



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17919/2016
HU/17921/2016
HU/17925/2016

THE IMMIGRATION ACTS

Heard at Manchester
On June 27, 2018

Decision & Reasons Promulgated
On June 29, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MRS N K

MR A K

MR A Z

(NO ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmed, Counsel, instructed by Greenhall Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer
Interpreter: Mrs Meher

DECISION AND REASONS

1. I do not make an anonymity direction.
2. The appellants are Pakistani nationals. The first-named appellant is the mother of the second and third-named appellants. They each entered the United Kingdom clandestinely on July 17, 2007 (the second and third-named appellants were aged 3 ½

and 6 ½ years of age at the time) and claimed asylum. Their claims were refused on October 25, 2007 and two applications to regularise their status on November 17, 2015 and January 13, 2016.

3. On February 5, 2016 they again applied for leave to remain on private and family life grounds. Their applications were refused by the respondent on July 5, 2016.
4. Their appeals originally came before Judge of the First-tier Tribunal Woodward (hereinafter called “the Judge”) on June 13, 2017 and in a decision promulgated on July 3, 2017 the Judge allowed their appeals on the basis it would be disproportionate to require them to leave this country. The respondent appealed those decisions and permission to appeal was granted by Judge of the First-tier Tribunal Froom on January 2, 2018. The matter came before me on March 26, 2018 and following submissions made by both parties I concluded the Judge’s proportionality assessment was lacking because no regard had been had to the following factors:
 - (i) The appellants have family living in Pakistan including the first named appellant’s mother and brother albeit they claimed not to have any contact.
 - (ii) Their private life was formed whilst here unlawfully and this should attract little weight according to section 117B of the 2002 Act.
 - (iii) There had also been a huge cost to the public purse because the two younger appellants had been educated in circumstances where normally they would not have been entitled to free education in the United Kingdom and no doubt there were other public expenses that had been incurred.
5. I concluded that this issue should be re-visited and in view of the fact the last hearing had been on June 13, 2017 I adjourned the hearing for additional oral evidence and/or submissions.
6. The matter came before me today and the parties were represented as set out above.
7. In considering proportionality I indicated to the representatives that as a starting point I would have regard to the following:
 - (a) Both children were born in Pakistan and came to this country aged 3½ and 6½ years of age.
 - (b) The children were now aged 14½ and 17½ years of age and they had therefore spent a substantial period in this country.
 - (c) The children should not be blamed for the actions of their mother especially as they were still minors.
 - (d) The children both spoke English.
 - (e) The respondent’s own February 2018 policy on Family Migration suggests that strong reasons will be required in order to refuse a case where the outcome will be removal of a child with continuous UK residence of seven years or more.

- (f) The First-named appellant entered the country clandestinely and any private life had been formed whilst here unlawfully.
 - (g) There had been a significant reliance placed on the public purse.
 - (h) It was arguable they had family in Pakistan.
8. Mr McVeety accepted that the matters highlighted in paragraph 7(a)-(e) above were strong factors in support of the second and third appellants' claims and the only basis in which he could invite the Tribunal to dismiss all three appeals would be if the factors outlined in paragraph 7 (f) to (h) were strong enough to outweigh 7(a) to (e). He accepted the second and third-named appellants had been in this country for 11 years and had spent the formative years of their life in the United Kingdom. He also accepted that they had been educated in this country and had no experience of education in Pakistan and that their private life would have been formed here. He argued that the First-named appellant could not succeed in her own right reminding me that section 117B(1) of the 2002 Act made clear that immigration control was in the public interest and the fact her private life had been formed here unlawfully and at the public expense together with the fact she did not speak English were all reasons to refuse her claim. However, if the Tribunal allowed the appeals of the remaining appellants then he accepted the First-named appellant would also succeed as she is their primary carer.
9. Mr Ahmed relied on the matters I set out in paragraph 7 (a) to (e) above. He pointed to the fact that the second and third-named appellants spoke English and had lived the majority of their lives in this country. He submitted there were no strong reasons, as suggested in MA (Pakistan) [2016] EWCA Civ 705, to require them to leave. Whilst there were negative factors, he submitted the positive factors outweighed those negative factors and in the absence of strong reasons he submitted it would be disproportionate to remove the appellants. He conceded that the first-named appellant's appeal would fail without the second and third appellants' appeals.

