



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17609/2016
HU/17612/2016
HU/17619/2016
HU/17632/2016
HU/17634/2016
HU/17637/2016

THE IMMIGRATION ACTS

Heard at Liverpool
on 13 March 2018

Decision promulgated
On 13 June 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MOHAMMED [A]
ASMA [A]
[F A]
USAMA [A]
AHTESHAM [A]
SHAZEEN [A]
(anonymity direction not made)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Salam of Salam & Co Solicitors Ltd (Manchester)
For the Respondent: Mr Harrison Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellants are a family unit who appeal with limited permission against a decision of the First-tier Tribunal which dismissed the appeals of all family members on human rights grounds.
2. The appellants, all nationals of Pakistan, arrived in the United Kingdom in 2007 lawfully with entry clearance as visitors. On 13 June 2016 each made human rights claims for leave to remain in the United Kingdom on the basis of their family and private life pursuant to article 8 ECHR. On 6 June 2016 the respondent refused the applications leading to the appeal before the First-tier Tribunal.
3. Having considered the evidence, the Judge sets out findings of fact from [34] of the decision under challenge. The Judge considers the matter by reference to the Immigration Rules and outside the Rules pursuant to article 8 ECHR.
4. In relation to the Rules and the sixth appellant the Judge writes:
 54. There remains the question of whether the sixth appellant meets the requirements of the Rules. In this respect it is submitted that she can now satisfy paragraph 276ADE(1)(v). I accept on the evidence before me that she does now satisfy the requirements of that paragraph. The sixth appellant came to the UK on 3 August 2007 when she was 9 ½ years of age and she is now slightly more than nineteen years of age. She is between eighteen and twenty-five years of age and has spent at least half of her life living continuously in the UK. The respondent's representative accepted the accuracy of this calculation.
 55. Thus I accept the submission of her representative that she now satisfies the requirements of that paragraph but I do not accept his further submission that that means that it is automatically disproportionate to remove her. Rather, as he also submitted, it is only a factor (albeit a factor of significance) in the balancing exercise to be undertaken with regard to Article 8 considerations. That is a consequence of the amendments made to section 82 of Nationality, Immigration and Asylum Act 2002 by the Immigration Act 2014 to the effect that appeals such as these can only be pursued by reference to human rights and not, directly, relying upon the Immigration Rules.
5. It is not made out that in relation to the sixth appellant there are any countervailing factors that would suggest that she represents a threat to the United Kingdom or acted in ways that her presence in the United Kingdom is not conducive to the public good.

Error of law

6. Paragraph 276ADE(1) of the Rules provides that the requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant: (i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM; and

- (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
 - (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or
 - (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or
 - (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); or
 - (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.
7. The Supreme Court have found that the Rules are not a complete code and following the introduction of the Immigration Act 2014 there is no appeal under the Rules. The Rules are, however, still important as they set out the Secretary of State's assessment of how human rights claims or an appeal should be assessed. Paragraph 276ADE provides the criteria which may make an application by a person who could otherwise succeed under subparagraph (v) likely to be refused. This is set out in paragraph 276ADE(1)(i) above. It is not suggested in this appeal that the 6th appellant falls for refusal on any of those stated provisions. It is not disputed that the 6th appellant is able to satisfy the requirements of (v) and as subparagraph 2 is not applicable, it is clear the Judge erred in refusing the appeal of this appellant.
 8. In relation to the other appellants it was submitted that the 6th appellant has strong family life with her siblings and mother and father and that it would be disproportionate to separate this family unit. It was submitted the 6th appellant could not be expected to live by herself as she is only 20 years of age and she wants to go to university. It was argued the 6th appellant could not pursue the same unless her parents remain as this is a close traditional family where the 6th appellant would ordinarily remain at home. It was argued on the appellant's behalf that there is a need to consider the best interests of the children.
 9. On behalf the Secretary of State, Mr Harrison submitted the 6th appellant is an adult and not a child and that although this family is close that has no consequence upon the decision. It was submitted many young people go to university aged 18 and that although parents might like to spend time with them the 6th appellant is now an adult and responsible.
 10. Mr Harrison submitted that the only reason the 6th appellant succeeds is due to the history family in avoiding regularising their status in the United Kingdom which the First-tier Judge comments upon. It was submitted that the appellants only attempted to regularise their status when the new regulations now applicable came into force in relation to whether a person is entitled to succeed to remain or not.

11. Mr Harrison submitted that the children in the United Kingdom, together with the 6th appellants mother and father, can return.
12. It was submitted this is a case in which if other family members are allowed to remain the parents will be seeking to be permitted to do so in the United Kingdom by hanging on the issue relating to the eldest daughter, which Mr Harrison submitted in the circumstances of this case was “abhorrent”. It was submitted this is the case for both the adults and children.
13. Mr Harrison submitted the 6th appellant wants to go to university in which it is normal for people of her age to make their own way in life and that there was nothing to stop other members the family following their sister’s education, such as at University in the United Kingdom as foreign students, if they wish to apply at a later date.
14. Mr Harrison submitted it was not unreasonable to expect the other family members to leave the United Kingdom and that no error had been made regarding the proportionality of the decision in a comprehensive decision on all aspect by the Judge.
15. On behalf of the appellants Mr Salam submitted that the remaining appellants cases are an extension of the best interests of the child and that they want to remain here. Reference was made to children under the age of 18 who should remain with their parents in the United Kingdom. It was submitted that the children have done nothing wrong and that all the family should be permitted to remain.

