



IAC-AH-DH-V2

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

Appeal Numbers: IA/21159/2014  
IA/21163/2014  
IA/21166/2014  
IA/21169/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15<sup>th</sup> March 2016**

**Decision & Reasons Promulgated  
On 31<sup>st</sup> March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Appellant**

**and**

**ASLAM PERVEZ  
FARIDA ASLAM  
SAMREENA ASLAM  
RAFIA ASLAM**

**(ANONYMITY DIRECTION NOT MADE)**

**Respondents**

**Representation:**

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer  
For the Respondents: Mr M Iqbal of Counsel instructed by Burney Legal Solicitors

**DECISION AND REASONS**

**Introduction and Background**

1. The Secretary of State appealed against the decision of the First-tier Tribunal (the FtT) promulgated on 23<sup>rd</sup> June 2015.

2. The Respondents before the Upper Tribunal were the Appellants before the FtT and I will refer to them as the Claimants.
3. The Claimants are citizens of Pakistan. The first and second Claimants are the parents of the third and fourth Claimants who are sisters. The third Claimant was born 25<sup>th</sup> November 1997 and therefore was a minor when the Secretary of State's decision was made to refuse leave to remain. The fourth Appellant was born on 12<sup>th</sup> January 1994.
4. The Claimants applied for leave to remain in the United Kingdom based upon their family and private lives. The applications were refused on 30<sup>th</sup> April 2014 and the appeals heard together by the FtT on 28<sup>th</sup> May 2015.
5. The FtT considered firstly the third Claimant and allowed her appeal pursuant to paragraph 276ADE(1)(iv). The FtT found that the third Claimant was under 18 years of age, had lived continuously in the United Kingdom for at least seven years at the date of application, and that it would not be reasonable to expect her to leave this country.
6. The FtT then considered the first and second Claimants. It was conceded on their behalf that they could not succeed under the Immigration Rules. The FtT allowed their appeals under Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention) outside the Immigration Rules with reference to section 117B(6) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) concluding that the public interest did not require their removal. This was because they had a genuine and subsisting parental relationship with the third Claimant, and the FtT had already found that it would not be reasonable to expect the third Claimant to leave the United Kingdom.
7. The FtT then considered the fourth Claimant, who is an adult, and found that her appeal could not succeed with reference to Article 8 under the Immigration Rules. The FtT allowed her appeal under Article 8 outside the Immigration Rules, noting that her family members had succeeded with their appeals. The FtT found that it would be unjustifiably harsh for the fourth Claimant, in those circumstances, to be removed from the United Kingdom.
8. The Secretary of State applied for permission to appeal to the Upper Tribunal contending that the FtT had misdirected itself in law by using the third Claimant child as "a trump card" in allowing the appeal of all the Claimants. Reliance was placed upon paragraph 39(iv) of SS (Congo) [2015] EWCA Civ 387. The Secretary of State also contended that the FtT had erred by not considering EV (Philippines) [2014] EWCA Civ 874, and in particular paragraph 60. It was contended that if parents who did not have leave to remain, were removed, then it would be entirely reasonable to expect children to go with them. Permission to appeal was granted, and directions issued that there should be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

## Error of Law

9. At a hearing on 27<sup>th</sup> January 2016 I heard submissions from both parties regarding error of law. It was contended on behalf of the Claimants, that the FtT had not erred in law. I set out below my conclusions and reasons for finding an error of law and setting aside the decision of the FtT;

20. I am persuaded that the FtT erred in law and that the error is material, for the following reasons.

21. The third Claimant was dependent upon her parents, and the FtT found this as a fact at paragraph 30 of the decision. In my view, the FtT did not follow the guidance given in EV (Philippines) and for ease of reference I set out below paragraph 58;

‘In my judgment, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in real world. If one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be, is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?’

