



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

Appeals: HU/09956/2017
HU/09962/2017, HU/09971/2017
HU/09973/2017, HU/09978/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 7 March 2019

Decision & Reasons Promulgated
On 12 March 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

MEMON + 4

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr D McGlashan, of McGlashan MacKay, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are husband, wife and three daughters, all citizens of Pakistan. They appeal to the UT against the decision of FtT Judge McGavin, dated 8 August 2018, dismissing their appeals on human rights grounds.
2. The grounds of appeal are set out in the appellants' application dated 23 August 2018.

3. The grounds say at 2(a) that the FtT's conclusion at 53 that it is in the best interests of the three children to return to Pakistan is "perverse", and at 2(b) in relation to the two older children that the FtT at 54 "misapplied the reasonableness test".
4. The first specification of alleged error is at 2.1.1 (i), first bullet point, where it is said that from 28-47 the FtT begins "not by examining what is in the best interests of each child, but by examining potentially negative considerations".
5. That misrepresents the decision, which thoroughly rehearses all relevant factors. It does not begin with negatives, and it includes them along with the positives. It is hard to see how an appraisal could otherwise be carried out. The bullet points which follow, second to fifth, are all flawed in the same way. They do not support the sixth and final bullet point, which says that rather than carefully examining all relevant factors, the FtT misbalanced the scales in a way "bound to lead to only one result".
6. At 2.1.2(ii) the grounds assert that the FtT's conclusions were not open to it.
7. The first bullet point hereunder refers to the FtT at 38 being concerned by a psychological report being based on the children's "health problems" when there was no diagnosis and no medical evidence that a move to Pakistan would adversely affect their health. The grounds do not show any error in the FtT's observation, or that it led the FtT astray. The FtT's further development of this theme at 39-40 is not challenged. There are sound reasons there for not giving the report of Dr Tagg as much weight as the appellants sought.
8. The second bullet point under this heading asserts that a letter from a depute head teacher about the oldest child "is not referred to at all", and that "considerable weight" should have been given to it as showing that interruption of studies at this stage would have a serious effect on her. Mr Govan in his submissions pointed out that the letter is referred to at 30. Mr McGlashan in his reply declined to accept that the ground is inaccurate. He said that the FtT cited only that the child is about to sit her "national 5 qualifications", but not the significant part of the letter.
9. This ground is not well founded. The judge noted in the previous sentence that the child wanted to qualify in medicine and had chosen her subjects accordingly. Detailed consideration follows in the next paragraph, noting that the girls "have all received excellent school reports and are considered by their teachers here to be intelligent and able". Not only is the letter cited, its substance is plainly taken into account. The judge goes on to find that fears expressed over educational difficulties are mitigated. No error has been shown in that finding.
10. The grounds finally, under heading 2.2, refer to *MA (Pakistan)* [2016] EWCA Civ 705, and say that "powerful reasons" had to be found for not

granting leave to the two older children, having been in the UK for more than 7 years, and that test was not met.

11. Mr McGlashan submitted that *JG* (s 117B(6): “reasonable to leave” UK) Turkey [2019] UKUT 00072 dealt with a situation analogous to the present case, laid down a new rule on how to approach such cases, and established error in the FtT’s decision. Summing up, he said that on applying s.117B(6) to the facts, the decision of the FtT had to be reversed.
12. Mr Govan said that *JG* deals with a different situation, and says nothing new about the reasonableness test which bears on the present case. In reply, Mr McGlashan maintained his position on *JG*.
13. In *JG* the appellant faced return to Turkey, in which event her two children would continue living in the UK with their father and paternal grandparents. The question for the UT (the President and UT Judge Gill) was whether the tribunal nevertheless had to hypothesise that they would leave and ask whether that would be reasonable. The UT held that it did. That is why the case is reported. I cannot see that the decision otherwise seeks to add to the jurisprudence on section 117B(6). The reality in the present case is that the five appellants leave or remain together. No unrealistic hypothesis arises.
14. The essential question for the FtT was whether it was reasonable to expect the children to leave the UK (with their parents), taking account of their best interests as a primary but not paramount consideration. The appellants’ grounds and submissions fail to show that question only to have one rational answer. It was open for decision either way. The grounds and submissions do not fairly represent the decision. It is detailed, thorough, and not shown to have prioritised negatives over positives. The reasons given for coming down on the side it did withstand all challenges made.
15. The making of the FtT’s decision is not shown to have involved the making of error on any point of law, so that decision shall stand.
16. No anonymity direction has been requested or made.



8 March 2019
UT Judge Macleman