



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

**Appeal Numbers: IA/01141/2016  
IA/01142/2016  
IA/01143/2016  
IA/01144/2016**

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 28 September 2018**

**Decision & Reasons Promulgated  
On 11 October 2018**

**Before**

**UPPER TRIBUNAL JUDGE HEMINGWAY**

**Between**

**MR AHMAD KHAN  
MRS SAHARA KHAN  
MR BAHRAM KHAN  
MR S K**

**(ANONYMITY NOT DIRECTED)**

**Appellants**

**and**

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

**Respondent**

**Representation:**

For the Appellants: M K Khan (Solicitor)  
For the Respondent: Mrs H Aboni (Senior [Home Office Presenting Officer])

**DECISION AND REASONS**

1. Each claimant has appealed to the Upper Tribunal, with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (the tribunal) which it made after a hearing of 23 March 2017 and which it sent to the parties on 10 April 2017; whereupon it dismissed their appeals against decisions of the Secretary of State, all made on 8 February 2016, to refuse to grant leave to remain in the United Kingdom (UK) on the basis of their family and private life under Article 8 of the European Convention on Human Rights (ECHR).

2. I have not made an anonymity order. The tribunal had not done so and, at the hearing before me, I was not urged to do so. In any event it does not seem that there is any sensitive information to protect.

3. The claimants are a family. The first named claimant is the father and the second named claimant is the mother of the third and fourth named claimants. I shall, from now on, simply refer to them as the first claimant, the second claimant, the third claimant and the fourth claimant. The first claimant says that he was born on 1 January 1965 but the Secretary of State believes that he was born on 1 February 1961. The second claimant says she was born on 1 January 1975 but the Secretary of State believes she was born on 1 January 1968. The third claimant says he was born on 1 January 1997. The Secretary of State thinks he was born on 17 July 1998 but the tribunal seems to have accepted that he was born when he says he was he was. The fourth claimant, it seems to have been accepted, was born on 1 January 2001. It is perhaps worth noting that on the basis of what the tribunal accepted regarding the dates of birth, the third claimant was aged 20 years at the date of the tribunal hearing and the fourth claimant was aged 16 years and was, therefore, a minor.

4. As to nationality, whilst I cannot see that the third or fourth claimants have made any assertions as to this, the first and second claimant claimed to be nationals of Afghanistan. However, the Secretary of State believes that all four claimants are, in fact, nationals of Pakistan. There is something of a history as to all of this in that the first claimant sought asylum in May 2007 on the basis that he was from Afghanistan and would be at risk if he were to be returned there. The other three claimants were dependants upon that asylum claim. The claim was initially refused but after a successful appeal he was, on 14 November 2007, granted humanitarian protection as, in line with him, were the remaining three claimants. However, in September 2008, the second appellant was fingerprinted whilst seeking to enter the UK at an airport, having travelled from Pakistan using a different identity. It was that and fingerprint evidence which principally led the Secretary of State, upon investigation, to conclude that the claimants were all, in fact, nationals of Pakistan. On 24 April 2014 the Secretary of State decided to revoke the humanitarian protection status of each claimant. No challenge was made to that decision. Eventually, on 8 February 2016, the Secretary of State decided to refuse leave to remain to all the claimants and it was that decision which led to the appeal before the tribunal and the decision which was sent to the parties on 10 April 2017.

5 Both parties were represented before the tribunal. The only issue for it was whether or not the claimants could succeed on Article 8 grounds. The claimants did not concede that they are, in fact, nationals of Pakistan but the tribunal found that they are. The tribunal heard evidence concerning certain health difficulties which the first two claimants have and the way in which the third claimant and the fourth claimant (a child at all material times) had integrated into UK society. It was argued in particular, with respect to the fourth claimant, that it was in his best interests, as a child, to remain in the UK. Mr Khan, who represented the four claimants before me, had also represented them before the tribunal. His closing submissions to the tribunal were summarised in this way:

“ 32. Mr Khan said the eldest son has now spent more years in the United Kingdom than abroad and the younger son has lived here for more than seven years. The best interests of the two sons have not been properly assessed. They both see themselves as British, as settled and integrated and to diminish the nationality they have adopted is not in their best interests. It would be unreasonable to expect them to leave the United Kingdom. Taking into account the medical conditions of the parents, it would be disproportionate to insist on removal. The appeal should be allowed.”

