



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

Appeal Numbers: IA/48173/2013
IA/48174/2013
IA/48175/2013
IA/48176/2013
IA/48177/2013

THE IMMIGRATION ACTS

Heard at Field House

On 9 December 2014

**Decision and
Promulgated**

On 6 January 2015

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**MR KAMRAN HAIDER
MRS TAYYABA NAZ
MASTER HARIS KAMRAN
MISS MARYUM BATOOL
MASTER HUSSAIN RAFIQUE
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms L Kenny (Senior Home Office Presenting Officer)

For the Respondent: Mr R Sharma (Counsel)

DECISION AND REASONS

1. The appellants' appeals against decisions to refuse to vary their leave and to remove them from the United Kingdom by way of directions under section 47 of the Nationality, Immigration and Asylum Act 2006 were allowed by First-tier Tribunal Judge Majid ("the judge") in a determination promulgated on 23 October 2014. The judge allowed the appeal under the Immigration Rules ("the rules") and also under Article 8 of the Human Rights Convention. An application for permission to appeal was made by the Secretary of State but it will be convenient to refer to the parties as they were before the First-tier Tribunal so that the Secretary of State is the respondent in what follows and Mr Kamran Haider and his family members are the appellants.
2. The respondent applied for permission to appeal on the basis that the judge's findings were wholly inadequate. It was not clear why the appeals were allowed in relation to the rules. In refusing the applications for further leave, the Secretary of State found that Mr Kamran Haider was not entitled to the points claimed as the evidence he provided regarding his earnings did not meet the requirements of Appendix A of the rules. The business bank statements were deficient and he was not entitled to the points claimed in relation to his previous earnings. The Secretary of State also found that he had not shown that he was entitled to points in relation to "UK experience", under Appendix A.
3. It was also contended that that the judge erred in relation to Article 8 of the Human Rights Convention. He failed to have regard to section 117 of the 2002 Act, introduced with effect from 28 July 2014 by the Immigration Act 2014. The judge's findings regarding private and family life were inadequate and there was nothing to show why the appellants' circumstances were compelling or exceptional. Mr Kamran Haider's children were young enough to adapt to life in Pakistan, following removal of the entire family and it was reasonable to expect them to do so as they would have the support of their parents there and other family members.
4. Permission to appeal was granted on 10 November 2014 and in directions made by the Principal Resident Judge, the parties were advised that if the decision were set aside, any further evidence that might be required if the Upper Tribunal decided to remake the decision could be considered, at the hearing.

Submissions on Error of Law

5. Ms Kenny said that the judge had not made clear why he allowed the appeal. He had not engaged with the 2014 Act and the determination contained nothing at all in relation to section 117B(6) of the 2002 Act, even though the hearing took place in October 2014. There were no

findings regarding the reasonableness of return to Pakistan of the children, with their parents.

6. Mr Sharma said that the appellants accepted that the determination was not well-written. However, at paragraph 3 the judge made clear that he had borne in mind the rules, as they applied in a case of more than ten years' lawful residence here. Mr Kamran Haider could show just such a period of residence and that he met the requirements of paragraph 276B. Although he could not formally show that the knowledge of life in the UK aspect of the rule was met, the judge ought to have given the Secretary of State an opportunity to deal with long residence. No material error of law would have been present if the judge had decided to allow the appeal on the basis that the decision was not in accordance with the law, as the requirements of the long residence rule were met. In Mr Kamran Haider's witness statement, he provided sufficient detail to show more than ten years' lawful residence. As was clear from MU [2010] UKUT 442, such a period might accrue while an appeal is pending and the Tribunal might then be asked to decide whether an appellant qualifies for leave on this basis. An application cannot be made under the long residence rule for only limited leave, but two years' leave may be granted under paragraphs 276A(1) to (4), to applicants for indefinite leave who are ineligible solely because their knowledge of English or life in the UK is not good enough. Mr Kamran Haider had submitted a certificate showing his Masters Degree. Mr Sharma accepted that the discretionary requirements of paragraph 276B would have to be met but this was a matter for the Secretary of State.
7. Ms Kenny responded by saying that there was insufficient evidence before the Tribunal to show that Mr Kamran Haider could succeed under paragraph 276B of the rules. The judge's error of law was certainly material as he had failed to engage with the Secretary of State's case. The letter containing the reasons for the adverse decisions included consideration of section 55 of the 2009 Act. It was clear that the judge ought not to have proceeded to allow the appeal substantively under paragraph 276B although, at its highest, the appeal might have been allowed on a limited basis with further findings being required in relation to any appropriate grant of leave.

