



IAC-AH-SAR-V1

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

Appeal Numbers: IA/29407/2014
IA/29411/2014
IA/29417/2014
IA/29426/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 23rd September 2015**

**Decision & Reasons Promulgated
On 21st December 2015**

Before

UPPER TRIBUNAL JUDGE DEANS

Between

**AL (FIRST APPELLANT)
LA (SECOND APPELLANT)
AA (THIRD APPELLANT)
ZA (FOURTH APPELLANT)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Z Malik of Counsel, instructed by Mayfair Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. These are appeals against a decision by Judge of the First-tier Tribunal Brunnen dismissing appeals on human rights grounds under Article 8.

2. The Appellants are a family, comprising a mother, father and two sons, and are all citizens of Pakistan. The first Appellant came to the UK as a student in October 2006 and the other Appellants are her dependants. The two sons were both born in the UK, the older in May 2007 and the younger in October 2008.
3. The Judge of the First-tier Tribunal proceeded on the basis that all four Appellants would be removed together as a family unit. There was no finding of family life with anyone outside this unit. There were members of the wider family in the UK but the evidence did not show the relationships with these relatives constituted family life under Article 8. The judge was concerned therefore only with interference with the Appellants' private life. The judge took account of the best interests of the children and accepted that a move to Pakistan would seem very strange to them to begin with. They would be separated from regular contact with members of the extended family in the UK. They did, however, have two grandmothers and uncles and aunts in Pakistan so would not be without contact with their wider family. The older son has a medical condition but medication would be available in Pakistan. He might require surgery at some stage in the future but the possibility of this did not give rise to disproportionate interference with private or family life under Article 8.
4. The judge observed that under section 117B(5) of the Nationality, Immigration and Asylum Act 2002, as amended, little weight should be given to private life established by a person at a time when the person's immigration status was precarious. The judge found that the status of the parents was precarious when they had established private life in the UK and that they had no legitimate expectation that their admission for temporary purposes would lead to any right to remain in the long term.
5. Permission to appeal was granted by the Upper Tribunal on the sole ground that the judge arguably erred in finding that when the Appellants had leave as a student and as the dependants of a student their immigration status was precarious in terms of section 117B(5) of the 2002 Act. According to the grant of permission to appeal this had the potential effect of undermining further findings in relation to private life they had established in the UK and the proportionality of any decision to remove them.

Submissions

6. In his submission for the Appellants, Mr Malik drew my attention to the decision of the Chamber President of the Upper Tribunal in Deelah and Others (Section 117B – ambit) [2015] UKUT 515. He informed me that an application for permission to appeal against this decision was pending. He acknowledged that he would not expect me to depart from the reported decision of the Upper Tribunal but he wished to reserve his position as to whether the decision in Deelah was correct. If the family's residence in

the UK was not regarded as precarious, then the appeal would be decided on a different basis and this might give rise to a different decision.

7. In his submission Mr Bramble pointed out that there was another potential issue under section 117B(6) in respect of the older child, who was a “qualifying child” under this provision. This point was, however, not being pursued. The issue of precariousness had been decided in Deelah and before that in AM (s117B) Malawi [2015] UKUT 0260. In the present appeal the judge had written a very thorough decision, which was mainly concerned with the position of the children, especially the older son. The judge had considered the best interests of the children and had made quite clear findings regarding the family unit. The judge had considered that the key period for residence by a child was seven years from the age of 4. The judge had taken account of medical findings and issues. The judge had considered the suitability of the children living in Pakistan and the issues raised by the parents in relation to this. The judge had considered the children’s understanding of written Urdu. The judge found that the children were young enough to catch up with their language skills. All the factors were addressed and the judge made appropriate findings. The children could return to Pakistan with their parents. It was not necessary for the judge to refer specifically to section 117B(6) as long as it could be seen from the findings that there was no uncertainty over the outcome in respect of this.
8. In response Mr Malik said that he could see the point that Mr Bramble was making but the decision of the First-tier Tribunal depended on a finding that the family’s residence was precarious. Mr Malik reiterated that he reserved his position on Deelah and would not expect me to depart from this decision in these proceedings.

Discussion

9. The sole ground on which permission to appeal was granted was on the question of whether the judge erred in treating the family’s immigration status as precarious for the purpose of section 117B(5). On this issue, Mr Malik recognised that in terms of the reported decision of the Upper Tribunal in Deelah the judge did not err in making this finding. This is sufficient to deal with the ground on which permission was granted.
10. There is another issue arising from the decision of the First-tier Tribunal, on which Mr Bramble addressed me. This was whether the judge had applied the proper test in respect of section 117B(6) in relation to the elder son, who is a qualifying child under this provision. As a qualifying child the question for the judge ought to have been whether it would not be reasonable to expect the child to leave the UK.
11. Instead the judge approached the issue, for example at paragraph 60 of the decision, by asking whether the child’s removal would be unduly harsh. On the face of it the judge applied the wrong test, notwithstanding

that the judge clearly had regard to section 117B and referred to sub-sections (1) and (5), though not specifically to sub-section (6).

12. The submission made by Mr Bramble was that this made no material difference to the outcome of the appeal as the judge had taken into account all the relevant factors, including the child's health and any linguistic difficulties. Indeed, at paragraph 41 the judge referred to the case of Azimi-Moayed [2013] UKUT 00197. The judge drew from this case the principle that it is in the best interests of children to be with both their parents and if both parents are being removed from the UK then the starting point suggests that so should any dependent children who form part of their household unless there are reasons to the contrary. The judge went on to note that lengthy residence in the host country can lead to the development of social, cultural and educational ties that it would be inappropriate to disrupt in the absence of compelling reasons to the contrary. The judge accepted that by the date of the hearing the older son was 7^{1/2} years of age but observed that in the case of Azimi-Moayed it was said that the seven years of a child's residence from the age of 4 will likely to be more significant than the first seven years of life as very young children are focused on their parents.
13. The judge then went on to consider the decision of the Supreme Court in Zoumbas [2013] UKSC 74, as well as the decision of the Court of Appeal in EV (Philippines) [2014] EWCA Civ 874. The judge came to the view that the best interests of the children were to be with their parents, including the best interests of the older child. I agree with Mr Bramble's submission that although the judge did not refer directly to the test of reasonableness, the judge took account of all the relevant factors and there was no apparent flaw in the judge's findings. As was pointed out in AM (s117B) Malawi the statutory duty to consider the matters set out in section 117B is satisfied if the Tribunal's decision shows that it has regard to such parts of it as are relevant. It was previously stated in Dube (ss.117A-117D) [2015] UKUT 00090 that it is not necessarily an error of law to fail to refer to a provision in section 117B and that what matters is substance rather than form.
14. My conclusion is that the judge did not err in law in relation to the finding that the family's immigration status in the UK was precarious and that any error he made in relation to consideration of the reasonableness of expecting the older son to leave the UK was not material. The decision will therefore stand.

Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal made an order for anonymity. I continue that order.

Signed

Date