



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

Appeal Numbers: IA/48437/2013
IA/48442/2013
IA/48448/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 19 May 2015**

**Decision and Reasons
Promulgated
On 18 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SYED AUSAF HAIDER (FIRST)
HAFSA AKTER (SECOND)
SYED GHAZANFER ABBAS (THIRD)**

Respondents

Representation:

For the Appellant: Ms Fijiwala, Home Office Presenting Officer

For the Respondents: No-one

DETERMINATION AND REASONS

1. The appellant in these proceedings is the Secretary of State however for convenience I shall now refer to the parties as they were before the First-Tier Tribunal.
2. The appellants were born on 10 August 1988, 1 January 1988 and 11 June 2012 respectively. They are citizens of Pakistan, Bangladesh and Pakistan respectively. The first appellant is the husband of the second appellant

and they are the parents of the third appellant. They appealed against the decision of the respondent dated 1 November 2013 refusing to grant them leave to remain in the United Kingdom under the provisions of Appendix FM of the statement of changes in the Immigration Rules (HC395) (as amended) and under the Article 8 family life provisions of ECHR. The appeals were heard by Judge of the First-Tier Tribunal Callender-Smith on 15 August 2014. Their appeals under the Immigration Rules were dismissed and their appeals in respect of Article 8 of ECHR were allowed, in a determination promulgated on 2 September 2014.

3. An application for permission to appeal was lodged by the respondent and was refused by Judge of the First-Tier Tribunal Mark Davies on 11 September 2014. However permission was granted by Upper Tribunal Judge Storey on 30 December 2013. He found that it was arguable that First-Tier Tribunal Judge Callender-Smith's assessment that the appellants' circumstances were exceptional or compelling was irrational and that the Judge had failed to apply the statutory provisions set out in Section 117A and B of Part 5A of the 2002 Act as amended. First-Tier Tribunal Judge Callender-Smith took into account the difficulties the inter-faith couple would face on return but the Upper Tribunal Judge found it not to be clear that the concerns he expressed in relation to the Pakistan scenario had application to the Bangladesh scenario or that the Judge had given adequate consideration to the latter.
4. On 20 February 2015 the appellants appeared before me and I found that there was a material error of law in the First-Tier Tribunal's determination for the reasons stated in the grounds. The Judge considered the expert report but did not consider the other side of the balancing exercise being the objective evidence and relevant country guidance cases. The Judge did not deal with Section 117 of the 2002 Act and the public interest question. I found that the Judge has used Article 8 as a general dispensing power as the terms of the Rules cannot be satisfied. The Judge has found that the terms of the Rules cannot be met but this has not been properly taken into account in the proportionality assessment in his determination and he has not dealt with the fact that the immigration status of neither appellant was other than temporary. Neither had and of them a legitimate expectation of remaining in the United Kingdom.
5. The First-Tier Judge found that the terms of the Rules could not be satisfied but he did not deal with internal relocation and did not deal with the part of the refusal letter which suggests that the parties apply for asylum. The Judge gave inadequate reasons for finding that the appellants would have problems throughout Pakistan and Bangladesh because of their inter-faith issues. The First-Tier Judge found the circumstances for the appellants exceptional and compelling but this finding is irrational as he did not apply the statutory provisions set out in section 117A and B of the 2002 Act as amended.