22. The FtT did in fact set out in summary at paragraph 21 the guidance given in Azimi-Moayed [2013] UKUT 197 (IAC) in the following terms;

‘As a starting point it is in the best interests of children to be with both their parents and if both parents are being removed from the United Kingdom then the starting point suggests that so should dependent children who form part of their household unless there are reasons to the contrary.’

23. The Supreme Court in Zoumbas [2013] UKSC 74 stated in paragraph 25 which is set out in part below;

‘It must be recalled that the decision maker began by stating the conclusion and then set out the reasoning. It was legitimate for the decision maker to ask herself first whether it would have been proportionate to remove the parents if they had no children and then, in considering the best interests of the children in the proportionality exercise, ask whether their well-being altered that provisional balance.’

24. The FtT did not follow the approach set out above, but considered firstly the child of the family in isolation. The FtT should, according to the authorities above, firstly assess the status of the parents, and thereafter assess whether if the parents had no right to remain, it would be reasonable for the child to follow them to Pakistan. I find that the flawed approach has infected the findings in relation to all the Claimants, and therefore the decision of the FtT must be set aside and will be re-made by the Upper Tribunal. When I announced that I would be reserving my decision on error of law, I canvassed the views of the

representatives as to what would be the appropriate course if a material error of law was found. There is no need for further evidence. It was agreed there would be a further hearing, to enable further submissions to be made in relation to paragraph 276ADE(1) and Article 8 outside the Immigration Rules.

10. The hearing was adjourned to enable me to prepare my decision. Full details of the application for permission to appeal, the grant of permission, and the submissions made by both parties are contained in my decision dated 1<sup>st</sup> February 2016.

## **Re-Making the Decision - Upper Tribunal Hearing 15<sup>th</sup> March 2016**

### **Oral Submissions**

11. Mr Iqbal relied upon paragraph 276ADE(v) which is set out below, as his primary submission on behalf of the third and fourth Appellants;
  - (v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment).
12. Mr Iqbal pointed out that the third Appellant was born on 25<sup>th</sup> November 1997, and the fourth Appellant 12<sup>th</sup> January 1994, and both had been residing in the United Kingdom since 4<sup>th</sup> October 2004. Therefore as at the date of the hearing, both had spent at least half of their lives living continuously in the UK.
13. Mr Iqbal placed reliance upon section 85(4) of the 2002 Act on the basis that the Tribunal could take into account the circumstances at the date of hearing. It was accepted that this provision could not be satisfied by any of the Appellants at the date of the Respondent's decision to refuse leave to remain.
14. As an alternative submission made on behalf of the third Appellant, Mr Iqbal relied upon paragraph 276ADE(iv) submitting that in the circumstances it would not be reasonable to expect the third Appellant to leave the United Kingdom, as she had been living in this country for in excess of seven years at the date of application. I was asked to take into account the evidence that the third Appellant had been educated in this country and was thoroughly integrated into British society.
15. In relation to the first, second and fourth Appellants, Mr Iqbal confirmed that their appeals rested upon Article 8 outside the Immigration Rules, as did that of the third Appellant, if her appeal failed under paragraph 276ADE.
16. Mr Iqbal pointed out that the first and second Claimants have five children in total, all of whom are in the United Kingdom. The eldest daughter is married to a British citizen and has leave to remain on that basis. The next daughter in age, has been granted refugee status. The Claimants also have a son, although Mr Iqbal stated that he was uncertain of the son's immigration status.
17. Mr Iqbal submitted that the third and fourth Claimants live with their parents and have done so since coming to the United Kingdom. They are a close knit family and

family life exists which engages Article 8. I was asked to find that it would be disproportionate to remove the Claimants from the United Kingdom, and take into account that the fourth Claimant is engaged to a British citizen, and to consider the principles in Beoku-Betts [2008] UKHL 39, in particular paragraph 12.