Discussion

16. As noted above, the Judge erred in relation to the assessment of the 6th appellant and in that respect the determination is set aside and a decision substituted to allow the appeal of that party.
17. The position of the other family members requires careful consideration of whether the Judge erred in law in relation to their appeals. The Judge initially found there was no need to consider the merits of the case outside the Rules as all the matters relied upon by the other parties have been considered within the Rules which could not be satisfied. The Judge, in the alternative, decided to undertake an assessment outside the Rules pursuant to article 8 ECHR.
18. The Judge notes a number of aspects of the evidence of the first appellant that he did not find credible being particularly that when he left Pakistan he intended that his family would return on or before the expiry of their visit Visa’s. The Judge also expresses a view that the 2nd appellant was complicit in that deception. Reasons are set out at [71 (i-iv)]. The Judge concludes that the issue pursuant to article 8 was the proportionality of the decision. The Judge reviews the relevant case law and the respondents IDI’s referred to at [84] of the decision under challenge.
19. In relation to the best interests of the children the Judge finds that the family life the family enjoy can be re-established in Pakistan and that it was not

unreasonable in all the circumstances to expect family life with the family, siblings, and extended family to continue in Pakistan. The Judge finds, by reference to section 117B(6) of the 2002 Act, that it would not be unreasonable to expect the 3rd appellant to leave the United Kingdom.

20. At [97] when summarising the findings, the Judge writes:

Summary

97. Given the concessions that only the 3rd and 6th appellants sought to rely upon the Immigration Rules and the findings I have made in relation to the above issues (including, without limitation, that, it would not be unreasonable to expect the 3rd appellant to leave the UK) the appellants have respectively failed to discharge the burden of proof upon them to satisfy me that their removal in accordance with the decisions of the respondent would amount to a disproportionate breach of their respective rights to a private or family life as protected by article 8.

21. That finding was made by the Judge on the basis all family members could return to Pakistan together. The actual position in relation to the 6th appellant is arguably different, for although she could physically return to Pakistan with her family she has acquired the right to remain in the United Kingdom.

22. Mr Harrison makes the point that what the remaining appellants are now seeking to do is to effectively “piggyback” their cases onto the status of the 6th appellant such that this family unit should be entitled to remain in the United Kingdom.

23. What the Upper Tribunal cannot infer from the findings is whether, in light of the position of the 6th appellant, it can be said the Judge has not erred in law at this stage i.e. that the decision would be the same. More detailed examination of the intention/arrangements for the 6th appellant is required including consideration of whether the family life she enjoys with the family means all family members are required to remain in the United Kingdom to enable her to continue her education or only some. Although the 6th appellant is an adult it was not made out that she leads an independent life on the evidence.

24. It may be that the outcome of the decision is the same, but findings need to be made in light of the situation that exists in law in relation to the 6th appellant. For that reason, I find the Judge erred in law as a consequence of the erroneous decision regarding the 6th appellant in assessing the entitlement of the remaining members of this family unit. I set the decision of the First-tier Tribunal aside. The adverse credibility findings made shall be preserved findings.

25. The following directions shall apply to the next hearing of this appeal:

- i). List for a Resumed hearing before Upper Tribunal Judge Hanson on the next available date after 14 June 2018, time estimate 3 hours.
- ii). No interpreter shall be provided by the Upper Tribunal unless specifically requested by the appellants representatives who must, no

later than 14 days from receipt of these directions, advise the Upper Tribunal of the language and dialect required.

- iii). The appellants shall file with the Upper Tribunal and serve upon the respondent's representative a consolidated, indexed, and paginated bundle containing all the documents they intend to rely upon in relation to this appeal; no later than 4 PM 1 June 2018. Witness statements in the bundle must be signed, dated, and contain a declaration of truth, and shall stand as the evidence in chief of the maker who shall be tendered for cross-examination and re-examination only.
- iv). The respondent shall have leave to file and serve any additional evidence in reply or upon which she relies in support of her case; provided the same is filed and served no later than 4 PM 1 June 2018.
- v). Evidence not filed in accordance with these directions shall not be admitted without the express permission of the Tribunal, such permission to be sought by the making of a proper application before the expiry of the time limit provided; informing the tribunal of the reasons for the failure to comply with the direction, person responsible, nature of evidence not admitted, date by which such evidence can be filed and served, nature of the evidence, importance of the evidence to the issues in dispute, prejudiced to the party in default of such evidence not being admitted, prejudice to the other party of such evidence being admitted late, and any impact upon any date set for hearing.
- vi). The appeals of the first, second, third, fourth and fifth appellants only shall be considered on the next occasion.

Decision

26. **The First-tier Tribunal materially erred in law. I set aside the decision of that Tribunal. I remake the decision of the 6th appellant which is hereby allowed. The appeals of the first, second, third, fourth and fifth appellants shall be case managed in accordance with the directions set out above to enable a further hearing after which the Upper Tribunal shall substitute a decision to allow or dismiss the appeals.**

Anonymity.

27. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

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Signed.....
Upper Tribunal Judge Hanson

Dated the 9 May 2018