6. As to the health difficulties of the first two claimants, the tribunal had recorded at paragraph 18 of its written reasons that the first claimant has epilepsy, chronic obstructive pulmonary disease and back pain and that the second appellant has fibromyalgia, diabetes and depression.

7. Having summarised the competing submissions, the tribunal then set out the law it had to apply with respect to Article 8 both within and outside the Immigration Rules. Its self-direction as to that appears from paragraphs 34-39 of the written reasons and has not been subsequently criticised.

8. The tribunal, having found that the claimants are from Pakistan, then went on to conduct its Article 8 analysis. This is what it said:

“ Article 8

46. First and foremost, in dealing with the claim under Article 8 is a consideration of the best interests of any child who is impacted by the decision under appeal. I must deal with the circumstances at the date of the hearing, which means that only the Fourth Appellant falls into this category.

47. The Fourth Appellant is now sixteen years old. He has lived in the United Kingdom as part of the family unit with his parents and brother for more than seven years. He has integrated into British society, has friends here, and is doing well at school. He has expressed a very strong desire to remain in the United Kingdom.

48. It is a well-established principle that the best interests of children are to be with their parents, and I see nothing in this appeal; to displace this principle. The Fourth Appellant has lived with his family all his life, and neither the Respondent or the Appellant suggests that the family should not remain as a family unit. The Fourth Appellant has spent many years in the United Kingdom with his family, has integrated here, has friends here, and is doing well at school here. He considers himself to be British and does not want to leave the United Kingdom. He knows very little about his country of origin because he has been in the United Kingdom since he was four years old. In these circumstances, it is also in his best interests that he remains in the United Kingdom.

49. My starting point in considering the claim under Article 8 is the Immigration Rules. The Appellants do not satisfy the requirements of the family life provisions of the Rules because of the revocation of their humanitarian protection status.

50. It is at the point that I consider the private life of the Appellants, that the route to my ultimate decision differs between the three adult Appellants, and the Fourth Appellant, who is still a child.

51. The First, Second and Third Appellants, might conceivably contend that they qualify under section 276ADE(vi) of the Rules on the grounds of private life in the United Kingdom because there would be very significant obstacles to their integration in the country they came from. The Third Appellant had not been in the United Kingdom for half his life at the date of the application, and his private life falls to be considered under the same provision.

52. Since the Appellants have provided no significant evidence of the circumstances they might face in either Pakistan or Afghanistan, they do not satisfy me that there would be such significant obstacles, bearing in mind the test of ‘integration’ outlined in SSH D v Kamara [2016] EWCA Civ 813, and that of ‘very significant obstacles’ in Treebhawon and Others (NIAA 2002 Part 5A - compelling circumstances test) [2017] UKUT 00013 (IAC).

53. The First and Second Appellants have lived in their country of origin for many years before coming to the United Kingdom, are familiar with the culture, and there is no reason given why they cannot renew that familiarity, and re-establish their private lives there. The Third Appellant does not have the same history

because of his age, and has now spent many years in the United Kingdom. However, he is clearly an intelligent young man who has built friendships and relationships in this country through his educational, social, and leisure activities. I see no reason why he cannot do so elsewhere than in the United Kingdom. The transition for him may be more difficult than that of his parents, and may inconvenience, upheaval, and some difficulties, but these do meet the threshold that 'even where multiplied, will generally be sufficient in this context' (Treebhawon).

54. For these reasons, I find that none of the three adult Appellants meet the requirements of the Immigration Rules regarding their private life.

