Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/34007/2014
IA/34008/2014
IA/34009/2014
IA/34011/2014
IA/34010/2014
IA/34012/2014

THE IMMIGRATION ACTS

Heard at Glasgow
on 14th March 2016

Decision & Reasons Promulgated
on 18th March 2016

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

FA and 5 others

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellants: Mr J Bryce, Advocate; Maguire Solicitors (Scotland) Limited

For the Respondent: Ms S Aitken, Presenting Officer

DETERMINATION AND REASONS

1. The appellants are husband, wife and four children, all citizens of Pakistan. An anonymity order was made in the First-tier Tribunal. The matter was not mentioned in the Upper Tribunal. The anonymity order is renewed below.

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2. The first appellant came to the UK as a student in March 2006. His family followed as his dependants in February 2007. The sixth appellant was born here in September 2007.

3. The respondent refused the appellants' applications for leave to remain on the basis of private and family life for reasons explained in a letter dated 15th August 2014.

4. First-tier Tribunal Judge J C Grant-Hutchison dismissed their appeals for reasons explained in her decision promulgated on 1st September 2015.

5. Contrary to the grounds of appeal and in line with a correction thereto in his note of argument, Mr Bryce accepted that the adult appellants could not meet the requirements of the Immigration Rules and could hope to succeed only on the basis of Article 8 of the ECHR, outwith the Rules. He said that the cases of the two older children met the requirements of the Rules so as to bring them to the point of decision in paragraph 276ADE(iv): whether "it would not be reasonable to expect the applicant to leave the UK". The third and fourth children had not at the relevant dates reached the period of seven years in the UK, so their cases also fell outwith the Rules, but they raised substantially the same question in terms of part 5A of the 2002 Act Section 117B(6)(b): whether "it would not be reasonable to expect the child to leave the UK".

6. The submissions for the appellants relied principally on *Azimi-Moayed* [2013] UKUT 197, [2013] INLR 693. Mr Bryce said that the case prescribed a rebuttable presumption that children who reach eleven years' residence ("four plus seven; seven years from age four") are entitled to remain. The appellants, although represented in the First-tier Tribunal, had not referred the judge to that authority. However, it was such a well-established principle that the judge erred by not applying it, even when not cited. The effect of applying the presumption would be that the third and fourth appellants would succeed under the Rules, and it would follow, treating the family unit as a whole, that the other appeals would succeed outwith the Rules.

7. In relation to the appeal by the parents, Mr Bryce submitted that in Part 5A of the 2002 Act section 117B(6) "switches off" the public interest entirely, so that their appeals could only properly be allowed. If that went too far, he submitted that the respondent put forward only two matters on her side of the proportionality balance. One was that the first appellant relied on a dishonestly obtained ETS certificate, but on that point the judge found in his favour (paragraphs 13 to 21). The other was the submission of a funding offer which was not genuine to support an application made as an entrepreneur. That application was later withdrawn. The judge found against the appellants on that matter (paragraphs 22 to 26) but Mr Bryce submitted that was wrong in law, because such false information could be taken into account only in relation to the application in support of which it was made (which was not the application leading to these appeals).

8. The authority for the latter proposition was an unreported decision by a Deputy Judge of the Upper Tribunal. However, Mr Bryce accepted my observation that there was no basis to permit reference to that decision, and that it was not in any way an authority. His submission came to be that whether or not the suitability conditions under the Immigration Rules are met is of no importance, because there is simply no public interest in removal.

9. The appellants offered further evidence, if required, to support the remaking of the decision. This was in the form of further school reports to show that the oldest child continues to do very well at school. He was also available to give evidence. I accept that it is a matter which the appellants might naturally feel keen to demonstrate, but it would be only updating of a point which is not contested. As Judge Grant-Hutchison found, the third appellant (and the other children) may be expected to continue to do well in life, whether in Pakistan or in the UK.

10. Mr Bryce said that as far as he is aware there is no case law on how to interpret and apply section 117B(6). I indicated that I had it in mind that there has been some authority touching on the point, to which I might refer.