Decision on Error of Law

8. Both sides accept that the determination is not well-written. In the "dispositive reasons and deliberations" part, much of the judge's reasoning is merely a summary of some of the leading cases. The judge drew attention to the period of years Mr Kamran Haider has spent in this country lawfully, and to the birth of his children here, at paragraph 15. He emphasised, at paragraph 25, "powerful factors" identified earlier in the determination at paragraph 10. He gave weight to particular aspects of Mr Kamran Haider's case, including knowledge of the English language, the

absence of any benefits claim, save for child benefit, and the claim that the family are fully integrated in British society. Those factors were sufficient to persuade the judge that “depriving these appellants of the protection of Article 8 will be ‘disproportionate’”.

9. The fundamental difficulty is that the determination does not show any real engagement with the Secretary of State’s case and, taking into account the hearing in October 2014, there is nothing to show that the judge has taken into account and applied section 117A of the 2002 Act, brought into effect by the 2014 Act. As Ms Kenny submitted, even though the time spent in the United Kingdom by the oldest of the children might have weight as a factor falling on the appellants’ side, section 117B(6) puts in issue the reasonableness of return. At the very least, the judge was required to make an assessment in this context.
10. The absence of a full engagement with the Secretary of State’s case and the apparent failure to take into account and apply section 117A amount to material errors of law and the decision of the First-tier Tribunal must be set aside and remade.

Remaking the Decision

11. The Secretary of State having succeeded in showing a material error of law, such that the decision of the First-tier Tribunal fell to be set aside, the Upper Tribunal embarked on remaking the decision, in the light of the directions given by the Principal Resident Judge. Neither side wished to call any evidence, Mr Sharma being content to make submissions on the appellants’ behalves.
12. Taking into account leave available to Mr Kamran Haider under section 3C of the 1971 Act, he could show more than ten years’ lawful residence in the United Kingdom. Mr Sharma said that guidance given by the Upper Tribunal in MU showed that Mr Haider could seek to rely on paragraph 276B of the rules. His appeal ought to succeed on the basis that the adverse decisions were not in accordance with the law as the Secretary of State had not taken into account paragraph 276B and she should have an opportunity to do so, with a possible outcome being two years leave in accordance with the rules, once she had considered Mr Kamran Haider’s knowledge of English and of life in the United Kingdom.
13. Ms Kenny said that the respondent accepted the case put on behalf of Mr Kamran Haider.
14. In the light of the apparent agreement between the parties that the Secretary of State ought to take into account paragraph 276B of the rules, and the indication that she would wish to do so, and taking into account the absence of any express consideration of the years spent lawfully in the United Kingdom by Mr Kamran Haider and his family members, the appeal

is allowed on the basis that the adverse decisions are not in accordance with the law. The appellants await a lawful decision from the Secretary of State, once paragraph 276B of the rules, and section 117A to D of the 2002 Act have been taken into account and applied.

NOTICE OF DECISION

15. The decision of the First-tier Tribunal having been set aside, it is remade as follows: the appeals are allowed as the adverse decisions are not in accordance with the law.

ANONYMITY

16. There has been no application for anonymity in these proceedings and I make no order on this occasion.

Signed

Date 05/01/2015

Deputy Upper Tribunal Judge R C Campbell

TO THE RESPONDENT
FEE AWARD

The appeals have been allowed, in part because of the passage of time and the impact of leave under section 3C of the 1971 Act. The notices of appeal are dated 13 November 2013, at a time when the impact of that leave was relatively modest. On the other hand, in the grounds of appeal attention was drawn to the period of time lawfully spent here by the first appellant. In all the circumstances, I make a fee award of half the fee payable in these proceedings.

Signed

Date 05/01/2015

Deputy Upper Tribunal Judge R C Campbell

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