



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/11661/2017**

Appeal Numbers:

HU/11672/2017

HU/11696/2017

HU/11697/2017

HU/11698/2017

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated
On 7th November 2018**

On 22nd October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**MR FAISAL DURRANI
MRS SHABANA
MASTER S
MISS S A
MISS A
(NO ANONYMITY DIRECTION)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr C Amgbah, Solicitor, UK Law Associates
For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Respondent refused the Appellants' applications for leave to remain on 25th September 2017. The appeal from the family against this decision was heard on 23rd February 2018 by Judge Barrowclough ("the judge").
2. The judge summarised the family's history in the United Kingdom noting that the initial leave granted to Mr Durrani to enter as a student on 3rd May 2005 led to his wife joining him together with their eldest child on 27th June 2009. The younger children were then born here. Leave was extended until 27th August 2010. The final application for leave to appeal against refusal of the decision was dismissed on 21st June 2011. Subsequent applications for leave to remain had been refused by the Secretary of State and appeals dismissed by the Tribunal.
3. Permission to appeal was granted by Deputy Upper Tribunal Judge Chapman on 28th August 2018 on one ground only. She stated;

"I have concluded that it is arguable the judge fell into error in that, despite directing himself as to the judgment in **MA (Pakistan) [2016] EWCA Civ 705** at [21] that "leave should be granted unless there are powerful reasons to the contrary" when applying that principle at [29] it did not identify what those powerful reasons are. It may be that this finding is based on the matters raised at [22] but this is neither clear nor is this critical aspect of the appeal arguably sufficiently reasoned."

4. Judge Chapman also stated;

"Whilst the fourth Ground of Appeal makes reference to the children's family life and psychological evidence, none appears to have been filed with the Tribunal to date and the judge cannot be blamed for not taking account of evidence that was not before him. Any further evidence upon which the Appellants wish to rely would need to be filed in accordance with the provisions of Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008."

5. Permission to appeal was refused in relation to other grounds filed.

Respondent's Position

6. The Respondent filed a Rule 24 notice on 10th October 2018. In essence this says the judge made a comprehensive determination and found powerful reasons in that he applied the ratio of **MA**. The judge made no material error of law.

Appellant's Position

7. Mr Amgbah sought permission to reopen the application for permission to appeal to include a third ground namely the ability of the children to reintegrate into life in Pakistan in that he argued that the judge imported

the parents' lack of reliability into the consideration of the children's best interests. That was based on [22] of the judge's decision in that he states;

"...I approach the evidence of both Mr Durrani and Mrs Shabana with considerable caution. That is essentially for two reasons. First, that at their first IAC appeal in March 2011 ... the Learned Judge found their accounts and evidence to be unreliable and not worthy of belief. He described Mr Durrani's evidence ... 'thoroughly unsatisfactory' and found Mrs Shabana's evidence ... not to be credible. ... it is I find significant that both Mr Durrani and Mrs Shabana had been found to be less than frank or truthful in their evidence ... Secondly in light of Mr Durrani and Mrs Shabana's immigration history, which they accept as being accurate ... this seems to me to be a classic example of two well-educated would be economic migrants playing the immigration system, at least until such time as their eldest child had achieved seven years residence status, with all the different considerations that then arise."

8. Mr Amgbah submitted that there are powerful reasons as to why the family should be able to stay and the fact that the judge referred to the fact that there were powerful reasons as being the test does not mean he has applied that test because he has not identified what the powerful reasons are.

