



IAC-AH-DN-V1

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

Appeal Numbers: IA/28656/2013
IA/22823/2014
IA/22846/2014
IA/22850/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 1 December 2015**

**Decision & Reasons Promulgated
On 14 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**MR MUHAMMAD AAMIR NAWAZ - FIRST APPELLANT
MRS AMNA SALAH-UD-DIN - SECOND APPELLANT
M J - THIRD APPELLANT
H F - FOURTH APPELLANT
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Heybroek, Counsel

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Pakistan. The first and second appellants are husband and wife and the third and fourth are their two minor children

born on 15 December 2008 and 19 September 2010 respectively, i.e. 6 years and 5 years old as at the date of my consideration.

2. They appeal with permission the decision of the First-tier Tribunal, Judge I Ross, following an oral hearing of their appeal on 8 July 2014. The appellants' representatives assert that the decision was not served until March 2015, meaning that the application for permission to appeal was made within time. There is no evidence to contradict that assertion because apparently the respondent failed to keep any record as to when they received the judge's decision and the position is not established by the court file. Whilst the case management system refers to the issue of an IA60, the letter accompanying a promulgated determination, being issued on 18 July 2014 no copy is on file and when the Appellants' representative eventually, in February 2015 chased her decision the copy of the IA60 provided, although dated 21 July 2014, was clearly produced after that event containing within it a clear reference to time limits for appeal which were only brought in by the Procedure Rules of October 2014. In those circumstances I find that the appellant has established late promulgation of the determination and the timeliness of the application for permission.
3. I pause to note that when Judge Ross heard these appeals in July 2014 he only had the file of the principal appellant. Although in an earlier Case Management Review the court had directed that the three dependent appellants' appeals be linked with that of the principal appellant and the matters listed together. The parties accordingly turned up at court expecting all four appellants' cases to be dealt with at the hearing. Unfortunately as a result of an administrative error the dependants' appeals remained separately listed in January 2015. Judge Ross, with the consent of the parties, dealt with all of the appeals and directed that the hearing in January be vacated. In the event further administrative errors resulted in a paper disposal of the dependants' appeals in January. There was no issue before me that the erroneous paper disposal of January 2015 is annulity and there is no need for me to make any further reference to it.
4. Judge Ross dismissed the appellants' appeal against the decision of the respondent refusing this family's application for indefinite leave to remain. The principal appellant entered the United Kingdom in September 2002 with entry clearance as a student which was extended until 31 July 2004. An in-time application for further leave to remain as a student was refused on 18 November 2004. The appellant did not leave and at that point became an overstayer. On 28 March 2009, i.e. over four years later the appellant made a further application for leave to remain as a student, and that application was granted, and subsequently varied to post-study work leave expiring in March 2013. On 25 September 2012 the first appellant applied for indefinite leave to remain on the ground of long residence. The application was refused the appellant not succeeding in establishing ten years' continuous lawful residence in the United Kingdom under paragraph

276B(i)(a) of HC 395 as amended because of the period of overstaying. The principal appellant's wife and eldest child entered the United Kingdom on 14 July 2010 as his dependants. The fourth dependant was born in the United Kingdom shortly after, in September 2010. The application for indefinite leave to remain submitted on 25 September 2012 was refused on 26 June 2013, the family have leave to remain having expired on 22 March 2013.

5. The grounds of appeal put forward mitigating circumstances for the period of overstaying, complained that the respondent delayed and should have made a prompt decision prior to the expiry of leave in March 2013 so as to afford the appellant an opportunity of making a further application before the leave expired, and contended that removal would amount to a breach of Article 8 ECHR. The mitigating circumstances were that the appellant believed that he had instructed an "immigration adviser" to make an in-time application.
6. Judge Ross correctly decided that the appellant could not establish the necessary period of lawful residence, the mitigating circumstances put forward being outweighed by the relaxations of the computation of time permitted within the Rule.
7. With regard to family and private life none of the "gateways" provided for by Appendix FM. The judge then turned to Article 8. The judge directed at paragraph 12:

"12. I have carefully considered whether the refusal of further leave would result in an unjustifiably harsh result such that the appeal ought to be considered under Article 8 ECHR, following the approach set out in Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640 (IAC)."