18. Mr Wilding submitted that paragraph 276ADE(v) could not assist the third or fourth Appellants, because the circumstances must be considered at the date of application, not the date of hearing. Neither had lived in the United Kingdom for at least half their lives when the application for leave to remain was made in June 2012.
19. Mr Wilding accepted that the third Claimant could rely upon paragraph 276ADE(iv) because at the date of application she was under 18 and had lived in the United Kingdom for in excess of seven years. However Mr Wilding submitted that the question of reasonableness must not be viewed in isolation and all relevant circumstances must be taken into account. There is an education system in Pakistan, and the third Claimant would have no difficulties with language. She would be returned with other family members. I was therefore asked to find that it would be reasonable for the third Claimant to return to Pakistan.
20. As to Article 8 outside the rules, Mr Wilding pointed out that family and private life had been developed in unlawful and precarious circumstances. Considerable weight should be given to the fact that none of the Claimants can satisfy the requirements of the Immigration Rules. I was asked to find the Secretary of State's decisions proportionate and to dismiss the Claimants' appeals.
21. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

22. I have taken into account all the evidence placed before the Tribunal. The Claimants' bundle of documents is extensive containing sections A-H. I have taken into account the submissions made by both representatives. I set out below a summary of the facts upon which I base my decision.
23. The first Claimant arrived in the United Kingdom on 8<sup>th</sup> August 2002. He had leave as a visitor valid until 19<sup>th</sup> January 2003. He overstayed without leave.
24. The second, third and fourth Appellants entered the United Kingdom on 4<sup>th</sup> October 2004 with leave as visitors, which leave was valid until 2<sup>nd</sup> March 2005. They also remained without leave.
25. While in the United Kingdom both the first and second Claimants have worked without permission. The first Claimant initially applied for leave to remain in order to care for his adult brother who lives in this country. That application was made in May 2003 and refused in September 2004.

26. There then followed further applications made for leave to remain all of which were refused. There has been a previous appeal hearing which took place on 18<sup>th</sup> May 2009. This involved the first Appellant, who appealed against a decision made on 19<sup>th</sup> February 2009 refusing his application for leave to remain in the United Kingdom outside the Immigration Rules. At that hearing both the first and second Claimants gave evidence. The judge found that the first Claimant had lied with regard to important parts of his evidence, and at paragraph 25 found that he had “deliberately flouted the immigration policies of this country, in order to secure education for his children and work for himself”.
27. Notwithstanding dismissal of that appeal, the Claimants remained in the United Kingdom and made further applications for leave to remain. An application made on 26<sup>th</sup> June 2012 was refused on 18<sup>th</sup> July 2013 with no right of appeal. The Claimants then commenced judicial review proceedings which resulted in a consent order dated 5<sup>th</sup> December 2013, whereby the Secretary of State agreed to reconsider the claim.
28. The claim for leave to remain was reconsidered on 30<sup>th</sup> April 2014. The Respondent did not accept that the Claimants could satisfy any of the provisions of Appendix FM in relation to family life, and did not accept that the provisions of paragraph 276ADE could be satisfied. It was accepted that the third Claimant had lived in the United Kingdom in excess of seven years, but the Respondent’s view was that it was reasonable for her to return to Pakistan with her parents. The Respondent did not accept that there were any exceptional circumstances which would justify granting leave to remain outside the Immigration Rules based on Article 8 of the 1950 Convention.
29. I accept that while in the United Kingdom, both the third and fourth Appellants have been educated. The third Appellant is still in education undertaking A levels. I accept that the fourth Appellant is engaged to a British citizen although they do not live together.
30. The Claimants live together, with another sister, Komal who is now 28 years of age, and who has been granted refugee status. The eldest daughter of the family, Sana, who is 30 years of age, lives with her husband who is a British citizen. No evidence was given as to the current immigration status of the first and second Claimant’s son.
31. I accept that the first, third and fourth Claimants have not returned to Pakistan since their arrival in the United Kingdom. The second Claimant has stated that she returned once to visit her relative who is ill.
32. As the Claimants rely upon family life, I firstly consider Appendix FM. It is accepted on behalf of the Claimants, that they cannot succeed with reference to Appendix FM and I make a finding accordingly.
33. The first and second Appellants do not contend that their appeals can succeed with reference to paragraph 276ADE, and again I make a finding confirming that.

