



**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Numbers:** IA/16889/2015  
IA/16896/2015  
IA/16901/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
Promulgated  
On 4 September 2017**

**Decision and Reasons  
On 14 September 2017**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA**

**Between**

**SUMBAL [K]**

**[Z K]**

**[H K]**

**(Anonymity directions not made)**

Appellant

**and**

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

Respondent

**Representation**

For the appellant: Mr, legal Representative

For the respondent: Mr S Walker, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant in this appeal is the Secretary of State for the Home Department and the respondents are citizens of Pakistan born on 5 July 1971, [ ] 2003 and [ ] 2009 respectively. However, for the sake of convenience, I shall continue to refer to the parties as they were referred to, at the First-tier Tribunal.

2. The appellants are mother and her son and daughter. They appealed to the First-tier Tribunal against the decision of the respondent dated 20 April 2015 refusing to grant them leave to remain in the United Kingdom under paragraph R- LTR PT. 1. 1 (d) (i) and Article 8 of the European Convention on Human Rights. First Tier Tribunal Judge Stewart allowed the appellants' appeals in a decision dated 9 January 2017.
3. Permission to appeal was granted by first-tier Tribunal Judge Cruthers on 12 July 2017 stating that it is arguable that the Judge may not have adequately explained his reasoning as regards paragraph 276 ADE of the immigration rules and he may not have sufficiently factored in the public interest, in amongst other things, immigration control as per Part 5 of the Nationality Immigration and Asylum Act 2002. It is arguable that the Judge failed to give adequate reasons for some of the findings made. He referred to paragraph 9 of **R (Iran) [2005] EWCA Civ 982**. The Judge referred to the cases of **Zoumbas [2013] UKUT 0074** and **MA Pakistan [2016] EWCA Civ 705**.

### **First-tier Tribunal's findings**

4. The Judge made the following findings in his decision which in summary are the following.
  - I. The respondent's position is that she did not find it unreasonable to expect the first appellant and her children to return to Pakistan as part of a family unit. The fact that the second appellant had spent the first four years of his life in Pakistan and the fact that he would be returning with the first appellant made it wholly reasonable to expect him to readjust to life in that country. While the third appellant has spent all her life in the United Kingdom, it was considered reasonable due to a young age to expect her to adjust to life in the first appellant's home country as well. The fact that the first appellant had spent most of her life in Pakistan and speaks little English and Urdu as a primary language will no doubt have already begun to expose the second and third appellants to both the language of the home country as well as its social and cultural norms.
  - II. The Judge stated that she is under a duty imposed by s55 of the Borders Citizenship and Immigration Act 2009 in respect of the welfare of the children appellants. She must safeguard and promote the welfare of children who are in the United Kingdom. The guidance by the Upper Tribunal in **Azimi Moyed and others (decisions affecting children; onward appeals) [2013] UKUT197 (IAC)** is of considerable help. With the sole parent being removed, the best interests of the children are to go with her unless there are reasons to the

contrary. But here we have two children who effectively have only known the United Kingdom – the second appellant from the age of 4 to his present age of 13, attained at the date of the hearing of this appeal in the third appellant who has been living in the United Kingdom for the whole of his life which now exceeds seven years.

