expect her to leave the United Kingdom. Mr Islam relied on the decision of the Upper Tribunal in *Azimi-Moayed (decisions affecting children: onward appeal)* [2013] UKUT 197 ((IAC)). The judge should have considered the evidence before her. Mr Islam asked me to allow the appeal and to set aside the First-tier Tribunal and remake the decision in the appellant's favour.

21. For the respondent, Mr Melvin relied on his written submissions and contended that the First-tier Tribunal's reasons were adequate, if not extensive: the question of reasonableness was a matter of weight and in this case, the fourth appellant's best interests lay in remaining with her family members, even if they relocated to Pakistan together. She was still emotionally dependent on her family members. Mr Melvin asked me to dismiss the appeal.

Analysis

22. The most helpful analysis of the task for the First-tier Judge is now in *KO (Nigeria) & Ors v Secretary of State for the Home Department (Respondent)* [2018] UKSC 53 in which Lord Carnwath JSC gave the judgment of the Court, Lord Kerr JSC, Lord Wilson JSC, Lord reed JSC and Lord Briggs JSC concurring. Lord Carnwath held that the parent's illegality or criminality was not relevant and approved the respondent's IDI dated 22 February 2018, as follows:

> ""The consideration of the child's best interests must not be affected by the conduct or immigration history of the parent(s) or primary carer, but these will be relevant to the assessment of the public interest, including in maintaining effective immigration control; whether this outweighs the child's best interests; and whether, in the round, it is reasonable to expect

> the child to leave the UK." (Family Migration: Appendix FM Section 1.0b. Family Life (as a Partner or Parent) and Private Life: Ten-Year Routes, p 76)"

23. Lord Carnwath held that although section 117B(6) was on the face of it free standing, but it was inevitably relevant to consider whether the parents (the first appellant, in this case) was expected to be, since it would normally be reasonable for the child to be with them. 'Reasonableness' was to be considered in the real world in which the children found themselves.

24. I remind myself also that the reasonableness finding, absent any misdirection in law, is a finding of fact by the First-tier Judge, who had the advantage of oral evidence which has not been available to me today, as well as the documents I have mentioned. The circumstances in which the Upper Tribunal may interfere with a finding of fact are very narrowly drawn: see *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296 and *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982.

25. In this appeal, the judge made a robust and concise assessment of the material before him. I have reviewed the school materials and they add very little weight to the appellants' case, although the fourth appellant is clearly a good student who is doing well. She has always lived with her (now adult) siblings and her mother, and the real world analysis is that, absent consideration of her circumstances, her mother and brother appear never to have had leave at all, and her elder sister only had discretionary leave until 2015. They have all been in the United Kingdom either precariously or unlawfully, and but for the fourth appellant's circumstances, they have not challenged the finding of the First-tier Tribunal that they can lawfully be removed.

26. The fourth appellant's educational arguments have fallen away: the need to take her GCSE examinations is no longer material to this appeal as she has already done so successfully. The fourth appellant has embarked on further study, but the judge found that she could do that in Pakistan.

27. The grounds of appeal accordingly disclose no material error of law in the decision of the First-tier Tribunal which is adequately, intelligibly and properly reasoned.

28. This appeal is dismissed.

DECISION

29. For the foregoing reasons, my decision is as follows:

    The making of the previous decision involved the making of no error on a point of law

    I do not set aside the decision but order that it shall stand.

Signed Judith AJC Gleeson Date: 22 December 2020

Upper Tribunal Judge Gleeson