



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/11659/2012
IA/11660/2012
IA/11664/2012
IA/11666/2012
IA/11669/2012

THE IMMIGRATION ACTS

**Heard at Bradford
On 5 August 2013**

**Determination Promulgated
On 31 October 2013**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**MOHAMMAD TABARAIZ MIR
SHAMIM AKHTAR
LAIBA TABARAIZ
SOBIA TABARAIZ
MUHAMMAD SAAIM TABARAIZ**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Afzal, IIAS (Manchester)
For the Respondent: Mr J Wardle, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are citizens of Pakistan. The first appellant is the husband of the second appellant and father of the remaining appellants. I shall (as did the judge in the First-tier Tribunal) refer to the first appellant as “the appellant” throughout this determination.
2. Granting permission to appeal to the Upper Tribunal, Judge Perkins expressed some doubt as to the immigration decision against which these appellants had appealed to the First-tier Tribunal. Having considered the matter carefully, I agree with Judge Jones (who heard and dismissed the appeal to the First-tier Tribunal) that the present appeal is against the refusal of the appellants’ applications to remain indefinitely in the United Kingdom on the basis that the appellant is a work permit holder. That decision is dated 20 December 2011, the same date of the respondent’s refusal letter. That letter makes it clear that the refusal concerned the application for indefinite leave to remain as a work permit holder which the appellant had submitted on 1 August 2011. The position was obscured subsequently by the issue by the respondent of a supplementary refusal letter on 26 April 2012. That letter deals with the (now revoked) paragraph 395C of the Immigration Rules. The respondent considered that the factors set out in that paragraph applied in the case of these appellants under the terms of Home Office internal guidance.
3. The grounds of appeal, however, to the Upper Tribunal make no reference to paragraph 395C but are concerned solely with Article 8 ECHR. I shall deal with the Immigration Rules points first. The first thing to note is that Judge Jones in his determination recorded more than once that the representative for the appellants at the First-tier Tribunal hearing had openly conceded to him that the appellants could not succeed in an appeal under the Immigration Rules [see, in particular, the determination at paragraph 27]. Secondly, the grounds of appeal assert that the passing of an English language test by the appellant was not required because this was not an entry clearance or points-based system application. A problem had also arisen over the timely submission of the appellants’ applications to which the appellant asserts that sufficient funds had been in his bank account but that the applications should not have been returned to him by the respondent.
4. It is clear from the refusal letter of 20 December 2011 that the applications had been refused because the first appellant failed to satisfy paragraph 134(vi) of the Immigration Rules:
 134. Indefinite leave to remain may be granted on application provided the applicant:
 - (vi) has sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, in accordance with paragraph 33BA of these Rules,

unless the applicant is under the age of 18 or aged 65 or over at the date of the application.

5. A further requirement in paragraph 33BA of BA of the Rules indicated that “a sufficient knowing of the English language” could only be proved by an applicant who had passed the Life in the UK Test. The refusal letter noted:

In considering your representations submitted in support of your application it is noted you and your dependent spouse have only submitted ESOL qualifications to demonstrate you have knowledge of life in the UK. ... For the reasons outlined above your application for indefinite leave to remain as a work permit holder is refused under paragraph 135 with reference to paragraph 134(vi) of HC 395 (as amended).

6. The parties in this appeal before the First-tier Tribunal were in agreement that the appellant could not satisfy the Immigration Rules because he had not passed the test. Indeed, the determination refers to an application for an adjournment of the hearing supposedly to enable the appellant to enter (and pass) the test. At the Upper Tribunal hearing in August 2013, Mr Afzal informed me that the appellant had now passed the life in the Life in the UK test.
7. I have to say I can find nothing wrong with the First-tier Tribunal Judge’s handling of the Immigration Rules appeal. Not only was he told by the appellants’ representative that his clients could not succeed under the Rules but it is apparent that the requirements of paragraph 134(vi) defeated the applications.
8. The remaining question, therefore, is whether the judge has reached a decision on Article 8 ECHR which is not flawed by legal error. Judge Perkins when granting permission considered that the judge may not have applied the case law (Judge Jones refers to the familiar cases of *Razgar* 2004 UKHL 27 and *Beoku-Betts* [2008] UKHL 39. At [29] the judge gave his reasons in detail for finding that it would be proportionate and in pursuance of a lawful and legitimate goal of controlling immigration for the respondent to refuse these appellants leave to remain in the United Kingdom. The private lives of the appellants were expressly considered by the judge at [30]. The judge found that the appellants had not established “friendships or community ties” within the United Kingdom which would render the respondent’s decision disproportionate. Whilst best practice might indicate that the judge should have referred to leading case authorities, his failure to do so is not an error of law per se; what is important is that the judge applies the relevant principles contained in the jurisprudence. I find that he has done precisely that in his determination. Further, the grounds are, with respect, little more than a disagreement with findings which were open to the judge on the evidence. The grounds speak of the income tax paid by the family who had lived lives in the United Kingdom “blamelessly”. It is true (as the grounds assert) that the judge has not referred expressly to Section 55 of the Borders, Citizenship and Immigration Act 2009. However, I find that this is a case where the judge’s analysis of all the relevant facts is sufficiently thorough that his failure to deal expressly with Section 55 does not render his determination wrong in law such that it

should be set aside. As regards Section 55, the grounds do no more than assert that it would not be in the best interests of the children “to go to a third world country which is almost a failed state”. Section 55 will rarely, if ever, involve a detailed comparison of conditions in the United Kingdom to those of the appellants’ home country. Had he examined Section 55 in detail, I find that the judge would have concluded that the best interests of these young children would be to remain with their parents, who are returning to Pakistan. That country is also the country of the children’s nationality and culture. It was clearly open to the judge to find that, notwithstanding the fact that the children and their parents had spent some years in the United Kingdom, it would not be disproportionate or contrary to the children’s best interests for them to be removed.

9. For these reasons, I find that the appeal should be dismissed. The judge has not reached a conclusion which is perverse in any way. His findings were available to him on evidence which he has analysed adequately.

DECISION

10. These appeals are dismissed.

Signed

Date 29 October 2013

Upper Tribunal Judge Clive Lane