



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

Appeal Numbers: IA/32074/2013
IA/32079/2013
IA/32085/2013
IA/32087/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 27th November 2014**

**Decision & Reasons Promulgated
On 2nd February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**MR MUHAMMAD AKRAM (FIRST APPELLANT)
MRS RUKHSAAR AKRAM (SECOND APPELLANT)
MISS JANITA AKRAM (THIRD APPELLANT)
MASTER MOEAZ AKRAM (FOURTH APPELLANT)
(NO ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss Jacob, Counsel

For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. These are appeals by the above Appellants who are citizens of Pakistan. The First and Second Appellants are husband and wife born on 7th September 1965 and 18th September 1970 respectively. The Third and Fourth Appellants are their children born on 25th July 1999 and 16th August 2005 respectively. They appeal against the decision of the Respondent to refuse the application of the First Appellant for leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant and the corresponding applications of the other three Appellants for leave to remain as his dependents.
2. The First Appellant first came to the UK on 10th October 2003 having been granted entry clearance as a student valid until 31st October 2004. On 31st March 2011 he was granted leave to remain until 31st March 2013 as a Tier 1 (Post-Study Work) Migrant. The Second and Third Appellants came to the UK in 2004 and the Fourth Appellant was born here. The application for leave to remain as an entrepreneur was made on 27th March 2013.
3. The Appellants' appeals against the decision of the Secretary of State were heard on 26th February 2014 by First-tier Tribunal Judge Blandy. He allowed the appeals on human rights grounds having dismissed them under the Immigration Rules. Permission was granted to appeal against the decision of Judge Blandy and on 8th May 2014, having heard submissions, I found that there was a material error of law in the determination of Judge Blandy insofar as it related to the First, Second and Fourth Appellants and set aside the determination insofar as it related to those Appellants.
4. Both the Respondent and the Appellant had sought leave to appeal against the determination of the First-tier Tribunal. The application by the Respondent was received first. The Judge who dealt with it said:
 - "2. It is not arguable that there is a material error of law in relation to the Third Appellant as Judge Blandy made it sufficiently clear at paragraph 21 that her appeal was being allowed under the Rules as she was under 18 and had achieved ten years' residence in the UK.
 3. It is arguable that in relation to the other Appellants Judge Blandy was not sufficiently clear as to the legal basis on which he was allowing their appeals under Article 8 human rights given his clear findings that they could not succeed under the Rules. There is an arguable material error of law in the decisions relating to the First, Second and Fourth Appellants."
5. A month later on 1st May 2014, Upper Tribunal Judge Martin dealt with the application for leave submitted late by the Appellants. She said:
 - "2. The applications are out of time. The applications should have been received by 17th March and were not in fact received until 30th April 2014. The reason the applications are late, it is contended, is that the Appellants changed representatives.

3. However it is clear that what has prompted the applications is the fact that the Secretary of State has been granted permission to appeal in relation to Appellants 1, 2 and 4. The proper procedure in that event is for the Appellants to file a Response pursuant to Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in which they can (a) defend their determination and (b) argue that the Judge ought to have allowed the appeal on another basis. Rule 24(3)(e).
4. I therefore do not admit the application but direct that the application be treated as a Rule 24 notice.”
6. In considering whether there was an error of law I took the view that in granting leave to the Third Appellant Judge Blandy had taken no account of the fact that paragraph 276ADE is a discretionary provision or of the fact that it requires it to be shown to be unreasonable for the child to have to leave the UK and that he erred in allowing the appeals of the other three Appellants on the basis of the grant of leave to the third Appellant.
7. At the first hearing before me Mr Khan for the Appellants submitted that the First Appellant would qualify for leave to remain in the UK under paragraph 276B of the Immigration Rules because he had by that time resided here lawfully for ten years. He further submitted that the Fourth Appellant also meets the requirements of paragraph 276ADE having been here for more than seven years. Neither of these issues had been previously raised.

