



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Numbers: HU/01823/2016

HU/01831/2016

HU/01863/2016

HU/01859/2016

HU/01851/2016

HU/01845/2016

THE IMMIGRATION ACTS

Heard at Manchester

On 3 October 2017

Decision & Reasons

Promulgated

On 20 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MRS GHAZALA KHAN
MR MUHAMMAD YAR KHAN
MISS HINA KHAN
MISS ZAINAB KHAN
MISS SALEHA KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr O’Ryan, Counsel instructed by Malik Legal Solicitors Ltd
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I do not make an anonymity direction in this matter pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

2. The appellants are citizens of Pakistan with the first and second appellants being husband and wife and the remaining appellants being their children.
3. At the outset of the hearing Mr O’Ryan confirmed that whilst all appellants were listed in these appeals neither the third nor the fourth named appellants had rights of appeal within the current proceedings as they had only been given out of country appeals. They now had pending appeals in the First-tier Tribunal which were listed on October 11, 2017 for a CMR, bearing case numbers HU/27623/2016 and HU/27612/2016. Hereafter, any reference to the appellants collectively will not include the third and fourth-named appellants.
4. On September 10, 2015 the appellants applied for leave to remain under the Immigration Rules and article 8 ECHR. The respondent refused their applications on January 7, 2016 and grounds of appeal were lodged by them on January 15, 2016.
5. The matter was listed before Judge of the First-tier Tribunal Taylor (hereinafter called the Judge) on December 7, 2016 and in a decision promulgated on January 18, 2017 he dismissed their appeals.
6. The appellants appealed those decisions and permission to appeal was granted by Judge of the First-tier Tribunal Adio on August 1, 2017.
7. The matter came before me on the above date and I heard submissions on the error of law from both representatives following which I reserved my decision.
8. Mr O’Ryan handed in a skeleton argument which set out the grounds of appeal more succinctly than those lodged by his instructing solicitors. He relied on all grounds save for Ground 3 which he accepted had no basis. He subsequently agreed with me that grounds 1, 4 and 5 were the main grounds he pursued albeit the remaining grounds were not conceded.

SUBMISSIONS

9. Mr O’Ryan submitted that grounds 1 and 4 and to a lesser extend ground 5 should be considered together. He submitted the Judge erred by failing to follow correctly the guidance and findings in MA (Pakistan) EWCA Civ 705 by failing to give adequate reasons to explain why it would be reasonable for the sixth-named appellant to leave the United Kingdom. The Court of Appeal made clear in MA (Pakistan) that there had to be powerful reasons for a Judge to find it would be reasonable for a child with over seven years residence in this country to leave the United Kingdom. Whilst the Judge had considered the appellant’s situation he submitted that none of the reasons given by the Judge were “powerful reasons”. Too much weight had been attached to the parent’s immigration history and

none of the reasons given by the Judge in [39] to [41] of the decision were powerful reasons as envisaged by the Court of Appeal in MA (Pakistan). The Judge further erred when considering reasonableness by not attaching sufficient weight to his findings in [33] of the decision and in particular the findings on the appellant becoming westernised.

10. With regard to the remaining grounds Mr O’Ryan submitted:

- (a) Ground 2-The test as set out in paragraph 276ADE(1)(iv) HC 395 was the same test as that under section 117B(6) of the 2002 Act. If the Judge’s approach under section 117B(6) had been erroneous then it was similarly erroneous under paragraph 276ADE(1)(iv).
- (b) Ground 6-Mr O’Rory pointed to the first sentence in [23] of the decision albeit he accepted that the Judge noted the sixth-named appellant spoke excellent English later in the decision.
- (c) Ground 7-The Judge had erred by giving inappropriate weight to the fact the children had attended school in the United Kingdom and received a free education. Legally the adult appellants were required to educate their children when they were of school age.
- (d) Ground 8-The Judge erred by finding the sixth-named appellant was not at a critical stage of her education. She had been attending school since being here and weight should have been given to this factor.
- (e) Ground 9-The Judge concentrated only on the sixth-named appellant and did not address the remaining appellants who would all face very significant obstacles were they to be returned.

11. Mr Bates adopted the Rule 24 response dated August 30, 2017 and submitted there had been no error in law. He referred to the decision in MA (Pakistan) and drew a difference between the child identified in [103] of MA (Pakistan) and the sixth-named appellant. The Court of Appeal made it clear that when looking at a child who has been here for over seven years the Court must firstly consider the child’s best and then the reasonableness of any return. Mr Bates submitted that this is exactly what the Judge did. The Judge found the sixth-named appellant’s best interests were to remain in the United Kingdom and he then correctly considered the reasonableness of return and he set out the powerful reasons that led him to conclude it was reasonable for the child to return to Pakistan.

12. The Court made clear in MA (Pakistan) that regard can be had to a parent’s immigration history. Their history was very poor and the Judge had concluded the sixth-named appellant’s parents delayed leaving the country by lodging meritless applications with the intention of dragging out the removal process. The Judge considered the issues of the family being westernised and the fact some spoke English but nevertheless gave

reasons for finding it was reasonable for the sixth-named appellant to leave the country (with her family). In doing so the Judge applied, where relevant, all the factors set out in section 117B of the 2002 Act.