6. I directed a second stage hearing on all counts. I would have heard the second stage on 15 February 2015 but I was told that the second appellant would require a Bengali interpreter and there was no such interpreter at the hearing centre and the Presenting Officer stated that he wished to bring to the court the Country Guidance cases which are relevant and also the relevant objective evidence.
7. This is the adjourned second stage hearing.
8. None of the appellants appeared at the hearing centre, nor did a representative appear on their behalf. I was told that an adjournment request had been faxed to the Tribunal on 18 May. This was not on the file. I made enquiries and eventually the adjournment request was found. This had not been dealt with. It was from Marks and Marks who represent the appellants. As the adjournment request had not been replied to, I would have expected a lawyer from Marks and Marks Solicitors in Harrow to have appeared at the hearing centre. No one appeared. The adjournment request states that the second appellant, who is 11 weeks pregnant, had slipped in the bath on 17 May 2015 and hit her abdomen. She attended the Accident and Emergency Unit at hospital and was prescribed painkillers. She has an appointment with her GP on 21 May 2015 for further checks and has been advised by the doctor/nurse to rest and apply medication to her back until her follow-up appointment on 21 May 2015. The fax asks for the hearing to be adjourned. There is an incident report from Partnership of East London Co-Ops (PELC) OOH Call on the second appellant as a walk-in patient on 17 May 2015. This states that the second appellant had hit her abdomen but there were no medical issues. The report confirms that the second appellant is pregnant but it was found that she had no head injury, no chest pain or breathing problems, no urinary problems and no medical issues. She was found to be walking comfortably and was looking well and her hydration was good.
9. Based on this I found that she could have attended the hearing or if she felt she was unable to do so at least the first appellant could have attended the hearing along with his solicitor.
10. In the circumstances I was not prepared to grant an adjournment. The Presenting Officer was prepared for the hearing. No additional evidence has been provided by the appellants since the hearing in February 2015.
11. I heard submissions from the Presenting Officer. She submitted that she is relying on the refusal letter of 1 November 2013. She submitted that this claim cannot succeed under the Rules. What has to be considered is an Article 8 assessment.
12. I was referred to the case of ***Singh & The Secretary of State for the Home Department [2015] WLR(D) 66*** paragraphs 60 to 66. These paragraphs deal with failure to apply the two stage approach, i.e. should this claim be considered outside the Rules? Paragraph 66 refers to the case of ***Nagri*** and states that the second stage can, in an appropriate

case, be satisfied by the decision maker concluding that any family life or private life issues raised by the claim have already been addressed, in which case there is no need to go through it all again. The Presenting Officer submitted that this claim cannot meet the terms of the Rules as the appellants have always only been in the United Kingdom on a temporary basis and none of them are British.

13. The Presenting Officer submitted that the appellants are stating that there are compelling reasons for the appeal to be allowed outside the Rules and these reasons are that the appellants cannot relocate in either Pakistan or Bangladesh because they have different faiths. She submitted that the first two appellants both knew that they were only in the United Kingdom on a temporary basis when they married. They also knew that they each worshipped different sects of Islam when they married. They knew there was no guarantee that they would be granted further leave to remain in the United Kingdom, particularly relating to their family life, as they were both students, so any family life in the United Kingdom must have been precarious and so little weight can be attached to this. They also knew their family life in the United Kingdom was precarious when they had the third appellant, their child.
14. I was referred to the case of ***SS Congo [2015] EWCA Civ 387*** at paragraph 44. This states that the proper approach should always be to identify in the first place the substantive content of the relevant Immigration Rules, both to see if an appellant satisfies the conditions laid down in these Rules and to assess the force of the public interest given expression in these Rules which is relevant to the balancing exercise under Article 8, in deciding whether leave to remain should be granted outside the substantive provisions set out in the Rules. She submitted that if an appellant does not satisfy the requirements of the substantive part of the Rules, she may seek to maintain a claim for a grant of leave to remain outside the substantive provisions of the Rules pursuant to Article 8. This will only be considered if there is a reasonable arguable case under Article 8 which has not already been sufficiently dealt with in consideration of the application under the substantive provision of the Rules. She submitted that if this happens the individual interests of the appellant and others, whose Article 8 rights are in issue, should be balanced against the public interest. She submitted therefore that if this claim is considered outside the Rules, Section 117B of the 2002 Act has to be given weight.
15. The Presenting Officer submitted that it would be reasonable for the three appellants to relocate to Pakistan. I was referred to the Country Information and Guidance on Pakistan dated in February 2015. This refers to Shia Muslims and states that there are no discriminatory laws or government policies against Shias in Pakistan and there are no legal restrictions on freedom of religion for Shias. It goes on to state that there is little societal discrimination that would restrict Shias in their daily life and the Pakistani authorities are willing to protect Shias. In this report at

2.4.1 it is stated that there are a significant number of Shia communities across Pakistan and there are options for Shia Muslims to relocate to other areas in Pakistan.