FINDINGS

10. I am dealing with appeals by mother and two children. Both children came to this country with their mother when they were both under the age of seven and they have lived here continuously for 11 years. During this period neither child has committed any criminal offence and they have progressed through state education. Both children spoke English and evidence had been provided to the First-tier Tribunal of their private life and achievements.
11. I had previously found there had been an error in law and I did so because when considering the appeal in the First-tier Tribunal, the Judge concentrated on the positive points only so far as the children were concerned and did not place sufficient weight on those matters set out in paragraph 4 above.
12. It took 12 months for this matter to progress from that decision to today's hearing. All the points referred to above in paragraph 7 are matters that I have taken into account when I have considered these appeals.

13. The respondent's own policy is a significant document in this case as it recognises that over time children start to put down roots and to integrate into life in the UK, to the extent that it may be unreasonable to require the child to leave the UK. Significant weight must be given to such a period of continuous residence. The longer the child has resided in the UK, and the older the age at which they have done so, the more the balance will begin to shift towards it being unreasonable to expect the child to leave the UK, and strong reasons will be required in order to refuse a case where the outcome will be removal of a child with continuous UK residence of seven years or more.
14. Such strong reasons may arise where, for example, the child will be returning with the family unit to the family's country of nationality, and the parents have deliberately sought to circumvent immigration control or abuse the immigration process - for example, by entering or remaining in the UK illegally or by using deception in an application for leave to enter or remain. In these appeals the children accompanied their mother who claimed asylum on arrival and whilst there has been an extension of their unlawful stay in this country it cannot be argued that deception has been used in any of the failed applications.
15. The consideration of the children's best interests must not be affected by the conduct or immigration history of the First-named appellant, but these will be relevant to the assessment of the public interest, including in maintaining effective immigration control; whether this outweighs the child's best interests; and whether, in the round, it is reasonable to expect the child to leave the UK.
16. In MA (Pakistan) the Court of Appeal held, "The only significance of Section 117B(6) is that where the seven year Rule is satisfied, it is a factor of some weight leaning in favour of leave to remain being granted".
17. Section 117B(6) of the 2002 Act is engaged in this case because both children had been here for more than seven years. At paragraph 57 of MA the court stated, "It is vital for the court to have made a full and careful assessment of the best interests of the child before any balancing exercise can be undertaken. If that is not done, there is a danger that those interests will be overridden simply because their full significance has not been appreciated. The court must not treat the other considerations as so powerful as to assume that they must inevitably outweigh the child's best interests whatever they may be, with the result that no proper assessment takes place."
18. I am satisfied, based on the evidence submitted and the findings above that the children's best interests are to remain in the United Kingdom. I find there are no strong reasons that require their removal from the United Kingdom and it would therefore be unreasonable to require them to leave the United Kingdom.
19. The First-named appellant is the primary carer of both children and as such she too must succeed in her appeal. Mr McVeety did not argue her appeal should be decided differently to her children's appeals.

DECISION

20. There was an error in law for the reasons set out both above and, in my decision, dated March 26, 2018.
21. I have remade the decision and allowed all three appeals on human rights grounds.

Signed

Date 27/06/2018

A handwritten signature in blue ink that reads "SPAR" with a stylized flourish underneath.

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I uphold the fee award previously made in this matter and direct that any fees paid should be refunded by the respondent.

Signed

Date 27/06/2018

A handwritten signature in blue ink that reads "SPAR" with a stylized flourish underneath.

Deputy Upper Tribunal Judge Alis