34. The fourth Appellant does not rely upon paragraph 276ADE(vi) but places reliance upon (v). I do not accept that the fourth Appellant can rely upon paragraph 276ADE(v) because the relevant time that must be considered, is the date of application. That is 26<sup>th</sup> June 2012. At that time, the fourth Claimant had not spent at least half her life living continuously in the UK. I reject Mr Iqbal's argument that section 85(4) of the 2002 Act means that in this case evidence can be considered at the date of hearing. That is not the case, as the fourth Claimant contends that she can succeed under the Immigration Rules, and in order to satisfy the Immigration Rules, she must have lived at least half her life in this country at the date of application. It is common ground that at that times, he could not succeed and I so find.
35. The third Claimant relies upon paragraph 276ADE(iv). She is now an adult, but was under 18 years of age at the date of application. I do not view her case in isolation. My starting point is to consider the circumstances of the family as a whole. The third Claimant as a child, is dependent upon her parents. She does not live independently from them. It is therefore relevant that I assess the circumstances of the parents, the first and second Claimants.
36. I have set out those circumstances earlier. The first and second Claimants have lived illegally in the United Kingdom since 19<sup>th</sup> January 2003 in the first Claimant's case, and 2<sup>nd</sup> March 2005 in the second Claimant's case. Both have flouted the Immigration Rules, and have worked without permission.
37. If the first and second Claimants did not have children, I would have no hesitation whatsoever in finding that they had no right to remain in the United Kingdom, and their appeals would be dismissed.
38. In my view, in the absence of children, the Secretary of State's decisions in relation to the first and second Claimants are lawful and proportionate.
39. I must however consider whether it would be reasonable to expect the third Claimant to follow her parents to Pakistan. This involves considering her best interests as a child. I must consider whether my finding in relation to the third Claimant, affects my provisional view that it would be proportionate for the first and second Claimants to return to Pakistan.
40. The Supreme Court in paragraph 10 of Zoumbas stated in summary, that the best interests of a child are an integral part of an Article 8 proportionality assessment. The best interest of a child must be a primary consideration, although not always the only primary consideration, and the child's best interests do not have the status of a paramount consideration. Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant.
41. It is important to understand a child's circumstances, and what is in the child's best interest, before deciding whether those interests are outweighed by other considerations. There must be a careful examination of all relevant factors, and a

child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent.

42. In my view it is helpful to set out paragraphs 34-37 of EV (Philippines);
34. In determining whether or not, in a case such as the present, the need for immigration control outweighs the best interests of the children, it is necessary to determine the relative strength of the factors which make it in their best interests to remain here, and also to take account of any factors that point the other way.
35. A decision as to what is in the best interests of children will depend on a number of factors such as (a) their age, (b) the length of time that they have been here, (c) how long they have been in education, (d) what stage of education is reached, (e) to what extent they have become distanced from the country to which it is proposed that they return, (f) how renewable their connection with it may be, (g) to what extent they will have linguistic, medical or other difficulties in adapting to life in that country, and (h) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens.
36. In a sense the Tribunal is concerned with how emphatic an answer falls to be given to the question, is it in the best interests of the child to remain? The longer the child has been here, the more advanced (or critical) the state of his education, the looser his ties with the country in question, and the more deleterious the consequences of his return, the greater the weight that falls into one side of the scales. If it is overwhelmingly in the child's best interest that he should not return, the need to maintain immigration control may well not tip the balance. By contrast if it is in the child's best interest to remain, but only on balance (with some factors pointing the other way), the result may be the opposite.
37. In the balance on the other side there falls to be taken into account the strong weight to be given to the need to maintain immigration control in pursuit of the economic well-being of the country and the fact that, *ex hypothesi*, the applicants have no entitlement to remain. The immigration history of the parents may also be relevant e.g. if they are overstayers, or have acted deceitfully.
43. I now apply the factors set out in paragraph 35 above to the third Claimant. She arrived in the United Kingdom at 6 years of age, and at the date of application for leave to remain was 14, she was 16 at refusal, 17 when she appeared before the FtT, and is now 18 years of age.
44. She has been here since October 2004, approximately eleven years six months.
45. The third Claimant has been in education since her arrival, and her education has reached what I would describe as an advanced and critical stage in that she is undertaking A levels. According to the evidence within the Claimants' bundle, she should now be in her second year of A levels.
46. In my view the third Claimant has become very considerably distanced from Pakistan, in that she has not lived in that country since October 2004. Her connection



