



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

Appeal Number: IA/03015/2015

## **THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 February 2016**

**Decision & Reasons  
Promulgated  
On 9 March 2016**

**Before  
DEPUTY JUDGE DRABU CBE**

**Between  
MRS NAVEEDA IQBAL Plus one**

Appellants

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellants: Mr Syed Qazi Anisuddin of S Z Solicitors.  
For the Respondent: Mr I Jarvis, Senior Presenting Officer.

### **DECISION AND REASONS**

1. The appellant is a citizen of Pakistan where she was born on 10 January 1982. She came to the United Kingdom on 26 April 2012 following her marriage to Mr Zafar Iqbal, as a spouse of a person present and settled in the United Kingdom. When she arrived she was accompanied by their daughter [S] whose date of birth is [ ] 2011. While in the United Kingdom she gave birth to her second daughter [A] on [ ] 2014 and on [ ] 2015 the couple had the third child, a son named [AZ]. On 30 April 2014, the appellant sought Indefinite leave to remain. That application was refused on 22 December 2014 and appeal against the decision was heard and dismissed by Judge Chapman, a Judge of the First tier Tribunal for reasons given in his determination dated 25 August 2015.

2. The appellants were granted permission to appeal by Judge Kelly, a Judge of the First tier Tribunal on 18 January. In granting permission Judge Kelly inter alia said, “ It is however at least arguable ( as hinted at paragraphs 11 and V111 of the application) that the Tribunal failed to conduct the assessment of best interests of the children against the background of their father’s entitlement to remain in the United Kingdom and thus to assess the risk of them becoming separated from one or the other of their parents as a result of the appellant’s removal [EV (Philippines) and Others [2014] EWCA Civ 874 at paragraph 60]. It is arguable that had the Tribunal conducted the assessment against this background it would have decided the appeal differently. Permission to appeal is accordingly granted.”
3. I heard submissions from the representatives. Syed Qazi Anisuddin for the appellants took me through the grounds of appeal and contended that the Judges’ conclusions were based upon material errors of facts as well as law drawing particular attention to Paragraphs 49 and 53 of the determination and the fact that the appellant has lived in the United Kingdom lawfully and without blemish since her entry as a spouse. The judge, he argued had failed to give due weight to the fact that the impugned decision would mean removal or constructive removal of three British citizens – the spouse of the appellant, their two children who are both British having been born in the United Kingdom. It could break up a genuine and subsisting marriage and a family unit in that the respondent could only enforce removal of the appellant and the first child of the couple but not the father and the two British born children. This would effectively mean that British born children would be left to cope without the presence or support of their mother. He asked me to find that the conclusion of the First tier Tribunal was in material error of law and should be set aside and remade.
4. In response Mr Jarvis argued that there was no material error of law in the determination of the First Tier Tribunal. He reminded me that the grant of permission was limited and did not include alleged errors of fact. He contended that Judge Chapman was correct in describing the immigration status as “precarious” in the assessment of proportionality. There was a clear difference between a status being precarious and being unlawful. He submitted that the British citizenship of the two children could not be used as the “trump card” as had been held by the Supreme Court in a case of which I was not provided a copy. Mr Jarvis said that all the findings made by Judge Chapman were correct and lawful and that I should find accordingly and dismiss this appeal.
5. I have given most careful consideration to the facts of this case and the legal framework applicable to those facts, reminding myself that the decision of the First tier to dismiss the appeal can only be interfered with if I find a material error of law in the determination of Judge Chapman. Before I go any further I should like to record that Judge Chapman’s determination cannot be faulted for the detailed manner in which he has set out the facts as he found them and the legal framework that he thought applied to them. It is a 14 paged type written determination consisting of 67 paragraphs. As all claims under Article 8 are more fact specific rather than law specific, this case had to be decided on its own facts but within correct legal boundaries.

6. Having taken account of all the relevant papers and the arguments made by Mr Syed Qazi Anisuddin and Mr Jarvis for the respondent, I find that the decision of Judge Chapman was in material error of law in that he failed to recognise and give weight to the particular facts of this case as well as the consequences of upholding the impugned decision of the respondent on family and private life of the appellant and her British citizen two children and spouse.
7. I note that the Judge quite properly raised factors that go against the appellant in the proportionality exercise but he failed to give appropriate weight to factors that go in favour of the appellant being allowed to remain. In granting permission to appeal Judge Kelly drew attention to the principles set out in paragraph 60 of the Court of Appeal decision in *EV Philippines and others* [2014] EWCA Civ 874 stating that “had the Tribunal conducted the assessment against this background it would have decided the appeal differently.” I respectfully agree with that view.
8. Judge Chapman did not conduct the assessment of the best interests of the children against the background of their father’s entitlement as a British citizen to remain in the United Kingdom. Additionally, his assessment of proportionality gave wholly insufficient weight to the long residence of the father of children in the UK and to the argument, which I find valid and compelling, that it would be unreasonable and disproportionate to expect him to uproot himself from the country that he is a citizen of and that he may or may not have the right of residence in Pakistan.
9. Judge Chapman did not remind himself, having quite correctly found that family and private life between the appellant, their child [S] and her husband/ father had been established, it was for the Secretary of State to show compliance with Article 8 (2) of the ECHR. Also in his assessment about the father being in receipt of public funds for two years, the Judge has paid no regard that he has worked and paid taxes for many years (18 years) when he worked as a taxi driver. As a British citizen he has an entitlement to draw on public funds and evidence the Judge had received showed that the father was pursuing employment options and had secured job with Amazon. The scepticism of Judge Chapman in this regard contaminated his assessment as did his failure to appreciate that the marital relationship of the couple and the children was strong and long lasting.
10. The conduct and character of the family needed to be put in the proportionality assessment but it was not. Here we do not have an appellant who has entered or remained in the UK unlawfully or engaged in any act against public interest or given birth to children to secure her own stay. Quite the contrary.

11. Judge Chapman also erred in mixing up the requirements under immigration rules (117B) with Article 8 eligibility. (See Paragraphs 29 onwards). He was also wrong to state as he does in paragraph 35 that he is “not satisfied that the Appellant speaks English” when the Judge had before him a document certifying that she does. The appellant’s appeal had been conceded under the Immigration Rules.
  
12. For the reasons given above the determination of Judge Chapman is set aside and in remaking the decision I find that the best interests of the two children who are British by birth and whose father is British and whose mother (the appellant) has been in the UK lawfully, will be best served by allowing the appeals.

K Drabu CBE  
Deputy Judge of the Upper Tribunal.  
29 February 2016