13. Mr Bates concluded his submissions by arguing the Judge was entitled to find:
 - (a) The sixth-named appellant was not at a critical stage of her education.
 - (b) The family were not financially independent.
 - (c) Their family and private life had always been precarious.
 - (d) Paragraph 276ADE(1)(vi) HC 395 applied a higher test than paragraph 276ADE(1)(iv) HC 395 considered in respect of the sixth-named appellant. If the sixth-named appellant could not succeed under paragraph 276ADE(1)(iv) then the Judge did not err by failing to specifically consider the wider position because the parties would clear be unable to succeed. The appellants had to show something above mere hardship or difficulty and the Judge found they had not.

ERROR OF LAW

14. Extensive grounds of appeal were lodged in this matter but in reality, the main grounds that concerned me in today's appeal were grounds 1, 4 and 5.
15. The appellants' original representative recognised the appeals centred around the sixth-named appellant. The Judge also recognised this and identified that paragraph 276ADE(1)(iv) HC 395 and section 117B(6) of the 2002 Act applied to this particular appellant.
16. It is against this background that I have considered Mr O'Ryan's submissions that there has been an error in law. The Judge was clearly aware of current case law because there are numerous references to that law between [25] and [28] of the decision.
17. Mr O'Ryan's primary submission is that the Judge erred because he did not identify any powerful reasons for rejecting the sixth-named appellant's claim.
18. The Judge's decision must be read as a whole and in doing so it is clear the Judge structured his approach to the issues correctly.
19. In particular, the Judge identified that when dealing with the sixth-named appellant the child's best interests had to be considered as an integral part of the proportionality assessment under article 8 ECHR. The Judge

noted the importance of the child's best interests and at [29] he carefully considered her current situation. The Judge was clearly aware she had established friendship groups and had spent 7 years in education but he rejected, with reasons, the submission that she was at a critical stage of her education. Mr O'Ryan's submission that the Judge did not have regard to the length of time she had been educated here has no merit as evidenced by [29] of the decision. The Judge was entitled to find the sixth-named appellant was not a critical stage of her education.

20. At [31] of the decision the Judge considered the sixth-named appellant's ability to speak Urdu whilst recognising her ability to speak English fluently. Those factors formed part of his subsequent assessment on both best interests and reasonableness. At [32] the Judge noted there were no medical issues affecting the sixth-named appellant. At [30], [33] and [34] the Judge referred to other matters relevant to his decision and at [35] he reminded himself that he needed to firstly make a finding on the best interests of the sixth-named appellant. He accepted that her best interest lay with her remaining here.
21. This approach is clearly in line with the guidance given in MA (Pakistan) and the Judge cannot be faulted in the way he approached the evidence.
22. The Judge at [36] recognised that the child's best interest could be outweighed but the fact she had been here over eight years at the date of hearing established a starting point that unless there were powerful reasons to the contrary she and her parents should succeed with in their appeals.
23. The Judge considered whether there were any powerful reasons and whilst Mr O'Ryan argued that the factors given were not powerful reasons I am satisfied that the reasons advanced by the Judge were capable of amounting to powerful reasons.
24. The parent's immigration history was not something that was relevant when considering the child's best interests but was a factor to have regard to when considering reasonableness. The Judge highlighted in [38] their immigration history and he concluded the parents' numerous applications to stay had little merit and were designed to delay their removal. The Court in MA (Pakistan) made it clear that a poor immigration history was a relevant factor to take into account when considering reasonableness.
25. Grounds 1 and 4 argue that the Judge erred in his approach but I am satisfied there is no material issue with regard to this issue.
26. Similarly, ground 5 challenged the Judge's approach to what the appellants faced in Pakistan and the failure to attach more weight to them being westernised. The Judge clearly considered this and Ground 5 is nothing more than a mere disagreement with his approach.

27. Whilst he mentioned at [25] that none of the financial or language requirements were met I am satisfied this was aimed at the adult appellants as the Judge clearly recognised the sixth-named appellant spoke English and he factored that into his reasonableness assessment.
28. Ground 7 concerned the fact the Judge made a finding the children had been educated at public expense. Mr O’Ryan argued that this could amount to an error because the parents were legally obliged to educate their children. Mr Bates made the point that this did not mean the children should be educated at public expense in circumstances where they were not entitled to be. No error is identified on this ground as the Judge’s finding was both correct and open to him.
29. The final issue relates to the fact Mr O’Ryan argued that the Judge should have considered the appellants separately. However, it appears accepted from the tone of [4] of the decision that the appeal was focused on the sixth-named appellant.
30. Having dismissed the sixth-named appellant’s claim under section 117B(6) and article 8 ECHR and paragraph 276ADE(1)(iv) HC 395 the Judge could have then considered the remaining appeals applying the higher test of “very significant obstacles” set out in paragraph 276ADE(1)(vi) HC 395. The fact the Judge did not go into this aspect of the claim in any detail does not amount to an error in law because all factors had already been considered for the sixth-named appellant and the test for the remaining appellants was higher under the Rules and no different under an article 8 proportionality assessment without reference to section 117B(6) of the 2002 Act. Those claims were doomed to failure in light of his previous findings in respect of the sixth-named appellant.
31. This was a very detailed decision which addressed all matters. The challenges made either have no merit or they amount to a mere disagreement.

NOTICE OF DECISION

32. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the original decision save there was no jurisdiction to consider the third and fourth-named appellants as they had no appeals before the Tribunal.

Signed

Date 02.10.2017



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

No fee award was made as I have dismissed the appeal.

Signed

Date 2.10.2017

A handwritten signature in black ink, appearing to read 'SP Alis', with a long horizontal stroke extending from the end.

Deputy Upper Tribunal Judge Alis