with Pakistan may be renewable if she returns with her parents and sister, but I accept that her main language is English and that she is not fluent in reading and writing Urdu, so there would be some linguistic difficulties in adapting to life in that country and carrying on with her education. I do not find that there would be medical difficulties. There is mention within the Claimants' bundle of the third Claimant being treated for depression, but there is no up-to-date evidence indicating that treatment is still continuing, and in any event if such treatment was needed it would be available in Pakistan.

47. I do not find that removal to Pakistan would interfere with the third Claimant's family life, as it is proposed to remove the family together. The third Claimant is not a British citizen.
48. Having considered the factors set out in paragraph 35 of EV (Philippines), I must then, in accordance with the guidance in paragraph 36 consider how emphatic an answer is given to the question as to whether it is in the best interest of the third Claimant to remain. In view of the considerable length of time that the third Claimant has lived here, and the advanced stage of her education, and the fact that I consider that she has no close ties with Pakistan, I am satisfied that it can be said to be overwhelmingly in her best interests to remain in the United Kingdom.
49. The evidence contained within the Claimants' witness statements, and the documentary evidence in the Appellant's bundle, indicates that the third Claimant is thoroughly integrated into British culture and lifestyle, and all her meaningful education has been in this country and taught in the English language.
50. I therefore have to balance my conclusion that it is very much in the best interests of the Appellant to remain in the United Kingdom, against countervailing considerations, which are the behaviour of her parents, who brought her to the United Kingdom as a visitor, and then deliberately decided to remain in this country illegally. Findings made at the earlier appeal hearing in 2009 in relation to the first Claimant acting deceitfully are maintained. Without doubt, the first and second Claimants have a poor immigration history. I place very significant weight upon the need to maintain effective immigration controls, which is in the public interest.
51. I have carefully considered the principles in Zoumbas and EV (Philippines) and find that there are distinctions which can be drawn, when the circumstances of the third Claimant are compared with the children considered in those cases. The third Claimant is older, and had acquired in excess of seven years' residence and therefore was eligible to have her claim considered under the Immigration Rules, which was not the case with the children considered in Zoumbas and EV (Philippines).
52. I have therefore conducted a balancing exercise, taking into account the importance of maintaining effective immigration control, and the poor immigration history of the third claimant's parents, but also taken into account the principles set out in Zoumbas, and EV (Philippines) in particular the principles set out in paragraphs 34-37. My conclusion is that despite the strong weight to be given to the need to

maintain immigration control, that does not tip the balance, and it is overwhelmingly in the third Claimant's interest that she should not return to Pakistan where she has virtually no connection, and I therefore conclude that it has been proved on behalf of the third Claimant, on a balance of probabilities, that it would not be reasonable to expect her to leave the United Kingdom. Her appeal succeeds under paragraph 276ADE(iv).

