



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/10556/2016

THE IMMIGRATION ACTS

Heard at Field House
On 26th April 2017

Decision & Reasons Promulgated
On 8th May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

H.A.

S.A.

S₁.A.

A.A.

E.A.

S₂.A.

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Singh, Solicitor

For the Respondent: Ms Fijiwala, Senior Home Office Presenting Office

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction is made because these cases centre around the claims of four minors.

DECISION AND REASONS

1. The Appellants, a family of six all of whom are citizens of Pakistan, appeal with permission to the Upper Tribunal against the decision of a First-tier Tribunal (Judge McGavin) dismissing their appeals against the Respondent's refusal to grant them leave to remain in the United Kingdom on account of their family/private life.

Background

2. The first and second named Appellants (Mr H.A. and Mrs S.A.) are the parents of the remaining four Appellants, who are their dependent minor children. The eldest two have been in the United Kingdom for more than seven years. The eldest child (S₁.A.) was born in Pakistan but arrived in the United Kingdom, aged 15 months, along with her parents on 4th March 2007. They were in possession of a family visit visa valid from 4th December 2006 until 4th June 2007. The first and second named Appellants did not seek to regularise their stay on expiry of their visit visa and remain in the United Kingdom without leave. They had three more children (A.A., E.A. and S₂.A.) who were born in the United Kingdom in 2007, 2010 and 2014 respectively.
3. On 6th March 2014 H.A. claimed asylum seven years after his arrival here. The other family members were named as dependants on that claim. H.A.'s asylum claim was refused on 17th April 2015 and an appeal against the refusal was dismissed on 29th October 2015. An application was then made for permission to appeal that decision but this application was refused on 26th November 2015 and by 4th January 2016 H.A.'s appeal rights were exhausted.
4. On 1st February 2016 H.A. then applied for leave to remain for himself, his wife and their four children under the Immigration Rules on the basis of family life and private life. That application was refused on 20th April 2016 by the Respondent in a letter of that date. The Appellants' appealed the Respondent's refusal to the First-tier Tribunal

The FtT Decision

5. When the appeals came before the FtT on 7th July 2016, the Appellants elected to have their cases decided by way of a paper hearing. In a well constructed and lengthy decision, the FtT Judge took account of the documentary evidence which had been provided. In particular she noted there had been produced on behalf of the family a social work report, which was neither signed nor dated but did indicate that the author had met the parents and children on 26th April 2016 and 30th April 2016.
6. The judge noted that the first and second Appellants are aged 47 and 37 years respectively and that they entered the United Kingdom in 2007 as visitors. They overstayed their leave raising an asylum claim in 2014, seven years after their arrival. Their eldest child who was born in Pakistan accompanied them in 2007 and was 15 months old at the time. The judge noted that at the time of the hearing before her, the eldest child was 10 years of age (she is now 11 years of age) and had lived in the United Kingdom for eight and a half years. The second child of the family who was

born here was 8 years of age at the time of the hearing and had therefore lived his whole life in the United Kingdom. The third and fourth children were aged 5 years and 21 months respectively.

7. The judge noted the evidence contained in the social work report concerning the family but gave cogent reasons why she did not place significant weight on it. She noted further that it was reasonable for the two eldest children to leave the UK as they would be leaving with their parents and siblings as a complete family unit. She noted that there was nothing in the evidence to persuade her that the two eldest children would be unable to attend school in Pakistan, nor that they would be unable to cope with learning Urdu. She considered that the best interests of the children would be to remain with their parents and therefore she dismissed all appeals.
8. The Appellants' appealed the decision and permission being refused by the First-tier Tribunal, renewed their applications before the Upper Tribunal. Permission was granted by Upper Tribunal Judge Smith and the relevant parts of the grant reads as follows:

"The grounds are difficult to follow but read as a whole, they challenge the judge's treatment of the cases of the two elder children, both of whom have been in the UK for more than seven years. Although I share some of the judge's concerns about the 'social worker report' the judge indicates at [34] that he can only give this weight as a letter of support. The judge was unarguably entitled to place that caveat on the weight to be given. There is though thereafter arguably no adequate consideration of the content of the report. The judge has therefore arguably failed to take into account material evidence relating to the two children's best interests. I am also concerned that by considering those children's best interests only after having reached the view that it is reasonable to expect them to return to Pakistan [38], the judge arguably fails to recognise the primacy of those interests as a consideration."

Thus the matter comes before me to decide whether the decision of the FtT discloses an error of law requiring it to be set aside and remade.

UT Hearing

9. Before me Mr Singh appeared for the Appellants and Ms Fijiwala on behalf of the Secretary of State. Mr Singh's submissions centred around the grant of permission and, following those lines, he submitted that the FtT had erred in two major respects:
 - the judge had failed to adequately take into account material evidence relating to the best interests of the two eldest children of the family; and
 - the judge erred in failing to take into account the best interests of the children as the primary consideration.
10. In expanding on the first point Mr Singh said that the judge had apparently taken issue with the expertise of the author of the social work report [26]. He said that the

qualifications of the social worker were listed and had been set out in the body of the report. Further the social worker had said that he had interviewed not only the eldest two children of the family but also had taken into account the wishes of the third child (the 5 year old) and therefore there was material that the judge had not considered.