The judge then goes on to consider the length of residence including the four years overstaying, the temporary grants of leave, and the application for indefinite leave to remain under the Rules, an application which was bound to fail. The judge considered the position of the dependent appellants he assessed the best interests of the third and fourth appellants to be to remain in their family unit. In that regard he took account that the children have both been to Pakistan, have been brought up according to Pakistani culture, and are both Pakistani citizens. The judge took account that the eldest child attends school and that the youngest at a nursery. The judge notes the presence of grandparents in Pakistan and the ability of the father to maintain the family as a result of having completed his BA and Masters degrees in the United Kingdom. In respect of the length of time that the respondent took to decide the application the judge found that there was no undue delay and that in any event there was no application that the appellant could have made prior to the expiry of his post-study visa expiring on 22 March 2013. Bearing in mind all of those matters the judge concludes that the refusal does not result in any

unjustifiably harsh consequences. The judge reminds himself that there is no Rules based entitlement to remain, and notes there are no compelling circumstances, and decides “I do not consider this appeal separately under Article 8 ECHR.”

The Grounds of the Application

8. Challenging Judge Ross’ decision reiterate the grounds of appeal and assert that the judge did not correctly consider the Article 8 issue in light of the Court of Appeal decision of MF (Nigeria) v SSHD [2013] EWCA Civ 1192 to the point that the Immigration Rules are not a complete code and the judge was required to conduct a separate Article 8 assessment.
9. Before me Ms Heybroek relied on the judge’s self direction with regard to the case of Gulshan as establishing a material error of law.
10. I clarified with Ms Heybroek that the factual matrix considered by the judge was not disputed nor was there any evidence that was relied upon by the appellants as establishing that the best interests of the children were not as found by the judge namely to be with their parents wherever their parents lived. There is no evidence of any medical or educational needs or concerns capable of operating to displace the public interest in removing those who have no entitlement to remain under the Rules. Although the evidence reveals that the couple were expecting, in July 2014 to have a third child in February 2014, that the principal appellant had been in an RTA in February 2004 which was the subject of a compensation claim, in the context of which the medical evidence is that his whiplash injury had resulted in physiotherapy, and that the eldest child had suffered and recovered from chickenpox and expected to start primary school those are all circumstances which reflect nothing outside the usual sorts of circumstances attendant upon a family going about life in an ordinary fashion.
11. As can be seen from the judge’s self direction he did not impose a test of exceptionality but concluded, in the context of an unremarkable factual matrix, that the application of the Immigration Rules afforded sufficient respect to the family life of these appellants.
12. Were I to reconsider the issue today and in this regard there is no application under Rule 15 for additional evidence to be submitted, I could properly come to no other conclusion but that the best interests of the children of this family are to continue to live with their parents, in the context of their own private lives Ms Heybroek indicated that she was unable to take me to any evidence which might show that it would not be reasonable to expect any of the children to leave the United Kingdom and return to Pakistan with their parents there being no significant obstacles to their doing so and to their integration and none having a significant term of residence in the context of the Rules or to qualify them as “qualifying

children” in the context of Section 117 of the Nationality, Immigration and Asylum Act 2002 as amended.

13. For those reasons if I were remaking the decision the only proper conclusion available to me is that the interference with the family and private life of this family is proportionate in the context of the legitimate aim reflected by the application of the Immigration Rules and that the removal of this family does not put the UK in breach of any Article 8 obligations.
14. For all the reasons set out above I find that the decision of the First-tier Tribunal does not reveal a material error of law such that it should be set aside. The decision of First-tier Tribunal Judge Ross dismissing these appellants’ appeals on Immigration Rules grounds as well as on Article 8 ECHR stands.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Davidge