16. I was then referred to the Country Information and Guidance Report on Pakistan at 2.4.2 which states that because of Pakistan's size and diversity internal relocation offers a degree of anonymity and the opportunity for victims to seek refuge from discrimination or violence. It states that there are options available for members of most ethnic and religious minorities to be able to relocate to areas of relative safety elsewhere in Pakistan. It refers to large urban centres being home to mixed ethnic and religious communities and refers to State protection.
17. I was then referred to a report from the Refugee Documentation Centre which deals with research into inter-religious marriages between Shias and Sunnis in Pakistan.
18. This states that inter-marriages between Sunnis and Shias are less problematic in Pakistan than marriages between Muslims and Christians. Sunni and Shia Muslims share the same faith and abide by the same five pillars of Islam and there are no rules forcing a woman to adopt her husband's particular branch of Islam. The report goes on to state that children born in Sunni/Shia inter-marriages are normally raised within the father's sect but there are cases where the children are brought up in the mother's sect. This is therefore something that can be resolved by the parents. There is no legal discrimination against a couple where one party is Sunni and one party is Shia. Society does not discriminate against them. The report states that the government recognises marriages of the same religion irrespective of what type of Islam each party worships.
19. With regard to honour killings, the Presenting Officer submitted that if the appellants relocate away from their families it is unlikely that their families will know they have returned and society will not discriminate against them if they internally relocate.
20. I was referred to the case of **AW Pakistan [2011] UK UT 31 (IAC)** which states that there is a sufficiency of State protection for people in the appellants' position. This refers to past persecution perhaps leading to future persecution but she submitted that there is no evidence of past persecution against the first appellant in this case. She submitted therefore that it would not be unreasonable or unduly harsh and there would be no insurmountable obstacles to the appellants going to Pakistan to live.
21. The Presenting Officer then referred to the appellants' ability to stay in Bangladesh. The Country Information and Guidance Report at 2.4.1 states that there is freedom of movement throughout Bangladesh. Women and minorities are not subject to any special controls and although it states that single women can have difficulties relocating in Bangladesh, the

second appellant will be with her husband and child if they go there and so should have no difficulties.

22. The Presenting Officer submitted that the First-Tier Judge remarked that the first appellant will not be able to get a visa in Bangladesh but there is no evidence to show that he will be unable to get a spouse visa. The evidence given at the First-Tier Hearing was that the first appellant had not tried to get an international job in Bangladesh to enable him to join his wife there but the Presenting Officer submitted that if he did this then he is likely to be able to go to Bangladesh to join his wife because of his job.
23. With regard to the language barrier both appellants have English and the first appellant can learn Bengali. Both the appellants have qualifications from the United Kingdom and she submitted that there should be no difficulties for this family relocating in Bangladesh.
24. The Presenting Officer submitted that the evidence she has supplied is in the public domain and this has to be weighed against the expert report which is the only objective evidence considered by the First-Tier Judge when making his decision.
25. She submitted that Section 117B applies to qualifying partners or children and that neither of the first two appellants is a qualified partner and the child is not a qualified child.
26. The appellants have always been in the United Kingdom on a temporary basis and she submitted that it would be in the public interest to remove them from the United Kingdom because of this. She submitted that the best interests of the child must be to be with his parents. The child is only three years old and his parents can choose what type of religion they wish to bring him up in. I was asked to dismiss the appeal.

