



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

Appeal Numbers: IA/01291/2014
IA/01290/2014
IA/01287/2014
IA/01288/2014
IA/01289/2014

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 27th November 2014**

**Determination Promulgated
On 14th January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

MAZHER HUSSAIN	<u>First Appellant</u>
SOFIA ZAMAN	<u>Second Appellant</u>
SASHA NEHAL	<u>Third Appellant</u>
AHMED MAZHAR	<u>Fourth Appellant</u>
MUHAMMAD MUSTAFA MAZHAR	<u>Fifth Appellant</u>

(ANONYMITY DIRECTION NOT MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Ahmed of Counsel
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. On 16th September 2014 Designated Judge of the First-tier Tribunal R C Campbell gave permission to the appellants to appeal against the decision of Judge of the First-tier Tribunal Hague in which he dismissed the appeals on immigration and human rights grounds against the decisions of the respondent to refuse leave to remain on the basis of family or private life in accordance with the provisions of Appendix FM and paragraph 276ADE of the Immigration Rules.
2. Designated Judge Campbell noted that the grounds of application contended that the judge erred by concluding that, although the provisions of paragraph 276ADE applied to the third and fourth appellants, this was a fact of no substantial weight when seen against paragraph 276B of the Rules which provides that limited leave “may be granted” where the Secretary of State is satisfied that the requirements of the Rule are met. It was also considered that reference to the Upper Tribunal decision in *Azimi-Moayed* [2013] UKUT 197 gave rise to an arguable error because that decision related to a family which had entered the United Kingdom only a matter of months before determination of their appeal and should not have been relied on as authority for the proposition that the seven year residence principle was a factor which should only be given modest weight.
3. Before me Mr Ahmed argued that the judge should, in any event, have made a favourable decision under paragraph 276ADE for the third and fourth appellants who were able to come within those provisions as the judge decided in paragraph 5. The judge failed to grapple with the issues of private life concerning himself solely with family life. Further, the issue of whether or not it would be reasonable to expect the third and fourth appellants to leave the United Kingdom were left open by the judge.
4. Mr McVeety drew attention to the two responses issued respectively on 19th and 22nd September 2014. The respondent was of the view that the judge had properly reflected the guidance in *Azimi-Moayed*, giving appropriate weight to the time spent in the United Kingdom of the two older children. He was not wrong to reach the conclusion that the family should remain together. The grounds are no more than a disagreement with the well reasoned findings of the judge. Whilst Mr McVeety conceded that the judge’s consideration of the issues appeared “rather odd” he submitted that no material error should be found. The judge correctly considered the best interests of all of the children applying relevant case law (paragraph 10). By applying *EV (Philippines)* [2014] EWCA Civ 874 the judge had considered the relevant test of whether or not it was reasonable to expect the child to follow the parent with no right to remain.

5. Mr Ahmed concluded his submissions by arguing that the judge's consideration of the best interests of the children should have led to a different decision taking into consideration the case law referred to in paragraph 10 of the determination. He argued that there were no strong countervailing factors to enable the conclusion to be reached that the third and fourth appellants should be removed from the United Kingdom.

Conclusions

6. I agree with the comment made by Mr McVeety that the determination is "rather odd". That is a reference to the judge's arguments before deciding that, despite the favourable application of paragraph 276ADE(iv) to the third and fourth appellants, that was not conclusive in deciding whether or not the appeal should be allowed. The judge made reference to paragraph 276BE of the Rule pointing out that leave "may be granted" on private life grounds when it is evident that it would have been sufficient for him to refer to the qualification set out in paragraph 276ADE(iv) of the Rule which requires that, in the case of a seven year resident child, it would not be reasonable to expect the child to leave the United Kingdom. Whilst the judge's reference to paragraph 276BE was therefore unnecessary having regard to the need to consider the qualification set out in paragraph 276ADE(iv), it cannot be said to be wrong or, for the reasons I set out below, shows that the judge considered the relevant issues wrongly.
7. I have also considered whether the judge's reference to the decision in Azimi-Moayed was wrong. I am not satisfied that it was. Despite the difference between the circumstances of that appeal and the present appeal the Court of Appeal reached conclusions which showed (paragraph 58) that the ultimate question will be: "Is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?". Further, the judge's analysis in paragraph 10 shows that he was fully aware of the need to consider that test because of his reference to the Court of Appeal decision in *EV (Philippines)*.
8. The fact that the third and fourth appellants had been in the United Kingdom for seven years at the time of the hearing was not reason in itself for the judge to either allow the appeal or make favourable decisions in relation to the private life of both of those children. It was open to him to decide that it would be reasonable to expect the children to go with their parents and other sibling back to Pakistan to maintain the family unit in the circumstances in which the found the family to be. The judge summarises the factors favouring the return of the whole family to Pakistan in paragraph 11 noting, in particular, that it was a close-knit family with educated and prosperous parents and that he had found that all the children were Urdu speakers with family connections in Pakistan. Thus the decision does not show a material error.

Notice of Decision

The decision of the First-tier Tribunal does not show a material error on a point of law and shall stand.

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Anonymity

The First-tier Tribunal did not make a direction pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 nor do I consider such a direction to be appropriate, the parties not having requested such .

Signed

Date **13th January 2015**

Deputy Upper Tribunal Judge Garratt