Evidence at the hearing

8. I have two statements from the First Appellant, the first dated 14th February 2014 and the second 15th July 2014.
9. The First Appellant confirms that he arrived in the UK on 10th October 2003 with valid leave as a student. The bulk of this statement pertains to the refusal of the application for leave as an entrepreneur. Permission was not granted in relation to the refusal of the application under the Immigration Rules. The Appellant goes on to say that his daughter arrived in the UK on 27th June 2004 and has been at school in the UK since then. His second child was born here in 2005 and is also at school here.
10. In his second statement he says that he has been in the UK lawfully studying and working for nearly eleven years. He has not left here since 2004 and is currently working as a Management Consultant with his own management consultancy business. With regard to his son he says his whole life is in the UK and he has no ties to Pakistan. His first language is English. He does speak some Urdu but is not fluent and cannot read or write in that language. I have statements from the First Appellant’s wife confirming the family circumstances as set out above.
11. In cross-examination Mr Melvin put it to the First Appellant that he had reported his passport missing in May 2006 and then obtained a fresh one from the Pakistan

Embassy. He asked the First Appellant if he could remember the start and expiry dates on that passport it and the Appellant said he could not. Mr Melvin put it to him that it is therefore difficult to determine his movements from the time he came here to the time he got his new passport. He asked him if there is any evidence that he was in the UK between 2003 and 2006. The Appellant insisted that he was in the UK. He asked him about his work in the UK between 2011 and 2013 and the Appellant gave details of this. He gave some details of his business. His wife works for him part-time and gets a salary of £600 a month which he pays into her bank account.

12. In re-examination the Appellant confirmed that he had gone to Pakistan on 7th April 2004 and returned to the UK after 37 days. He went to collect his wife and daughter and bring them to the UK and had not left the UK since then.
13. The Second Appellant gave evidence adopting her statements. In cross-examination she told Mr Melvin that she had last visited Pakistan in 2008 and had not been back since. She confirmed that she does twenty hours a week in her husband's business and gets paid £600 a month. She has a contract that says she does twenty hours a week. The Inland Revenue are aware of this job. The family are not in receipt of state benefits. There is enough money in the business to support the family. Her husband also works as a taxi driver. She confirmed that it had been her husband's intention, as he told the Immigration Officer on entry, to start a school in Islamabad but the children settled here and they had their baby here and then did not want to return to Pakistan. Initially they did intend to return and it was only three or four years ago that they changed their minds.

My findings

14. I have given careful consideration to all the evidence put before me in this case.
15. It submitted that the Appellant's case should succeed under paragraph 276B of the Immigration Rules.
16. Paragraph 276B says,

276B. The requirements to be met by an applicant for indefinite leave to remain on the ground of long residence in the United Kingdom are that:

- (i) he has had at least 10 years continuous lawful residence in the United Kingdom.
- (ii) having regard to the public interest there are no reasons why it would be undesirable for him to be given indefinite leave to remain on the ground of long residence, taking into account his:

- (a) age; and
- (b) strength of connections in the United Kingdom; and
- (c) personal history, including character, conduct, associations and employment record; and
- (d) domestic circumstances; and
- (e) compassionate circumstances; and
- (f) any representations received on the person's behalf; and

(iii) the applicant does not fall for refusal under the general grounds for refusal.

(iv) the applicant has demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, in accordance with Appendix KoLL.

(v) the applicant must not be in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded, as will any period of overstaying between periods of entry clearance, leave to enter or leave to remain of up to 28 days and any period of overstaying pending the determination of an application made within that 28 day period.

17. The Appellant came to the UK in October 2003. The Respondent has provided no evidence that he was out of the UK for longer than the 37 days stated. No records are kept of people exiting the UK. The Appellant has never been in receipt of public funds and has always worked to support his family. His wife is working too. There is nothing before me to suggest any reason why it would be contrary to the public interest to allow him and his family to remain here. His firstborn child came to the UK in 2004 when she was around 5 years old and his younger child was born here in 2005. The children have been brought up here. Neither has any knowledge or experience of life in Pakistan. Both are settled here. Both meet the requirements of paragraph 276ADE (iv) that they have resided in the UK for 7 years subject to the requirement that it be unreasonable to expect them to leave the UK. Taking into account all the circumstances including the fact that their parents have been here lawfully for over 10 years and indeed that a Judge has already granted leave to the older child and this finding was not challenged, I find that it would be unreasonable to expect them to leave the UK. In any event they are dependant on their father who I find is entitled to Indefinite Leave to Remain in the UK on the grounds of long residence here.

Notice of Decision

The appeal is allowed under the Immigration Rules.

Signed: N A Baird
Deputy Judge of the Upper Tribunal

Date: 26th January 2015

TO THE RESPONDENT **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award as the basis on which the appeal has been allowed was not before the First-tier Tribunal and was only very recently open to the Appellants and raised by them.

Signed: N A Baird
Deputy Judge of the Upper Tribunal

Date: 26th January 2015