- III. The guidance is that it is generally in the interests of children to have both stability and continuity of social and educational provisions and the benefit of growing up in the cultural norms of the society to which they belong. The society that these children have grown up in is the society in the United Kingdom. The second appellant's residence in the United Kingdom, which is not his State of origin, he has without doubt developed social, cultural and educational ties. It would be inappropriate to disrupt these ties in the absence of compelling reasons to the contrary. If the period of seven years has been identified as a lengthy residence, then a period of nine years has added significance.
- IV. It is always a balancing exercise but in this case the balancing exercise produces the clear result that the welfare of the second appellant is best safeguarded and promoted by him staying in this country. The welfare of the third appellant is also best safeguarded and promoted by her also staying in this country, although the evidence in respect of her it is less compelling than that for her brother. Under the immigration rules, the second appellant has been in this country for seven years but only meets the requirements of paragraph 276 ADE, if it would not be reasonable to expect him to leave the United Kingdom. It would not be reasonable and therefore he meets the requirements of (1) (iv) of the immigration rules.
- V. The second appellant result dictates the result for the other two appellants. I cannot agree with the view of the Secretary of State that it should not be considered unreasonable to expect all the appellants to go to Pakistan as a family unit. The First appellant comes within the exception of paragraph EX1.
- VI. If it is wrong to allow these appeals within the immigration rules, it is made clear that the proposed removal of the second appellant as being an interference with his private and family life that has consequences of such gravity as to engage Article 88 of the European Convention on Human Rights.
- VII. The Judge allowed the appeal under the Immigration Rules and under Article 8 of the European Convention on Human Rights.

## **Grounds of appeal**

5. The respondent in her grounds of appeal states the following which I summarise. The appellant's application was refused on 20 April 2015 and therefore enjoyed a limited right of appeal on the basis that the decision was unlawful under s6 of the Human Rights Act pursuant to s5A of the 2002 Act. At paragraph 26 the Judge finds that second appellant meets paragraph 276 ADE (iv) of the immigration rules and on human rights grounds. It was not open to the Tribunal to allow the appeal under the immigration rules given this limited statutory right of appeal. The First-tier Tribunal Judge's reasoning in respect of 276 ADE is wholly inadequate whilst at paragraph 25 the Judge recognises that the balancing exercise exist yet fails to identify the public interest completely. The Judge should appropriately have conducted the reasonableness test under section 117B (6) weighing the best interests of the second appellant against the countervailing public interest as in **MA Pakistan** which was not done. There is also no reference to the mandatory consideration under 117B.

### **Decision on error of law**

6. The First-tier Tribunal Judge allowed the appellant's appeals under the immigration rules and Article 8 of the European Convention on Human Rights. She found that the second appellant who has been in the United Kingdom for seven years after he had spent the first four years of his life in Pakistan and therefore it would be wholly unreasonable to expect him to readjust to life in Pakistan. Judge stated that the second appellant who was born in this country and has lived here for seven years, which is all her life. Having found that both appellant's meets the requirements of paragraph 276 ADE (1) (iv), she found that it would be not the reasonable to expect both, especially the second appellant, to leave the United Kingdom and return to Pakistan with their mother.
7. The Judge in the entirety of the decision did not take into account the public interest which it was incumbent upon him to do. That is a material error of law. If the Judge had conducted the balancing exercise as required and considered, the respondent's interests this might have led to a different decision.
8. The Judge also failed to give adequate reasons for why it would not be reasonable to expect the second and third appellants to return to Pakistan which is the country of their nationality. The only reason appears to be that the second and third appellant's have been in this country for seven years and above, as if that is the trump card and precludes consideration of all the other circumstances, such as the First appellant's immigration history which is that she is a failed asylum seeker who has remained in this country unlawfully.

9. That is not to say that the mother's conduct should involve punishing the second and third appellants for their mother's actions but all the circumstances of this family must be considered even when determining the best interests of the children.
10. The upshot is that the decision of the Judge is affected by material error as the Judge failed to properly assess all the evidence in this appeal including the respondent's interest in order to reach a sustainable conclusion.
11. I set aside the decision of the First-tier Tribunal in its entirety and remit the appeal to the First-tier Tribunal for a decision to be made considering all the evidence as of that date.

### **Conclusion and decision**

12. I therefore find that the respondent's appeal succeeds to the extent that the file be placed before the First-tier Tribunal for a fresh decision to be made.

I make no anonymity orders

Signed by

A Deputy Judge of the Upper Tribunal  
Ms S Chana  
September 2017

Dated 12<sup>th</sup> day of