



**The Upper Tribunal
(Immigration and Asylum Chamber)
IA/31612/2014**

Appeal number:

**IA/31519/2014
IA/31537/2014
IA/31520/2014**

THE IMMIGRATION ACTS

Heard at Field House

On January 30, 2015

on Sent

4, 2015

Determinati

On February

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR AM J

MRS K S

MISS B J

MASTER R J

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Duffy (Home Office Presenting Officer)

For the Respondent: Ms Kabir (Legal Representative)

DETERMINATION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellants are citizens of Pakistan. The first-named appellant came to the United Kingdom legally on July 11, 2003 and June 14, 2006. The second-named appellant made a number of legal trips to the United Kingdom on February 25, 2011, October 25, 2001, July 11, 2003 March 26, 2004 and finally July 14, 2006. The two adult appellants have overstayed since their respective visas expired on September 29, 2006. Both the third and fourth named appellants were born in the United Kingdom but neither are British citizens.
3. Each appellant applied for further leave to remain and initially the respondent refused their applications with no right of appeal due to the fact the adult appellants were overstayers. Following a consent order in the Administrative Court on April 29, 2014 fresh removal decisions were issued in respect of each appellant on July 25, 2014.
4. The appellants appealed on August 6, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
5. The matter came before Judge of the First-tier Tribunal Randall (hereinafter referred to as the "FtTJ") on September 10, 2014 and in a decision promulgated on November 5, 2014 he allowed the third-named appellant's appeal under paragraph 276ADE HC 395 and the remaining appeals under article 8 ECHR.
6. The respondent lodged grounds of appeal on November 11, 2014. She submitted the FtTJ erred by failing to apply the approach in R (Nagre) v SSHD [2013] EWHC 720 (Admin) and EV (Philippines) & Ors v SSHD [2014] EWCA Civ 874 and by failing to have full regard to Section 117 B of the Immigration Act 2014.
7. Judge of the First-tier Tribunal Cruthers granted permission to appeal on December 15, 2014 stating there was an arguable errors in law based on the grounds.
8. The appellants were all in attendance in court and were represented as set out above.

ERROR OF LAW SUBMISSIONS

9. Mr Duffy submitted the FtTJ's approach was contrary to the established approach set out in the cases of Gulshan (article 8-new rules-correct approach) [2013] UKUT 640 and EV. In any event the FtTJ concentrated wholly on the third appellant and whilst paragraph 276ADE(iv) HC 395 allows a child under 8 who had lived here to remain on private life grounds he should only

do so where it would not be reasonable to expect her to leave the United Kingdom. Mr Duffy submitted the FtTJ had materially erred in his assessment of the second part of the test as he had considered this appellant's appeal in isolation to the rest of the family. As the Court stated in EV the court should consider the application in the real world. The FtTJ made several adverse findings and failed to attach sufficient weight to these findings and he submitted any disruption by removal would not render the decision unreasonable. The adult family members had overstayed since 2006 and the family have a poor immigration history. The FtTJ failed to attach sufficient weight to this or the fact he found that the family could be removed and still be supported by family from the United Kingdom. ZH (Tanzania) [2011] UKSC 4 says being British not a trump card but third appellant was being used as a trump card and this was unreasonable as her claim should not be looked at in isolation. He submitted there was an error in law.

10. Mr Jafar rejected Mr Duffy's submissions and submitted there was no identifiable error of law as the FtTJ had not misapplied either the Rules or Regulations. At paragraph [15] the FtTJ accepted most of appellants' evidence and even made clear that he found the adult appellants had embellished or played down some of their evidence. The FtTJ recorded they were here for economic reasons but he properly considered the case of EV at paragraph 15.2 of his determination and at paragraphs 15.4 and 15.5 he considered the best interests of the third-named appellant. He concluded at the end of paragraph 15.5 that what was in the third-named appellant's best interest was not the end of the matter and he then continued to assess all the other factors and from paragraph 15.8 onwards he considered all of the available evidence not only about the third-named appellant but all of the appellants and he gave reasons for making the findings he did. Having considered the evidence he then considered Section 117B of the 2002 and in particular subsection (vi) and he made positive findings in respect of all of the appellants. Having considered all of the evidence he allowed the appeals as outlined above. There as no error in law and the respondent's submissions was a mere disagreement.
11. Having heard the representations I indicated I would be refusing the respondent's appeal and that I would give written reasons for my decision.

ERROR OF LAW ASSESSMENT AND DISCUSSION

DECISION

12. The decision of the First-tier Tribunal did not disclose an error in law. The original decision shall stand in its entirety.

13. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) an appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order was not made in the First-tier but as there are two young children involved I make an anonymity order with all the consequences that flow from that order.

SKALis

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I *SKALis* uphold the original decision on fees.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis