



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08680/2016

**THE IMMIGRATION ACTS**

Heard at Birmingham Employment Tribunal  
On 12 September 2018

Decision & Reasons Promulgated  
On 13 September 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

KRA  
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: In person.

For the Respondent: Mr Mills – Senior Home Office Presenting Officer.

**ERROR OF LAW FINDING AND REASONS**

1. The appellant appeals with permission a decision of First-Tier Tribunal Judge Frankish promulgated on 9 August 2017 in which the Judge dismissed the appellant's appeal on all grounds.

## Background

2. The appellant is a national of Pakistan born on 9 September 1972. His immigration history is set out at [3] of the decision under challenge. The Judge sets out findings of fact from [11] which, in relation to the asylum claim at [17], the Judge writes:

17. I can only conclude that, in his heart, the appellant himself must know that the basis of his claim is fabricated nonsense. Telling pointers in the interview identified genuine facts behind the appellant's circumstances. In Pakistan the appellant was a second-hand garment trader with stock obtained from the UK (Q44/50). Bringing his wife here had nothing to do with purported studies but as a subterfuge for attempting settlement (Q52-55). After a lifetime of attempted unauthorised emigration to escape modest circumstances as a dealer in second-hand clothes, the appellant now feels too old and unwell to resume his life in his home country despite qualifications and skills subsequently obtained (Q81). In short the appellant has spent years of failed attempts to settle here when he is not entitled. This asylum claim is the final such attempt. The appellant is entirely without credibility in that regard. That being so, the further two questions that arise are of no pertinence: whether a claim can still be maintained in the face of returns once the problems purportedly began; whether the appellant falls outside of Convention reasons but still qualifies for humanitarian protection.

3. There is no challenge to the dismissal of the appeal on protection grounds.

4. The Judge notes that following the rejection of the protection claim the First-Tier Tribunal was left with the article 8 claim which turned heavily on the best interests of the children under section 55 Borders, Citizenship and Immigration Act 2009. Having set out a number of relevant cases the Judge sets out the core finding at [28] in the following terms:

28. So far as the children are concerned, they have the benefit of having grown up in an Urdu speaking household (the appellant himself also speaks Gujarati, Punjabi, Sindhi and Memoni). They are settled at primary school but would, in any event, have to move in the near future and start with new friends. The children have to supportive parents, parents who have the advantage of higher education qualifications and business experience acquired here. Yet further extended family support is to be found in the home country. My conclusion is that, on the facts of this case, the need for effective immigration control tips the balance (see [46] of EV (Philippines) and there is no unreasonableness in the children returning with their parents.

5. The Judge sets out his final conclusion in relation to the proportionality of the decision at [29] in the following terms:

29. It may be seen that the foregoing is highly pertinent guidance in this case: neither parent has the right to remain here. The case rests upon ephemeral ties at primary school as grounds to remain for educational reasons for the rest of the appellants' lives. For that to amount to a reason for the indefinite leave which the appellant seeks would, I conclude, amount to an error of law by way of contradiction of EV (Philippines). I find that conclusion to be all the more substantiated by the fact that the children in this case, at nine and seven, are still mainly focused on the home, those in EV (Philippines) being aged fourteen, thirteen and ten albeit with only five years residence. Following the foregoing analysis, I find that there are no additional exceptional circumstances necessitating consideration outside of the Rules having regard to SS (Congo) [2015] EWCA Civ 387 at [40] and [56].

6. The appellant sought permission to appeal asserting the Judge failed in his consideration of paragraph 276ADE and article 8 to take into account the exceptional circumstances of the case in that five days after the appeal hearing the eldest child reached 10 years of age and was planning, by way of the British Nationality 1981, section 1(4), to register as a British citizen by entitlement. The appellant asserted the Judge erred in law in failing to factor this matter into the proportionality consideration.
7. Permission to appeal was granted by another judge of the First-Tier Tribunal on 14 November 2017 the operative part of the grant being in the following terms:
  3. The grounds do not challenge the Judge's decision in relation to protection issues. However, they argue that the Judge fell into error in his consideration of paragraph 276ADE and Article 8 outside the Rules, by failing to take into account the highly relevant evidence before him, to the effect one of the children was entitled to apply for British citizenship a few days after the hearing, this issue having been raised at the hearing as an exceptional circumstance.
  4. In his decision, and when considering proportionality and the question of the reasonableness of return to Pakistan for the children, the Judge makes no reference to the fact that, a few days after the hearing, the elder child of the family appeared to be eligible to apply for British citizenship; this despite such clearly having been raised at [5] of the appellant statement, irrespective of whether it was raised in submissions at the hearing itself. It is clearly a higher highly material, and arguably exceptional, factor in the proportionality assessment. In the circumstances the grounds as pleaded disclose a material error of law.
8. The respondent in her Rule 24 response dated 27 December 2017 submits at [2] that *"the Judge was entitled to consider the facts of the appeal as they were at the date of hearing. Even if one of the children was entitled to apply for British citizenship 5 days after the hearing, it was incumbent on the Judge to consider whether it would be reasonable for the child to relocate to Pakistan. The Judge refers to MA (Pakistan), the best interests of the child and fully considers their time in the UK prior to finding that it would be reasonable to expect the children to leave and therefore Article 8 rights have not been breached"*. The respondent asserts the Judge directed himself appropriately and that no legal error arises.

### **Error of law**

9. The appellant attended in person having filed with the Upper Tribunal prior to the hearing a number of additional documents. These take the form of an additional witness statement in which the appellant claims that his previous solicitors, Premium Law, let him down badly and did not prepare the case properly, that the case bundle was incomplete, and that they did not instruct the barrister, and that on the hearing date he provided the case papers he had with him. The appellant states that Premium Law have been the subject of intervention by the Solicitors Regulatory Authority (SRA) and been closed down. The appellant repeats the dates of birth of the family members and his claim that the Judge failed to properly consider his children or private and family life pursuant to paragraph 276ADE and Appendix FM. The appellant provides an addition copy of the grant of permission

to appeal, a copy of his witness statement lodged for the purposes of the First-Tier Tribunal hearing in which he states his son has been living in the United Kingdom for nearly 10 years and that “my son has the eligibility to become a British national on 7 August 2017”. It is not disputed that this document was before the Judge.

10. The appellant also produces a copy of a British passport in the name of his son confirming issue on 1 March 2018 and a copy of a certificate of registration in relation to the child, dated 19 January 2018, confirming he has been granted British citizenship. A letter from the Nottingham Law Centre and the SRA have also been provided.
11. Although the appellant raises an issue in relation to the intervention by the SRA permission to appeal was not sought or granted on the basis of a procedural irregularity sufficient to amount to an arguable error of law. The appellant initially instructed 1<sup>st</sup> Call Immigration Services to represent him but changed his instructions to Premium Law Solicitors during the course of the proceedings. The appellant has now reverted to his original solicitors who filed the notice of permission to appeal on his behalf.
12. The solicitors with conduct of the case at the date of the First-Tier Tribunal hearing were Premium Law Solicitors, who did file a bundle of documents with the First-tier Tribunal, in preparation for the substantive hearing of the appellant’s appeal against the respondent’s decision originally listed for 20 February 2017. That hearing did not go ahead as there was no judge available at the Stoke Hearing Centre and was adjourned off to 3 August 2017. Any assertion the solicitors failed to provide appropriate documents is not made out.
13. It is clear from the Judge’s decision that the appellant was also represented by a professional advocate. Mr Edward Barr, a barrister of New Walk Chambers in Leicester, who is experienced in immigration matters was instructed to represent the appellant. The Judge records at [6] of the decision under challenge the following:
  6. At the hearing Mr Barr filed a witness statement on behalf of the appellant bearing that day’s date. He then made an application for an adjournment, essentially on grounds of poor preparation of the appellant’s case including his own instructions which comprised no more than the said statement which had reached his Chambers late the previous evening when he happened to be still there and which failed to address the issues raised. He also had yet to see either party’s bundles. I declined the request for an adjournment given that notice of hearing was issued on 6 February 2017, the hearing had previously been adjourned on 20 February 2017 and that hearing itself had been preceded by copious correspondence and directions requiring the appellant, through his representatives, to file a bundle of documents. However, I had the case put back to the end of the list and made the bundles in the court file available to Mr Barr. He expressed himself ready to proceed when the matter was called on once more.
14. No arguable legal error sufficient to warrant further investigation into this aspect of the case is made out. Whatever deficiencies previously existed the Judge ensured that the instructed representative had sight of all available evidence after which the representative confirmed he was ready to proceed.
15. In relation to the specific issue on which permission was granted, whether the Judge properly undertook the assessment of the human rights aspect, it is