Determination

27. The burden of proof is on the appellants and the standard of proof is the balance of probabilities.
28. I have considered all the evidence before me, the subjective and objective evidence, some of which may not be specifically referred to herein and the submissions of the Presenting Officer.
29. The appellants' applications cannot succeed under the Immigration Rules. The first two appellants have only been in the United Kingdom on a temporary basis and neither of them has ever had any legitimate expectation of being able to remain in the United Kingdom. Neither of the first two appellants is British. What I have to consider is the Article 8 aspect of the Rules and whether this claim has to be considered outside the Rules.

30. I have to consider Sections 117A to D of Part 5A of the 2002 Act in dealing with proportionality. As the first two appellants only have a temporary stay in the United Kingdom their situation here is precarious and was precarious when they got married and they were aware of this. There has never been any guarantee that further leave to remain would be granted to either party. They were both students and as their private and family life in the UK was precarious little weight can be attached to it.
31. Because this is the case, when the parties' situation is weighed against public interest, public interest must succeed when weighed against the appellants' rights.
32. The appellants' case is that there are compelling reasons for them to be granted leave to remain in the United Kingdom outside the Rules. They state that they cannot relocate to Pakistan or Bangladesh because one of them is a Sunni Muslim and the other is a Shia Muslim. They were also aware of this when they married.
33. I have considered the expert report on file along with the Country Guidance cases and the objective evidence. Based on the COI report the fact that the first appellant is a Shia Muslim and the second appellant is a Sunni Muslim does not stop them returning to Pakistan and relocating internally when they get there if they are afraid of the first appellant's family. I considered in particular the report on Sunni and Shia Muslims which has been provided by the Respondent. This states that the appellants are of the same faith, being Islam, and worship the same five pillars of Islam. On return to Pakistan the first appellant's wife would not require to adopt her husband's branch of Islam. A couple can decide whether their children are to be brought up as Sunni or Shia and there is no legal discrimination against them in Pakistan because of their inter-faith. The government in Pakistan recognises marriage of the same religion irrespective of which type of Islam they each worship. The COI Report also states that there is no societal discrimination against an inter religious marriage of this type.
34. The appellants have stated that there is a possibility of an honour killing if they return to Pakistan or Bangladesh. I see no reason why they cannot relocate away from the first appellant's family in Pakistan. In any case his parents seem to live in Saudi Arabia. They appellants will be entitled to State protection. The first appellant has never suffered persecution in Pakistan. The objective evidence states that there will be a sufficiency of protection in Pakistan.
35. Although the expert report refers to difficulties, this report cannot be considered on its own and when it is considered along with the Country Guidance cases and the objective evidence I find that the appellants can go to live in Pakistan as a family.
36. I have also noted the COI report on Bangladesh and the freedom of movement that there is in Bangladesh. Again the objective evidence

indicates that the appellants can both return to Bangladesh with their child. The first appellant does not appear to have tried to get a job there but if he tries and is successful in this, then there is no reason why he cannot join his wife there. The fact that he does not speak Bengali is not a sufficient reason for him being unable to go to live in Bangladesh. The first and second appellants both speak English and are well educated. When this is weighed against the problems referred to in the expert report, I find there are no compelling circumstances which would stop the appellants being removed as a family to Bangladesh.

37. The terms of the Immigration Rules cannot be met and when the claims are considered outside the Rules, Section 117 and “the public interest question” have to be weighed against the rights of the appellants. In this case it must be in the public interest to remove the appellants from the United Kingdom as they have always been here on a temporary basis. Effective immigration has to be upheld in the UK.
38. With regard to the best interests of the child, I find that the best interests of the child is to be with his parents. The child is only three years old and his parents can choose what religion he follows. They can leave the United Kingdom and go to live in either Pakistan or Bangladesh. The fact that the terms of the Immigration Rules cannot be satisfied must go against the appellants’ claim in the proportionality assessment.
39. Under EX1 there are no insurmountable obstacles preventing the continuation of family life outside the UK.

Decision

40. I dismiss the appeals in respect of the Immigration Rules.
41. I dismiss the appeals under Article 8 of ECHR.
42. No anonymity direction is made.

Signed

Date

Designated Judge Murray
Judge of the Upper Tribunal