55. The test to be applied to the Fourth Appellant under paragraph 276ADE is different because of his age. Paragraph 276ADE(iv) imposes the test, because he has lived here for seven years, of whether it is 'reasonable to expect him to leave the United Kingdom'. This is the same test to be applied under section 117B(6) of the 2002 Act, to which I will return.

56. Setting aside, for the time being, any considerations that might arise as a result of considering the Fourth Appellant, I now consider the position of the adult Appellants outside of the Immigration Rules, and encompassing considerations under section 117B(1)-(5).

57. Firstly, I do not consider there to be compelling circumstances regarding these three Appellants. They point to the medical conditions of the First and Second Appellants, but these are neither sufficiently serious or severe to qualify as compelling reasons to remain in the United Kingdom. No evidence has been presented that their conditions are not treatable outside the United Kingdom. They point to the educational and social achievements of the Third Appellant, but, again, there is no evidence that he cannot continue to achieve elsewhere, apply for entry clearance to re-enter the United Kingdom to continue his studies here, or continue the relationships and friendships he has established here through other means than his presence here.

58. For these reasons, I find there to be no compelling circumstances.

59. Secondly, I must consider the provisions of section 117B of the 2002 Act. Disregarding those provisions of the Act which are of no relevance to this appeal, I give effect to the legislature's instruction to have regard to the specified considerations in the following way:

- (i) The public interest in the maintenance of effective immigration controls is engaged: section 117B(1).
- (ii) It is not disputed that the Third Appellant is a capable English speaker, with the result that the public interest which is engaged in cases where the person concerned does not possess this ability does not arise: section 117B(2). However, this is not the case with the First and Second Appellants, and therefore the public interest is engaged.
- (iii) There is little, if any evidence before me, that these Appellants are financially independent. Indeed, their engagement in publicly funded healthcare and education suggests the contrary, with the result that the public interest is engaged: section 117B(3).
- (iv) I have considered the position so far as the Appellant's immigration history above. I find that their sojourn in the United Kingdom has been based on the false representations made when they claimed asylum purporting to be from Afghanistan, when they are not. Their presence has been unlawful, or at the very least precarious throughout their time here. Thus, their private lives qualify for the attribution of little weight. I consider that the First and Second Appellants' cases lie at the lower end of the notional 'little weight' scale discussed in Kaur (children's best interests/public interest interface) [2017] UKUT 00014 (IAC). This is because there has been no significant evidence of its nature or quality, and, indeed, they appear to rely almost wholly on the private lives of their two children as the basis of their claim. The Third Appellant's private life is evidence by his own evidence, that of his parents, and the documentary evidence in support. I place it at the higher end of the spectrum, but nevertheless attribute to it little weight.

60. Thus, to summarise the position regarding the three adult Appellants. The parents have a highly blemished immigration history because of a significant misrepresentation about who they are, and why they came to the United Kingdom. Their stay here, for many years, has been founded on this false representation. During this time, they have established their private lives, and, in all reality, have accessed public services to which they would not have been entitled. They do not meet the requirements of the Immigration Rules, nor the public interest factors in section 117B. Their eldest son, the Third Appellant, does not fall into quite the same category because he was guided by his parents when he came here, and his ability to speak English also sets him apart from them, as does the stronger private life he has established.

61. Having regard to all these factors, if it were not for the considerations I must make regarding the Fourth Appellant, I would firmly conclude that the strong public interest in firm, fair and consistent immigration control, designed to secure the economic well-being and national security of the country, would significantly outweigh the private interests of these Appellants, and that the decision of the Respondent should be upheld.

62. My analysis of this appeal cannot end there, however, because I must return to the Fourth Appellant, whose best interests I started with, and to whom I now return, I remind myself of my findings above that his best interests lie in him remaining with his parents and in him remaining in the United Kingdom. I also note that there is no suggestion in this appeal of any separation of the Third Appellant from his parents. The Respondent proposes removal as a family, and the Appellants propose no other scenario other than the family remaining together.

63. I also remind myself that, although his best interests are a primary consideration but not the primary, paramount, or determinative consideration.

64. Since the Fourth Appellant has been here for more than seven years, section 117B(6)(b) requires me to consider whether it would be reasonable to expect the child to leave the United Kingdom. The material aspects I have considered in deciding this issue are: the strong ties which the Appellant has in the United Kingdom; he has lived here most of his life; he would return to Pakistan with his parents; he could continue his education in Pakistan; Pakistan is the country of his origin; the immigration history of his parents which has meant that he has lived in the United Kingdom unlawfully or precariously throughout his stay here; he has not acquired British citizenship, or any other right to remain.

65. Looking at these factors in the round, I do not find that it would be unreasonable to expect the Fourth Appellant to leave the United Kingdom. He would be leaving with his parents and brother, and, like his brother, there is nothing to suggest that he cannot continue his studies in Pakistan, develop new relationships, and maintain the friendships he has made in the United Kingdom. I find that he is not a qualifying child for the purposes of section 117B(6).

66. I am strongly conscious of the seventh principle in Zoumbas v SSHD [2013] UKSC74 that the child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent. This was considered in Kaur (children's best interests/public interest interface) [2017], in which it was said that this does not preclude an outcome whereby the best interests of a child must yield to the public interest, and where it was said that:

‘... an outcome for a family which has a prejudicial impact upon a child member is not incompatible with the seventh principle of the Zoumbas code. Where, in any given case, the evaluation of parental immigration misconduct in the balancing exercise contributes to a conclusion which will involve the entire family unit departing the United Kingdom, this does not (per Elias LJ) ‘amount to’ blaming the children.’

67. It is with these principles in mind that I approach my final task of determining where the overall balance lies in this appeal, and I do so by weighing, the main facts and factors above. I attach significant weight to the best interests of the Fourth Appellant, but recognize that there is a strong public interest in immigration control, and that there is a significant feature in this appeal in the attempts made to thwart immigration control by the false misrepresentations made in 2007.

68. Considering all these factors in the round, I conclude that the Respondent's decision regarding these four Appellants does not interfere disproportionately with the right to respect to private and family life under Article 8. I am satisfied that the public interest in immigration control outweighs other considerations in this appeal, and that the decision is proportionate.

69. Accordingly, I dismiss the appeals of all four Appellants under Article 8."

9. So, the appeals were all dismissed. But that was not the end of the matter because each claimant sought permission to appeal to the Upper Tribunal. The written grounds of appeal, prepared by Mr Khan, assert (I paraphrase) that the tribunal erred in failing to adequately assess what was in the best interests of the third and fourth claimant and failed to properly understand what was meant by the word "reasonable" as it appears in section 117B(6) of the Nationality, Immigration and Asylum Act 2002. Permission to appeal was granted and the granting Judge observed that there appeared to be an error at paragraph 65 of the written reasons, the tribunal having found that the fourth claimant was "not a qualifying child" for the purposes of section 117B(6) in circumstance where, in fact, he was because he had already resided in the UK for over seven years. The granting Judge thought that mistake might have affected the reasoning of the tribunal in coming to its conclusions concerning the fourth claimant.

10. Permission having been granted there was a hearing before the Upper Tribunal (before me) so that consideration could be given as to whether the tribunal had, in fact, erred in law and, if so, what should flow from that. Representation was as indicated above and I am grateful to each representative.

11. Mr Khan, in his submissions to me, focussed primarily upon the situation of the fourth claimant. He took me to paragraphs 47, 48 and 62 of the tribunals written reasons which contained what he said were significantly favourable findings concerning Article 8 and what was in the best interests of the fourth claimant. He argued, in effect, that having made those findings it was impermissible for the tribunal to conclude anything other than that it would not be reasonable (see section 117B(6) to expect the fourth claimant, as a child, to leave the UK. As to the position of the third claimant Mr Khan pointed out that he had done well educationally and has been in the UK a long time. The implication being, in light of that, that the tribunal had erred in failing to conclude he could lawfully be required to leave the UK too. As Mr Khan then pointed out, the claimants, together, form a family unit, the implication then being that if only one of them cannot be removed on Article 8 grounds none of them should be.

12. Mrs Aboni, for the Secretary of State, argued that the tribunal had carefully considered the position of the fourth claimant. What was in a child's best interests was a primary consideration but not the primary consideration. As to paragraph 65 of the tribunal's written reasons, the tribunal had simply expressed itself badly. What it had meant to say was not that the fourth claimant is not "a qualifying child" for the purposes of section 117B(6) but that, notwithstanding that, it is reasonable to require his return.

13. Mr Khan, replying to Mrs Aboni, maintained his original arguments and said that there was no public interest element with respect to the removal of the third and fourth claimant. He said, in effect, that the sins of the parents ought not to be visited upon their children. He could not, however, point to anything in the written reasons (despite my invitation to him to do so) which suggested that the tribunal had, in fact, done that.

14. I have concluded, as I informed the parties at the hearing, that the decision of the tribunal did not involve the making of an error of law.

15. I have chosen to set out much of what the tribunal had to say. I have done so because, in my judgment, its analysis of the Article 8 arguments with respect to all four claimants was thorough and cogent. What it had to say about the first two claimants had not been the subject of any criticism. As to the third claimant, I was not able to detect anything in what Mr Khan had said in writing or orally which was capable of demonstrating any error of law on the part of the tribunal. It is true that the third claimant has done well academically and that he has spent much of his relatively young life in the UK. But the tribunal was aware of all of that and factored it into its analysis. In particular, at paragraph 53 of its written reasons, it explained why it was, despite that, deciding that he could not succeed under Article 8. That reasoning was clearly open to it.

16. The main issue, at the hearing, concerned the position of the fourth claimant. It is true, as Mr Khan points out, that the tribunal made a number of favourable findings from his perspective with respect to the Article 8 exercise it was required to undertake. It noted, for example, at paragraph 47 of its written reasons that he had been in the UK for more than seven years, that he had integrated into UK society, that he has friends in the UK, that he is doing well at school and that he had expressed a strong desire to remain in the UK. At paragraph 48 it pointed out that he had integrated and now regarded himself as being British. It accepted it would be in his best interests to remain in the UK with his other family members. But as Mrs Aboni points out, what was in his best interests pursuant to section 55 of the Borders, Citizenship and Immigration Act 2009 was not, of itself, necessarily decisive and whilst a primary consideration was not necessarily the primary consideration.

17. Having identified what it regarded as positive factors from the claimant's perspective the tribunal then turned to countervailing points at paragraphs 64 and 65 of its written reasons. Effectively, what it was doing, was carrying out a balancing exercise with respect to the question of whether it would or would not be reasonable to expect the fourth claimant to leave the UK. In my judgment it carried out an appropriate balancing exercise in which it took into account relevant matters and reached a conclusion which was open to it. I agree that, from one perspective at least, its conclusion was perhaps what might be characterised as a "tough one" if I can put it that way. But I do not accept, given the matters it referred to at paragraphs 64 and 65 of the written reasons, that its positive findings were so favourable that it could not lawfully conclude as it did which was, essentially, Mr Khan's argument to me. That argument simply goes too far.

18. As to the "qualifying child" point, the tribunal did express itself somewhat clumsily at paragraph 65 of the written reasons. But those reasons have to be read as a whole. I accept Mrs Aboni's submission on the point. The tribunal clearly did not mean to say the claimant had not been in the UK for 7 years and so was not a qualifying child. What it had meant to say was that despite his being a qualifying child it was, nevertheless, reasonable, to require his return.

19. In the circumstances I have concluded that the tribunal did not err in law. In consequence, this appeal to the Upper Tribunal must fail.

## **Decision**

The decisions of the First-tier Tribunal did not involve the making of errors of law. Accordingly,