Discussion

9. In relation to the application to extend the grounds for permission to appeal, in [22] the judge set out his concerns about the weight that could be attached to what the parents told him. That it is what the judge is required to do. It was not importing the parents' dishonesty into the best interest assessment. It was importing the parents' dishonesty into what weight could be placed on what they said. Indeed, the judge stated that specifically at [23]. There is therefore no merit in the assertion that a new ground for permission to appeal should be considered and I reject that.
10. The judge undertook a comprehensive Section 55 assessment at [24-29]. He noted the length of time the children had been here, they were settled in school, that they had friends, they participate in activities, and they were accustomed to life here. He accepted that leaving those relationships and schools would cause emotional distress. He accepted they could not speak Pushto fluently but found that they had a minimum and basic understanding of the language and could make themselves understood. He found that it was probably in the children's best interests to remain here. He properly said that was not the end point of his consideration.
11. He went through the various factors as to what the family's circumstances would be in Pakistan. He said they would be returned to the home environment with significant family membership in their village who could

provide assistance and acclimatization. He did not accept the family were too poor to help or it was a war zone. He noted the parental education to university level which presumably had been supported and paid for by their parent and family. He noted that Mr Durrani had the ability to earn a significant income as a business management consultant. He noted that Mr Durrani accepted his family home was large enough to accommodate two siblings one of whom had a large family. He found it probable that both the adult Appellants are from middle class and relatively prosperous backgrounds and that financial and other help and support would be available in Pakistan. He noted that both adults worked in Pakistan in the past and had transferrable skills.

12. The judge went on to note that the children are in good health. He went on to find that the children are young and not at a critical stage in terms of their academic progress. He noted the lack of evidence of relationships going beyond normal ties of friendship and affection and the ability to maintain contact with current friends through modern means of communication. He found that the children are so young that their distress at being removed from their friends and surroundings would be temporary and not long-standing. He rejected the assertion of close family links here. He found that language may be a problem but that it would be short lived. He found that English is the official language used in Pakistan and that the adults could pay for supplementary private tuition in English should it be required.
13. All these findings were available to the judge on the evidence.
14. It was against that background in [28] that the judge considered the reasonableness test required of him. He considered the Respondent's legitimate interest in maintaining effective immigration control. He attached little weight to private life developed whilst here unlawfully or whilst leave was precarious. He identified that this applied to all the Appellants during all of their time here. He identified that none of them had the legitimate expectation that leave was anything other than temporary. He reminded himself that the children were not active or conscious participants in the decision to come or remain here and should not be blamed for the conduct of their parents. He reminded himself that none of the children are British citizens and are not entitled as of right to benefit from the education system and other public services in this country.
15. The judge considered holistically the evidence and summarised it in [29] by noting that their life could be satisfactorily continued in Pakistan to a reasonably acceptable level. Bearing all this in mind and taking the evidence in the round he was entitled to find as he did that these are powerful reasons to uphold and maintain effective immigration control and that removal would be reasonable and not disproportionate.

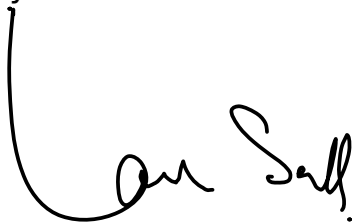
16. In summary the judge did exactly what he was required to do. He identified the relevant test. He found facts. He applied the facts to the test and was entitled to find that the facts he found amounted to powerful reasons as to why the family should be required to leave the United Kingdom. The grounds amount to nothing more than a disagreement with that assessment. I therefore find that there was no material error of law.
17. In relation to the second point that was raised by Judge Chapman, this does not arise as the judge cannot be blamed for evidence not placed before him and I do not give permission to reopen that ground because there was no material error of law in relation to the only matter upon which permission to appeal had been granted.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a material point of law.

I do not set aside the decision.

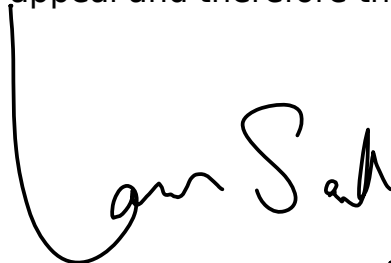
No anonymity direction is made.



Date 26 October 2018
Deputy Upper Tribunal Judge Saffer

Fees

I have dismissed the appeal and therefore there can be no fee award.



Date 26 October 2018
Deputy Upper Tribunal Judge Saffer