



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal No's: OA/09347/2015
OA/09361/2015
OA/09362/2015

THE IMMIGRATION ACTS

Heard at Glasgow
On 5 June 2017

Decision & Reasons Promulgated
On 6 June 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

S K ABBASI + 2

Appellants

and

ENTRY CLEARANCE OFFICER, ISLAMABAD

Respondent

Representation


For the Appellant: Mr H Ndubuisi, of Drummond Miller, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants appeal against a determination by First-tier Tribunal Judge Farrelly, promulgated on 12 October 2016, on three grounds.
2. The first ground is directed against the failure of the case under ¶320(11) and SEC 1.6 of appendix FM of the Immigration Rules. The argument is that the immigration breaches took place over 10 years ago; those provisions are discretionary rather than mandatory; mandatory exclusion is for a maximum of 10 years; the second and third appellants, being children [the second has become an adult], should not suffer for the misconduct of their parents; account should be taken of the Irish citizenship of the third appellant; the sponsor is now a citizen with businesses in the UK; and the passage of time does make a difference.

3. There was no reference at the hearing in the UT to the terms of the decisions by the ECO. The hearing was conducted as if the refusal under ¶320(11) applied to all three appellants. The appellants seem to have put their case that way also in the FtT. However, as far as I can detect from the papers, that part of the refusal applies only to the first appellant.
4. Mr Ndubuisi referred to no authority which suggests that once a period of mandatory exclusion has run, discretionary considerations disappear, and an applicant must be considered as if the record was unblemished. The passage of time may be relevant, but discretionary considerations are not time-limited. The comparison is not a good one.
5. The rest of ground one is only insistence that factors were not considered when they were, and disagreement with an assessment which was open to the judge. It was said that the judge failed to identify aggravating circumstances as required by *PS* [2010] UKUT 440, but he did; see ¶ 11, 17, 18.
6. Mr Ndubuisi acknowledged that to succeed under the rules, the appellants had to make out both grounds one and two.
7. The second ground is that the judge gave no adequate reasons for concluding that the financial requirements of the rules were not met, because he did not deal with "a whole bundle of supporting financial documents" produced to the FtT.
8. This ground fails at the first hurdle. Mr Ndubuisi accepted that the rules required the evidence specified in appendix FM-SE to be produced with the applications made to the ECO, and that he had no authority on which to argue that appeals might succeed under the rules by production of evidence which was not with the applications.
9. The remedy in that respect is by fresh applications to the ECO, not by way of appeal.
10. The third ground is that the judge "failed to carry out a proper article 8 proportionality assessment" and made no assessment of the best interests of the children.
11. Mr Ndubuisi said that the case on the best interests of the children was based on the separation of family members, as the sponsor lives in the UK with another child of the family. He acknowledged that the family has a choice, but he said that was forced upon them by the decisions of the SSHD, and the outcome was disproportionate. The judge did not evaluate the impact of the separation upon the children. Even if the evidence of income had not been apt to establish success under the rules, it should have contributed to the appeal being allowed under article 8.
12. This ground is only another disagreement, and shows no error of law.
13. The family situation before the judge was clear. He left nothing out of account. The ground does not disclose that there was anything else of substance which might have been considered.

14. The family members have, as the judge observed, chosen to live separately (apart presumably from meeting in Pakistan or elsewhere, although there was no reference to evidence of how family life has been carried on). The decision in this respect was well within the judge's sensible scope. There was no evidence of any adverse impact of the ECO's decisions on the best interests of the children which might have contributed to to another conclusion.
15. That is enough to dispose of the ground; but it is difficult to see that on the facts before the FtT any judge might have found, by any test, that the appellants have a right to live in the UK, other than in compliance with the immigration rules.
16. The determination of the First-tier Tribunal shall stand.
17. No anonymity direction has been requested or made.

A handwritten signature in black ink, appearing to read 'Hugh Macleman'. The signature is written in a cursive style with a large, stylized 'H' and 'M'.

6 June 2017
Upper Tribunal Judge Macleman