



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

Appeal Numbers:

HU/05574/2017

HU/05578/2017

HU/05594/2017

HU/05591/2017

THE IMMIGRATION ACTS

Heard at Field House

On 14 March 2019

**Decision & Reasons
Promulgated**

On 19 March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**SHABANA USMAN
SYED USMAN FAROOQ**

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(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms A Jones of Counsel instructed by Farani Taylor,
solicitors

For the Respondent: Mr L Tarlow of the Specialist Appeals Team

DECISION AND REASONS

1. The Appellants are wife and husband and their two minor children. They have a third child who is a babe in arms. They are all citizens of Pakistan. On 4 August 2004 the wife arrived and was given leave to enter a student.

The husband came as her dependant with leave in line. Their leave to remain was extended several times. Their applications of 23 June 2011 under the Points-Based System were refused on 7 September 2011. Their appeals were dismissed and their appeal rights became exhausted on 6 August 2012.

2. On 28 March 2013, out of time, they submitted applications for leave to remain based on their private and family life which on 16 May 2013 were refused with no in-country right of appeal. They did not leave and on 3 June 2016 they submitted further submissions which were treated as a fresh claim and refused on 3 April 2017.
3. By a decision promulgated on 31 May 2018 Judge of the First-tier Tribunal D Ross dismissed their appeals. On 2 October 2018 Judge of the First-tier Tribunal Davidge refused the Appellants permission to appeal. They renewed their application to the Upper Tribunal and on 10 December 2018 Upper Tribunal Judge Blum, referring to the judgment in *KO (Nigeria) v SSHD [2018] UKSC 53* given on 24 October 2018, granted permission. By a decision promulgated on 1 February 2019 I found that through no fault of Judge Ross his decision contained a material error of law in the light of the subsequently given judgment of the Supreme Court in *KO*.
4. At the start of the resumed hearing Ms Jones advised that the eldest child was now over 10 and had made an application for British citizenship. She had filed her bio-metrics and her solicitors had been informed by the Respondent that a decision on the application should be made within a fortnight or so.
5. The Appellant's' solicitors had filed the Presidential decision of the Upper Tribunal reported on 4 March 2019 in *JG (s. 117B(6): "reasonable to leave" UK) [2019] UKUT 00072 (IAC)*.
6. For the Respondent Mr Tarlow quite properly noted the eldest child was now over 10 years of age and there was a reasonable likelihood that the child would shortly become a naturalised citizen. He had considered the jurisprudence in *KO* and the extensive guidance given in Sections E and F of *JG* on the application of the "best interests of the child" requirement and the meaning of "whether it is reasonable to expect a child" to go to another country in s.117B(6) of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). With this in mind, there were no further submissions the Respondent could reasonably make.
7. I commended Mr Tarlow for his pragmatic approach to the appeals. I indicated I did not need to hear further from Ms Jones for the Appellants and found for them for reasons which I would give in my written decision and which now follow.
8. The eldest child of the lead Appellants was born in the United Kingdom and has always lived here. The child is now over 10 years of age. The parents' appeals have been founded on the claim that it would be

unreasonable to expect the eldest child and indeed their two other children to leave the United Kingdom for Pakistan.

9. The parents have not established and indeed in default have accepted they have no right to remain in the United Kingdom other than by reason of their children.
10. I have had particular regard to paragraph 41 of *JG* which states:-

We accept that this interpretation may result in an underserving individual or family remaining in the United Kingdom. However, the fact that Parliament has mandated such an outcome merely means that, in such cases, Parliament has decided to be more generous than is strictly required by the Human Rights Act 1998. It can be regarded as a necessary consequence of the aim of Part 5A of imposing greater consistency in decision-making in this area by courts and tribunals. The fact that section 117B(6) has such an aim was expressly recognised by Elias LJ at paragraph 44 of *MA (Pakistan)*.
11. I have taken account of what is contained in the Social Worker's report in relation to the lead Appellants' oldest child and that in relation to page 14 of the report I have to take into account as of primary but not paramount importance the best interests of a child by reason of s.55 Borders, Citizenship and Immigration Act 2009.
12. While it might be reasonable for the two younger children of the lead Appellants to leave the United Kingdom and continue their lives in Pakistan, I conclude it would not be reasonable for their eldest child to leave. There was no claim by the Respondent that there were any factors adverse to the lead Appellants identified in Part VA of the 2002 Act.
13. The Appellants have a family life in the United Kingdom with which the Respondent's decisions amount to an interference of sufficient gravity to engage the State's obligations under Article 8 of the European Convention. In the light of the factors already mentioned, such interference is disproportionate to the need to maintain proper immigration control and so, the appeals are allowed.
14. For the reasons referred to in my error of law decision I do not find there is a need for an anonymity direction.

SUMMARY OF DECISION

**The appeal of each of the Appellants is allowed on human rights grounds.
No anonymity direction is made.**

Signed/Official Crest

Date 15. iii. 2019

Designated Judge Shaerf

A Deputy Judge of the Upper Tribunal

TO THE RESPONDENT: FEE AWARD

I have allowed the appeal and decline to make any fee award because the appeals have been allowed on the basis of the passage of time subsequent to the decisions under appeal

Signed/Official Crest
2019

Date 15. iii.

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal.