



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

Appeal Numbers:  
IA/32514/2013  
IA/38000/2013  
IA/38032/2013

**THE IMMIGRATION ACTS**

**Heard at: Manchester**

**On: 23<sup>rd</sup> April 2014**

**Determination**

**Promulgated**

**On: 6<sup>th</sup> June 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**HR**

**RK**

**ZR**

**(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**For the Appellants: Mr Muhammad, International Immigration  
Advisory Servi**

**For the Respondent: Mr McVeety, Senior Home Office Presenting  
Officer**

**DETERMINATION AND REASONS**

1. The Appellants are all nationals of Pakistan. They are respectively a mother, father and their son, who is now aged two years old. They

have permission to appeal against the decision of the First-tier Tribunal (Judge Lever) to dismiss their linked appeals against the Respondent's decisions to refuse to vary their leave to remain and to remove them from the United Kingdom pursuant to s47 of the Immigration, Asylum and Nationality Act 2006.

2. The background to these appeals is that the parents of the youngest Appellant both came to the United Kingdom in September 2011 with leave to enter under the Points Based System (respectively a Tier 4 (General) Student Migrant and her dependent). The Third Appellant was born in the UK in 2012. Both parents were fully complying with the terms of that leave when on the 21<sup>st</sup> January 2013 they made an application for leave to remain on compassionate grounds on the basis of their son's medical condition.
3. The Third Appellant has been unwell all of his life. He needed significant resuscitation at birth and thereafter received intensive care support. By early 2013 he had been diagnosed with a rare congenital deficiency of a specific enzyme called ADAMTS/13 which results in developmental problems and difficulty in coagulating blood. The basis of the applications in January 2013 was that he required specialist medical intervention that would not be available in Pakistan. The application form expressly states that this is "the only factor" under the heading of 'private life' [at 6.18].
4. The evidence submitted to the Respondent consisted of a series of letters from Central Manchester University Hospitals<sup>1</sup>. These stated that the Third Appellant:
  - Was born prematurely at 34 weeks;
  - Was placed in intensive care on mechanical ventilation immediately after birth;
  - Was found to have a very large brain infarction (neonatal stroke) and required large blood transfusions;
  - Has a diagnosis of ADAMTS-13 deficiency and related micro-angiopathic haemolytic anaemia
  - Is likely to have long-term growth and development problems;
  - Will require physiotherapy, speech therapy, occupational therapy and intervention by other services;
  - Will require close monitoring and blood transfusion every two weeks to maintain survival;
  - Was in March 2013 in remission due to the treatment he was receiving here;
  - Would be unlikely to receive the medical support he needs in Pakistan.

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<sup>1</sup> 25<sup>th</sup> October 2012 and 13<sup>th</sup> June 2013 from Dr Victor, Senior Lecturer and Honorary Consultant Neonatologist, 6<sup>th</sup> and 15<sup>th</sup> March 2013 from Dr RF Wynn, Consultant Paediatric Haematologist and BMT.

5. The applications were refused on the basis that there would be suitable medical treatment for the Third Appellant in Pakistan.
  
6. On appeal the First-tier Tribunal had one additional letter from the hospital treating the Third Appellant. In a letter dated 22<sup>nd</sup> August 2013 Dr Andrew M Will stressed that it would be extremely unlikely that there would be any understanding of, or treatment for, this condition outside of Europe or the United States: in particular it would be “extremely unlikely that recombinant ADAMSTS -13 would ever be available in the third world”. This was a reference to a new therapy currently under development in the UK.
  
7. On the basis of the evidence that was before him, Judge Lever found that the Appellants had not shown that the physiotherapy etc required by the Third Appellant would not be available in Pakistan. He noted the unchallenged medical evidence that the child required fortnightly blood transfusions to survive but accepted the Respondent’s evidence that such transfusions would also be available in Pakistan. He accepted that the treatment that the child now receives in the UK may be better than that he would receive in Pakistan; in particular therapies were being developed here which could lead to greater success in treating the condition in the future. However at present those therapies appeared to be “some years off”. These findings led Judge Lever to reject the appeal on Article 3 grounds. He found that the Third Appellant was not in the exceptional category referred to in D<sup>2</sup> or N<sup>3</sup>. He would benefit from the support of his parents and the medical treatment available in Pakistan.
  