important to note the specific submissions that were made by Mr Barr to the Judge on the human rights issue. The Judge's contemporaneous note reads:

"Art 8 applies to him and family. Children Pakistan national's but English upbringing re education. Claremont School and thriving there. No mention could resume rel with English and Nottingham friends by electronic measures. But significant break. Entitled to state education to 14 nature and quality significant difference. Young enough to be flexible but reality in formative years. Cusp of leaving primary school. Height of formative years. Significant wrench removing from suburban Nottingham and planting in Karachi.

Both Islamic. The appellant is Shia and liberal."

16. There is therefore no evidence that specific submissions were made to the Judge in a similar manner to that which the appellant now seeks to rely upon, namely that the fact his eldest child would have been shortly entitled to apply for British citizenship should be considered as the determinative factor or warrant greater weight been given to the evidence than was given by the Judge.
17. It is not made out the Judge was unaware of the ages of the children, length of residence in the United Kingdom, or the need to properly consider these matters as part of the assessment of the merits of the case. A reading of the decision under challenge shows the Judge was aware of all these facts which he properly incorporated into the required assessment of the reasonableness of the children leaving the UK. The focus of the determination and the hearing was on the children and their rights and I make a finding of fact that any assertion the Judge failed to take such issues into account has not been adequately established on the basis of the information available to the Upper Tribunal. As submitted by Mr Mills some judges may on the basis of the evidence available, and having given the weight they thought appropriate to the age of the eldest and potential entitlement to British citizenship, have allowed the appeal but that does not mean that every judge is bound to do so and does not entitle the appellant to claim that the Judge was not entitled to find as he did.
18. The Judge noted the children are 'qualified children' and that the core issue was the reasonableness of expecting them to leave the United Kingdom to relocate with their parents to Pakistan. The Judge concluded that the public interest prevailed on the facts of this matter and that it had not been established that it was unreasonable to expect the children to leave the United Kingdom. No arguable irrationality or perversity is made out in the judge's conclusion in this respect.
19. What the appellant is seeking to do is to rely upon post hearing evidence, namely the grant of British citizenship to the older child, a situation that did not exist at the date of the hearing, to suggest that somehow the Judge has materially erred in law in a manner material to the decision to dismiss the appeal. At his highest, all the appellant could arguably claim before the Judge was that shortly after the hearing an entitlement to British citizenship would have arisen; although unless proper application is made which is granted by the Secretary of State the child remains a citizen of Pakistan.
20. I do not find it established the Judge erred in law in a manner material to the decision to dismiss the appeal on the basis of the evidence made available to him and the case advanced by the appellant's representative at the hearing before the

First-Tier Tribunal. I do not accept the appellant has establish the Judge failed to consider all the relevant evidence he was required to consider or that the Judge failed to factor such evidence into the decision-making process.

- 21. It is accepted there has been a material change in circumstances of the appellant’s son which may make it open to the appellant to make a fresh application to the Secretary of State. The appellant was advised, as he has solicitors representing him, to give consideration to seeking their advice in relation to the merits of such application.
- 22. So far as this case is concerned, the appellant’s appeal is dismissed on the basis he has failed to establish that the Judge’s decision is outside the range of reasonable findings/conclusions available to the Judge on the evidence.

**Decision**

- 23. **There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

- 24. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 12 September 2018