11. He said that the judge and her assessment of the evidence had seemingly not taken into account other evidence which was available to her. When pressed by me at this point to particularise what the other evidence consisted of he submitted that the judge had failed to take into account evidence of supporting reports from the children's school, family friends and their church. In addition the children's own wishes had not been considered. All those matters showed the extent of the integration of the children in the community.
12. Ms Fijiwala also began her submissions by referring directly to the permission grant. She said it was important to note that the grant of permission also shared the judge's concerns about the social worker report. She then referred to [36] to [38] of the FtT's decision. She said that the judge was clearly setting out the situation of the parents and their background, and that was relevant because it was necessary to place the children's claims in context.
13. By [42] the judge deals in depth with the best interests of the children. Reference is made throughout the decision to the supporting material. Clearly the judge kept it in mind because she made reference to the children's education and to other parts of the social worker report in [38]. It had to be borne in mind that this was a paper hearing and the cases of the two eldest children relied heavily upon the comments and evidence contained in the social worker report. The judge for good reason had found that she could not place weight upon that report, having found that the author had overstepped his remit by presenting a report as if he were an advocate on behalf of the family rather than setting out a report to assist the court.
14. Finally she drew my attention to **MA (Pakistan) and Others [2016] EWCA Civ 705**. She submitted that in any event the central point of the present appeals revolved around the question of whether it would be reasonable to expect the eldest two children of this family to relocate with their parents and other siblings to Pakistan. She referred to paragraph 47 of **MA** which she said provides guidance that the best interests of a child are not determinative in the reasonableness test. Even where the best interests of the child are to stay, it may not be unreasonable to expect the children to leave. She said that this was clearly the approach adopted by the FtT in the present appeals and the judge had taken into account all the relevant factors. The decision should therefore stand.

Consideration

15. As I understand the grant of permission and Mr Singh's subsequent submissions, it was said to be arguable that the FtT had erred in two respects;

- because there was no adequate consideration of the material contained in the social worker report and thus the judge had failed to take into account material evidence relating to the best interests of the two eldest children of the family; and
- the judge had failed to recognise the primacy of those interests because she may have reached a view that it was reasonable to expect the eldest two children to relocate to Pakistan before she considered their best interests.

16. I find that these arguable errors are interrelated. They raise issues concerning:
- (a) the best interests of the children, primarily the eldest two; and
 - (b) on account of the eldest two children of the family being qualifying children, the reasonableness test as set out in Section 117(6)(b) of the Nationality, Immigration and Asylum Act 2002.
17. I start my consideration by dealing with the first point. The FtT indisputably gave the social worker's report its full consideration. That report set out that the eldest two children have excellent school reports, many friends and good community connections from neighbours and church. However, the judge sets out in [26] to [34] of her decision, a number of lengthy paragraphs discussing the content of the report and her reasons as to why she can place little weight upon it. The grant of permission poses the question of whether the FtT failed to take into account material evidence relating to the best interests of the eldest two children. I find that this is not the case. The judge can only deal with the evidence before her and in [29] specifically mentions school reports and letters from the children. Therefore I find that there is no evidence that the judge has not kept in mind the material evidence concerning the eldest children's progress at school and community ties.
18. The report discloses that there are no health problems with the children. The family unit is a happy one with no reported issues of concern. The children have expressed the wish that they do not want to return to Pakistan.
19. The report disclosed some concern on whether or not the children spoke sufficient Urdu. The judge in fact discounted that because as she set out the parents both speak Urdu and it was clear that some Urdu was spoken at home because of the comment that the children struggled with it. The judge did not consider that to be an obstacle to return and that is a finding that she was entitled to make.
20. Given the ages of the children it is hardly surprising that they have expressed a wish to remain in the UK. They are not mature enough to make such a decision for themselves and are making it from a position of knowing life only in the UK. The FtT judge was concerned about the tenor of what the children said to the social worker concerning life in Pakistan. It must be remembered that H.A. claimed asylum and it was found that that claim was not a credible one and therefore there was no risk to his return together with his family members back to Pakistan. In this

context, it is not helpful that the social work report providing evidence on behalf of the eldest two children includes an observation stating:

“Surely this is not a safe country to send the children and sending them to Pakistan would be psychological (sic) damaging and traumatising to treat innocent children who already call Liverpool their home.”

21. Contrary to Mr Singh’s assertion, I find that the judge did not fail to adequately take into account material evidence relating to the eldest two children of the family. She has had regard to the report put before her and I see no evidence that the judge has somehow sidelined material evidence. Looking at the evidence holistically, the judge has reached a conclusion that the best interests of the eldest children are to remain with their parents and return to their country of nationality.
22. Likewise so far as the second point is concerned I see nothing to raise concerns that the judge has failed to recognise the primacy of the children’s best interests as a consideration before she reached conclusions on the reasonableness test.
23. As Ms Fijiwale pointed out the decision must be read as a whole. Whilst it is correct to say that by [35] the judge seemingly makes a conclusion on the reasonableness test, it is clear that she was aware and kept in mind that the best interests of the children are of prime importance. One needs look no further than [10] to see that the judge reminds herself and takes into account the skeleton argument submitted on behalf of the Appellants. That skeleton argument sets out that the best interests of the children are paramount (sic) and refers to the social worker’s report. The judge then takes this up at [28] and outlines that the author of the social work report states that he has been instructed to explore the best interests and views of the three eldest children.
24. The judge then at [38] and [42] goes into considerable detail outlining that the best interests of the children are a primary consideration.
25. Altogether I find I am satisfied for the foregoing reasons, that the decision of the FtT discloses no material error of law requiring it to be set aside. The decision therefore stands.

Notice of Decision

There being no material error of law in the First-tier Tribunal’s decision, these appeals are dismissed.

Appeals dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed C E Roberts Date 05 May 2017

Deputy Upper Tribunal Judge Roberts

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed C E Roberts Date 05 May 2017

Deputy Upper Tribunal Judge Roberts