8. In respect of Article 8 the determination notes that a healthcare case that has failed under Article 3 will not necessarily fail under Article 8, however those cases that could succeed would likely be on a particular set of facts. Unlike the applicants in JA (Ivory Coast)<sup>4</sup> the Respondent had never taken responsibility for the Third Appellant’s medical treatment. Unlike the case of MM<sup>5</sup>, the health of the child was not one factor amongst many relevant considerations in the proportionality balancing exercise; it was the only consideration. In respect of section 55 of the Borders Act 2007 Judge Lever considered that it may be in the Third Appellant’s best interest to grow up and know his own country, culture and society. Weighing all these factor in the balance he found that the decision was proportionate.

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<sup>2</sup> [2007] Application no. [30240/96](#)

<sup>3</sup> N v SSHD [2005] UKHL 31

<sup>4</sup> JA and ES [2009] EWCA Civ 1353

<sup>5</sup> MM (Zimbabwe) [2012] EWCA Civ 279

9. Permission to appeal was sought by the Appellants' previous representatives, Malik Legal Solicitors Ltd. The grounds of appeal were that there was inadequate consideration given to the Third Appellant's best interests and that the determination "failed to properly assess Article 8". Ground 3 refers to "additional medical evidence which is dated the same day as the hearing and was not considered by the Judge or the Respondent".

10. It was that latter point which attracted the attention of Upper Tribunal Judge Roberts in granting permission to appeal:

"The Judge clearly did consider section 55 and did undertake an evaluation of the child Appellant's best interests. It appears, though, the Judge did not take into account two letters written by a Consultant involved in the child's treatment seemingly suggesting a cessation in treatment would be fatal "within a matter of weeks" and that suitable treatment might not be available outside Europe, the USA and Canada. It was also suggested there would be a risk from contaminated blood in Pakistan"

11. Judge Roberts was here paraphrasing a letter dated 24<sup>th</sup> January 2014 from Dr Will in which he reiterates his conviction that treatment would not be available outside of Europe, the US and Canada, and states: "I note that in my last letter I had not mentioned that without treatment this condition is fatal within a matter of weeks". A further brief letter dated the 29<sup>th</sup> January 2014 from Dr Will states that an additional problem is that blood supplies in Pakistan are likely to be contaminated with, for instance, dengue fever or malaria, which are not problems in the UK.

12. Since permission to appeal was granted the Appellants have changed their legal representatives. Before me Mr Muhammad realistically conceded that the grant of permission appeared to turn on evidence that was simply not before Judge Lever. He accepted that Judge Lever could not therefore be criticised for not taking this evidence into account.

13. It is unfortunate in the extreme that Dr Will did not make his evidence about the extent of this child's illness clearer in his earlier letters. It is often the case that doctors, particularly when communicating with one another, will think such conclusions obvious from the context of the information being communicated, but this is not so. Although the earlier letters certainly hint at a very poor prognosis for the Third Appellant should his treatment cease, it was not spelled out in terms. Had it been Judge Lever would no doubt have directed his mind to the likelihood of any treatment in Pakistan being found and commenced in time to save this child's life. The issue

of contaminated blood was not evidenced at all before Judge Lever. This Tribunal is aware that this is a serious problem and that there is good evidence available showing the extent of contamination by hepatitis and HIV in the blood transfusion supply in Pakistan, where there is no screening. This evidence must however be produced if the Appellants wish to rely upon it.

14. I find there to be no error of law in the determination of the First-tier Tribunal. It is not a decision that every Tribunal would have reached, but the decision taken reflects the law and the evidence that was before it. Judge Lever considered section 55 and conducted a proportionality balancing exercise, giving reasons for his findings throughout. This appeal is grounded wholly upon new evidence that was not before him. At the conclusion of the hearing before me Mr McVeety undertook to ensure that this up to date evidence is placed before the relevant case-owner. Mr Muhammad indicated that he would seek further information about the availability, if any, of suitable treatment in Pakistan, and provide this, along with evidence about blood supplies there, to the Respondent, who will no doubt re-examine these applications with the care and sympathy that they demand.

## **Decisions**

15. The determination of the First-tier Tribunal contains no error of law and the decision is upheld.
16. The First-tier Tribunal made an order for anonymity pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Deputy Upper Tribunal Judge Bruce  
1<sup>st</sup> June 2014