53. I turn then to consider the first and second Claimants. It has been conceded that their appeals cannot succeed under the Immigration Rules. The fact that they cannot succeed under the Immigration Rules carries significant weight.
54. I take into account the principles in SS (Congo) [2015] EWCA Civ 387, and in particular paragraph 33 in which it is stated that compelling circumstances would need to be identified to support a claim for a grant of leave to remain outside the new Immigration Rules.
55. In considering Article 8 outside the rules, I adopt the five stage approach advocated in Razgar [2004] UKHL 27. This involves answering the following questions;
  - (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
  - (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
  - (3) If so, is such interference in accordance with the law?
  - (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
  - (5) If so, is such interference proportionate to the legitimate public end sought to be achieved.
56. The first and second Claimants have established family life with the third and fourth Claimants in the United Kingdom. This has not been disputed by the Secretary of State. They have also established a private life since they arrived in 2002 and 2004 respectively.
57. I am satisfied that Article 8 is engaged. Any proposed interference with the family and private lives of the first and second Claimants is in accordance with the law as they cannot satisfy the Immigration Rules that must be satisfied in order to be granted leave to remain. Any proposed interference is necessary in the interests of maintaining effective immigration control, which is in the public interest and necessary to protect the economic well-being of the country.

58. The issue relates to proportionality. I take into account section 117B of the 2002 Act. This confirms that the maintenance of effective immigration controls is in the public interest. I place little weight upon the private lives established by the first and second Claimants, because they have been established when their immigration state was initially precarious, as they only had leave to enter and remain as visitors, and thereafter established while they were in the United Kingdom unlawfully.
59. As previously recorded, if the first and second Claimants did not have children, their appeals would fail. However I have to take into account section 117B(6) which is set out below;
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –
    - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
    - (b) it would not be reasonable to expect the child to leave the United Kingdom.
60. At the date of the Secretary of State's decision, the third Claimant was a qualifying child because she had lived in the United Kingdom for a continuous period in excess of seven years and was under 18 years of age. I accept that the first and second claimants have a genuine and subsisting parental relationship with her.
61. The first and second Claimants are not liable to deportation, and I have taken into account Treebhawon and Others (section 117B(6)) [2015] UKUT 674 (IAC) the head note of which is set out below;
- (i) section 117B(6) is a reflection of the distinction which Parliament has chosen to make between persons who are, and who are not, liable to deportation. In any case where the conditions enshrined in section 117B(6) of the Nationality, Immigration and Asylum Act 2002 are satisfied, the section 117B(6) public interest prevails over the public interests identified in section 117B(1)(3).
  - (ii) section 117B(4) and (5) are not parliamentary prescriptions of the public interest. Rather, they operate as instructions to courts and Tribunals to be applied in cases where the balancing exercise is being conducted in order to determine proportionality under Article 8 ECHR in cases where either of the factors which they identify arises.
62. It would not be proportionate to separate the third Claimant from her parents. It is not reasonable to expect the third Claimant to leave the United Kingdom. Therefore I conclude that because of the family life that is in existence between the third Claimant and her parents, their appeals must succeed with reference to Article 8 outside the Immigration Rules. The view may be taken that the first and second Claimants have profited, from a deliberate flouting of the Immigration Rules and a determination to remain in the United Kingdom even though the only leave they were ever granted was as visitors for an initial six month period. Their behaviour

has been taken fully into account, but the overriding factor is that for the reasons given earlier, it is not reasonable to expect the third Claimant to leave the United Kingdom, and therefore it would be disproportionate to separate her from her parents, and that is why their appeals are allowed. The compelling of circumstances are that if the appeals were not allowed under Article 8 outside the Immigration Rules, this may result in the third Claimant having to leave the United Kingdom, notwithstanding that she satisfies paragraph 276ADE(iv).

