Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/29821/2013
IA/29826/2013
IA/29828/2013
IA/29830/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 23 April 2014	**On 4 June 2014**

Oral Determination given following the Hearing

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR SYED ARIF ALI
MRS MARIA ARIF
MISS SYED URWA ALI
MR SYED SHAZ ALI

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: No representation. Mr Syed Arif Ali and Mrs M Arif appeared in person
For the Respondent: Mr P Deller, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants in this appeal are Mr Ali together with his wife and children. The first appellant was at the time of applications aged 42. All the appellants are nationals of Pakistan. The immigration history of the family can be summarised briefly. The first appellant entered the UK as a student on 17 September 2004 when he was 35 years old. Before then he had lived exclusively in Pakistan. His wife and daughter arrived in the UK as his dependants on 17 March 2010 and they have remained here ever since. His daughter is now aged 6. His son, the fourth appellant was born in this country and has never been to Pakistan.

2. The appellant applied for permission to remain in this country but this application was refused on 27 June 2013 and the respondent also at that time issued removal directions pursuant to Section 47 of the Immigration, Asylum and Nationality Act 2007. The application had been made on the basis of the appellants' private life outside the strict requirements of the Rules. The respondent's decision was contained within refusal letters which were sent to the appellants on 27 June 2013. The respondent considered the applications under the provisions of paragraph 276ADE of the Rules but decided that none of the requirements under these Rules were satisfied. It is not suggested on behalf of the appellants that they would be entitled to remain under the provisions of paragraph 276ADE. It is however submitted that they should be allowed to remain on the basis of their private life outside the provisions of paragraph 276ADE but the respondent considered that the application did not contain any exceptional circumstances "which, consistent with the right to respect for private and family life contained in Article 8 of the [ECHR] might warrant consideration by [the respondent] of the grant of leave to remain in the United Kingdom outside the requirements of the Immigration Rules".

3. The appellants appealed against this decision and their appeal was heard before First-tier Tribunal Judge B Lloyd sitting at Newport (Columbus House) on 3 February 2014, but in a determination prepared the following day and promulgated on 11 February 2014 Judge Lloyd dismissed the appeals. The appellants have appealed against this decision and the grounds of appeal essentially argue that the judge failed to give proper consideration to the question of whether or not the removal of these appellants to Pakistan would be proportionate for Article 8 purposes and in particular did not give proper weight to the obligations he had to consider the interests of the third and fourth appellants, who are children, in light of Section 55 of the Borders, Citizen and Immigration Act 2009. It is said that "especially 6 years old child who has made considerable progress at school in such early age". It is submitted in the ground that "if uprooted then such child shall not have a good opportunity to build her [career] in a peaceful society. There appears to be very drastic consequences upon the children future which are contrary to the Borders, Citizenship and Immigration Act 2009" and the relevant section, Section 55, does set out the obligations which the respondent has regarding the welfare of children, in particular at Section 55(4)(a) that "the Director of Border Revenue must make arrangements for ensuring that.... the Director's

functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom."

4. Permission to appeal was granted by First-tier Tribunal Judge Levin on 26 March 2014, who when setting out his reasons for granting permission stated as follows:

> "...
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> 2. The grounds are very long and repetitive but in essence argue that the judge erred in law in failing to consider properly the appellants' private and family life under Article 8 of the ECHR, in failing to consider the length of time for which the first appellant has been here, in failing to give adequate reasons for his findings that the respondent's decisions to return the appellants to Pakistan was proportionate, and in failing to give adequate consideration to the best interests of the children under Section 55 of the 2009 Act.
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> 3. It is arguable that the judge's failure to engage with the evidence and to make clear findings which were based upon the evidence constitutes a material error of law which renders the judge's findings and conclusions unsustainable....".

The Hearing

5. Before me the first and second appellants appeared but were not represented. The respondent was represented by Mr Deller, Home Office Presenting Officer. I heard submissions on behalf of the appellants and also on behalf of the respondent which I recorded contemporaneously. As these submissions are contained within my Record of Proceedings I shall not set out below everything which was said to me during the course of the hearing, but I have had regard to everything which was said as well as to all the documents which are contained within the file.

6. The appellants between them told me in fluent English that the first appellant had been in the UK for a long time and on that basis he had applied for permission to remain on the grounds of long residence. I should state in this regard that this is apparent from the immigration history which was provided by the respondent and was set out at the time of the refusal letters. He had apparently been in this country for around nine years at the time of application. Essentially the basis upon which the appellants claimed, and still claim that they should be allowed to remain is that the situation in Pakistan is worse than it is in this country, that their daughter is 6 and their son who was born here is 3 and that their main objective was to ensure that their children would be able to study in a peaceful environment. Perfectly understandably, the first and second appellants wanted their children to have a bright future in this country

because they both considered their prospects would not be as good in Pakistan. Their son was keen to play football here and their daughter wanted to be a doctor. Because the first appellant had been unemployed since 2012 when he applied for further leave to remain he did not have any money and borrowed from a friend. If he was allowed to stay he could pay this friend back and if the family was returned to Pakistan they would have no money to start a business and they would have to start again from zero. In this country he had been offered a job which he could start.

7. On behalf of the respondent Mr Deller submitted that there was absolutely nothing wrong with the decision made by the First-tier Tribunal Judge. He had looked at all the matters which were put before him for consideration and he had balanced the interests of the first appellant's family including his children with the public interest in a consistent and properly applied policy of immigration control. Mr Deller referred the Tribunal to the Immigration Rules which had been in force now since the middle of 2012 and which set out the respondent's position with regard to these matters and although the applications had been made before these new provisions came into force they nonetheless have to be considered in the context of the new Rules because this was where the proper balance now lay. There was no suggestion that the requirements of the Rules (by which Mr Deller clearly had in mind paragraph 276ADE) could be met and something very special and very compelling was needed before an applicant could succeed outside these provisions. The task for this Tribunal was not to consider whether or not it would itself had reached the same decision but whether the Judge of the First-tier Tribunal got the law wrong. The fact that another judge might have reached a different decision was not a proper basis on which the decision could be challenged.

Discussion

8. I am conscious of the compassionate aspects of this case and I would not suggest for a moment that either the first or second appellant want anything other than the best that they can provide for their children. I also accept that they both consider that their children who clearly are their main concern would have a better life in this country. However as Mr Deller rightly submitted the task of this Tribunal at this stage is not to re-hear these appeals but to consider whether or not the judge who did hear the appeals did so properly and took account of everything which had been put before him. In my judgment he clearly did. His determination is both thorough and detailed and he has reminded himself of all the relevant jurisprudence with regard to appeals such as this, the cases to which he has given consideration being set out in paragraph 25 of his determination. He has set out in detail the submissions which were made and his finding at paragraph 59 that "I conclude there will not be a disproportionate interference" with the Article 8 rights of the family as submitted on behalf of the appellants was in my judgment entirely open to him for the reasons which he has given. It is clear from paragraph 63 of

the determination that specific regard was in fact given to Section 55 of the 2009 Act and to the need to have regard to the best interests of the children and the judge's reasons for finding (at paragraph 64) that "I do not consider that the children's interests will be unduly jeopardised by their returning to Pakistan" are fully reasoned within that paragraph. Essentially, the judge found as he was entitled to find that the appellants just did not appreciate that the first appellant having come to this country as a student and stayed here for some time did not thereby acquire any right to remain in this country. It must have been clear to him, and if it was not it should have been, that his ultimate obligation was to return to Pakistan after he had completed his studies. The judge's ultimate finding is set out at paragraph 66 of his determination as follows:

> "66. I believe that the position of the appellant was in reality well summed up during the course of his cross-examination by the Presenting Officer. He said that he had been here for a long time. He liked the UK. He wanted to stay here with his family. He wanted to pursue his employment here because he thought he would have a 'better' life than he would have in Pakistan. That may be so. However, it identifies what the true philosophy of the appellant is. He came here as a student in September 2004 and he expected to be able to move his life and his career here without question and without dispute. He may not have realised that the Immigration Rules and his rights under the ECHR does not necessarily entitled him to do that automatically."

9. Then at paragraph 67, in the course of weighing up the competing interests, the judge continued as follows:

> "The appellant may desire a life in the UK and may have expected it to be given to him when he came here as a student. The UK must be entitled to maintain a proper system of immigration control. He does not engage the Immigration Rules. His rights under the ECHR and the Human Rights Act 1998 are not compromised disproportionately."

10. In my judgment although I understand fully why these appellants would wish to remain in this country the judge was entirely justified in finding that they have no right to do so. He weighed up the factors which it was argued suggested that these appellants should be allowed to remain against the need of this country to maintain a fair and consistent policy of immigration control which is necessary for the economic wellbeing of this country and his decision that the balance came down in favour of removal was entirely open to him. It follows, there being no error of law in the judge's determination, that this appeal must be dismissed and I will so find.

Decision

There being no error of law in the determination of the First-tier Tribunal, this appeal is dismissed on all grounds.

Signed: Date: 30 May 2014

Upper Tribunal Judge Craig