



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

Appeal Numbers: IA/36008/2013  
IA/36043/2013  
IA/36048/2013  
IA/36056/2013

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 20<sup>th</sup> January 2015**

**Decision & Reasons  
Promulgated  
On 10<sup>th</sup> February 2015**

**Before**

**UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**MK**

**UI**

**KIK**

**QMK**

**(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms Smith

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the Appellants' appeal against the decision of Judge Saffer made following a hearing at Bradford on 7<sup>th</sup> January 2014.

## **Background**

2. The Appellants are citizens of Pakistan. The principal Appellant arrived in the UK on 4<sup>th</sup> May 2004 as a student and was subsequently granted leave, first as a student and then as a Tier 1 (Post-Study) visa until 5<sup>th</sup> July 2013. Her husband joined her as a dependant on 25<sup>th</sup> January 2005 and the two children were born in the UK on 12<sup>th</sup> June 2006 and 8<sup>th</sup> June 2008 respectively
3. Their applications for leave to remain were refused on 14<sup>th</sup> August 2013. The Respondent said that the Appellants do not meet the requirements of the Immigration Rules with respect of private life and, although the elder child, was born in the UK and has lived here for over seven years, it was reasonable to require the family to leave.
4. The judge dismissed the appeal and, in doing so, wrote as follows:

“I do not accept the submission that the children are almost British. They are not British at all and have never been. It is clear from Zoumbas that the best interest test in ZH relates to British children. These children do not have the lifetime entitlement to education and health care that British children have. They are Pakistani children who have been raised in the false hope that they may be able to stay here. The fact that the parents choose not to speak to them in their mother tongue of Urdu is a failure of parental responsibility to seek to cut them off from their cultural heritage and presumably diminish the relationship they would, could, and should have with their family in Pakistan. That omission is easily rectified.”
5. The Appellant sought permission to appeal on the grounds that the judge had wrongly stated that ZH (Tanzania) [2011] UKSC 4 did not apply to children in the UK. Since the judge failed to apply the correct test he had erred in law.
6. Permission to appeal was granted on that basis by Upper Tribunal Judge Jordan on 13<sup>th</sup> March 2014.
7. The Respondent served a reply on 24<sup>th</sup> November 2014 and accepted that the judge may have misunderstood whether the best interests consideration applied to non-British children in the UK. However in fact the judge did give detailed consideration to their best interests and the error was immaterial.

## **Submissions**

8. Ms Smith relied on the grounds and said that the judge had not properly considered the best interests of the children and had he done so he would

have found that removal would be a breach of their Article 8 rights. They were fully integrated into the UK, both having lived here since birth. English was their first language and the culture of Pakistan was alien to them. Although they had been to Pakistan on holiday for brief periods of time the bonds which tie them to the UK were far stronger.

9. She relied on ZH, in which the Supreme Court stated:

“It is not enough to say that a young child may readily adapt to life in another country. That may well be so, particularly if she moves with both her parents to a country which they know well and where they can easily re-integrate into their own community (as might have been the case for example in Poku, paragraph 20 above). But it is very different in the case of children who have lived here all their lives and are being expected to remove to a country which they do not know and will be separated from a parent whom they also know well.”

10. Mr Diwnycz defended the decision and submitted that there was no real barrier to integration and it was entirely reasonable to expect the children to return with their parents to Pakistan.

### **Findings and conclusions**

11. First, it has to be acknowledged that the judge was wrong to state that the best interests of the children was not a relevant consideration. Nevertheless, the conclusions which he reached are wholly sustainable.

12. This is not a case, as in ZH (Tanzania), where British children would be removed from a parent who remains in the UK. These children are Pakistani nationals and would be removed with both of their parents.

13. The test here is set out in paragraph EX.1 of Appendix FM to the Immigration Rules and applies here because the older child has lived in the UK continuously for at least seven years immediately preceding the date of application. It is whether it would be reasonable to expect the child to leave the UK.

14. The judge carefully considered all of the relevant circumstances, including the fact that the older child has friends at school and has many social activities. He also accepted that English was the children’s first language but that he speaks and understands a little Urdu, and would be able to learn quickly. Suitable education was available to the children in Peshawar. They could reasonably re-settle there in school where the children’s ability to speak English will be an asset to them. He was also satisfied that the parents would be able to find employment in Pakistan with their qualifications and would be able to provide for the children. The family have a network of support available to them and the children would be able to make friends in Pakistan as they have in the UK. The three surviving grandparents and other members of the immediate family are there.

15. The judge's overall conclusions on proportionality are unassailable.

**Decision**

16. The judge's decision stands. The Appellants appeals are dismissed.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: **20<sup>th</sup> January 2015**

Upper Tribunal Judge Taylor