63. Turning to the fourth Claimant, who is now 22 years of age, it is perhaps surprising that no reliance is placed on her behalf, on paragraph 276ADE(vi) which would entail her proving, on a balance of probabilities, that she is aged 18 years or above, has lived continuously in the UK for less than twenty years, but there would be very significant obstacles to her integration into Pakistan. However it was conceded that she did not rely upon this, and I therefore consider her appeal in relation to Article 8 outside the Immigration Rules.
64. If the fourth Claimant now made an application for leave to remain based on her private life, then she would, it would seem, be able to succeed under paragraph 276ADE(v) because she is aged between 18 and 25, and has now spent at least half her life living continuously in the United Kingdom. It is, for reasons explained earlier, not open to me to consider sub-paragraph (v) in this appeal because the continuous period of residence must have been achieved at the date of application.
65. It is clear that the fourth Claimant has established her private life in the United Kingdom since her arrival in 2004. She has been educated here, I accept she undertakes voluntary work, I also accept that she would wish to carry on with education, and that she is engaged to be married.
66. However her private life has been established while she has been in the United Kingdom unlawfully, and therefore pursuant to section 117B(4) of the 2002 Act, little weight should be given to that private life.
67. I am satisfied that the fourth Claimant has established a family life with her parents and the siblings with whom she lives. This is despite the fact that she is now an adult.
68. The Court of Appeal in Kugathas [2003] EWCA Civ 31 indicated at paragraph 25 that a family life that would engage Article 8 is not established between an adult child and parent or other siblings unless something more exists than normal emotional ties. However, case law has moved on, and this issue was considered by the Upper Tribunal in Ghising [2012] UKUT 00160 (IAC) and in paragraph 56 it was accepted that the judgment in Kugathas had been interpreted too restrictively in the past and should be read in the light of subsequent decisions of the domestic and Strasbourg courts. It was pointed out that it has been recognised that family life may continue between parents and a child even after the child has attained a majority (Etti-Adegbola [2009] EWCA Civ 1319). The Upper Tribunal found that there is no general proposition that Article 8 can never be engaged with regard to adult

children, and that rather than applying a blanket rule, each case should be analysed on its own facts, as each case is fact-sensitive.

69. This was approved by the Court of Appeal in Gurung and Others [2013] EWCA Civ 8 and in paragraph 50 reference was made to the need in addition to the usual emotional bonds between parents and children, a requisite degree of emotional dependence.
70. Although the fourth Claimant is engaged to be married, she does not live with her fiancé, and lives with her parents, the third Claimant, and her sister who has been granted refugee status. The fourth Claimant has always lived with her family. She was separated from her father only when he left to come to the United Kingdom in 2002, and the family was subsequently reunited approximately two years later.
71. The fourth Claimant has lived with her family in this country since October 2004, and is supported by her parents. There is no 'bright line' which means that when an individual reaches the age of 18, there is no longer family life. I am satisfied that there is mutual dependence between the fourth Claimant and her siblings and parents. As I have concluded that the other family members are entitled to remain in the United Kingdom I do find that it would be disproportionate to cut off the fourth Claimant from her family and force her to return to Pakistan, alone, which would mean returning her to a country that she left almost twelve years ago. I have found this to be an extremely difficult case to consider, in relation to all the Claimants, but after careful consideration my view is that the appeal of the fourth Claimant should be allowed under Article 8 outside the Immigration Rules. I conclude that compelling circumstances do exist, those being that if she is forced to return to Pakistan, she would be separated from her family upon whom she is dependent, and she would be forced to live alone in a country to which she has very little connection.

### **Notice of Decision**

The decision of the First-tier Tribunal contained an error of law and was set aside. I substitute a fresh decision.

The first Claimant's appeal is allowed under the Immigration Rules, pursuant to paragraph 276ADE(iv).

The appeals of the second, third and fourth Claimants are dismissed under the Immigration Rules.

The appeals of the second, third and fourth Claimants are allowed on human rights grounds, pursuant to Article 8 of the 1950 Convention.

## **Anonymity**

There has been no request for anonymity and I see no need to make an anonymity order.

Signed

Date: 18<sup>th</sup> March 2016

Deputy Upper Tribunal Judge M A Hall

## **TO THE RESPONDENT FEE AWARD**

There are no fee awards. Evidence was presented to the Tribunal that was not before the initial decision maker.

Signed

Date: 18<sup>th</sup> March 2016

Deputy Upper Tribunal Judge M A Hall