11. The respondent submitted that the judge addressed herself appropriately to the question whether it was reasonable to expect the children, the two older ones in particular, to leave the UK. She had done so carefully and in detail - see paragraphs 30 to 38. It was agreed that the same question of whether it was reasonable to expect the return of the four children arose in terms of the Rules and in terms of the statute respectively. The judge correctly addressed all the relevant circumstances and came to a conclusion which she was entitled to draw and which disclosed no error of law, account having been taken of the private life of the children, the family life in the UK, ability to adjust or readjust in Pakistan, familiarity with the language and culture there, and so on. There was no reason to set the decision aside.

12. Mr Bryce in response said that it was clear from the structure of part 5A of the 2002 Act that the public interest considerations in section 117B(4) and (5) did not apply in a case which met the terms of section 117B(6).

13. I reserved my determination.

14. The case which I had in mind but whose citation I was unable to recall at of the hearing is *Treebhawon and Others (section 117B(6))* [2015] UKUT 00674. The context of the Rules and the statute is set out fully in the decision, which is by a panel comprising the President (McCloskey J) and Judge Frances. At paragraphs 20 and 21 the panel said that where the three conditions of section 117B(6) are satisfied, section 117B(1) to (3) does not apply. At paragraph 22 the panel said that it further appeared that the "little weight" provisions of section 117B(4) and (5) were also of no application. The panel's conclusions appear to me to be broadly in line with much of the submission by Mr Bryce, except for the argument that section 117B(6) left only

one result available. At paragraph 23 the panel said, "… in any case where the parent concerned is unable to satisfy the requirements of the rules section 117B(6) may conceivably apply: all will depend on the facts as found by the Tribunal".

15. What Judge Grant-Hutchison did was what the sub-section required. She came to a view on whether she thought it was reasonable to expect the children to leave the UK (which had to be in company with their parents), taking sensible account of all the facts before her.

16. In *Azimi-Moayed* a family comprising husband, wife and two children appealed unsuccessfully against a determination of the First-tier Tribunal that removal would not contravene Article 8 of the ECHR. A panel comprising the President (Blake J) and Judge Taylor provided the following digest of guidance at paragraph 13:

> It is not the case that the best interests principle means that it is automatically in the interests of any child to be permitted to remain in the United Kingdom, irrespective of age, length of stay, family background or other circumstances. The case law of the Upper Tribunal has identified the following principles to assist in the determination of appeals where children are affected by the decisions:
>
> (i) As a starting point it is in the best interests of children to be with both their parents and if both parents are being removed from the United Kingdom then the starting point suggests that so should dependent children who form part of their household unless there are reasons to the contrary.
>
> (ii) It is generally in the interests of children to have both stability and continuity of social and educational provision and the benefit of growing up in the cultural norms of the society to which they belong.
>
> (iii) Lengthy residence in a country other than the state of origin can lead to development of social cultural and educational ties that it would be inappropriate to disrupt, in the absence of compelling reason to the contrary. What amounts to lengthy residence is not clear cut but past and present policies have identified seven years as a relevant period.
>
> (iv) Apart from the terms of published policies and rules, the Tribunal notes that seven years from age four is likely to be more significant to a child that the first seven years of life. Very young children are focussed on their parents rather than their peers and are adaptable.
>
> (v) Short periods of residence, particularly ones without leave or the reasonable expectation of leave to enter or remain, while claims are promptly considered, are unlikely to give rise to private life deserving of respect in the absence of exceptional factors. In any event, protection of the economic well being of society amply justifies removal in such cases.

17. I do not find in the above extract a rebuttable presumption, such that Judge Grant-Hutchison fell into an error of law. She was not referred to the case, but it does not bear to be more than a general statement of what was established by its date. It is most often cited for the now well-known doctrine that the early years of life are less likely to give rise to ties which it would be inappropriate to disrupt, because infant

lives are focussed within the family unit. The appellants did not demonstrate that the judge failed to have that doctrine in mind, or that she failed to have in mind any of the other matters canvassed in *Azimi-Moayed*, although she was not referred to that particular authority. It appears to me that all the matters mentioned as relevant in *Azimi-Moayed* are also considered in the decision now under appeal.

18. The judge reached the conclusion that looking at the circumstances of all appellants and of the family unit as a whole, there was nothing unreasonable in the expectation that they would return together to Pakistan. As I observed at the hearing, if the adult appellants had decided at the end of the first appellant's studies (being the reason for which they came here), or at any other time, that the family was to return to Pakistan, no-one would have thought that to be an unreasonable course of action, or one which the UK authorities might think of preventing, in the interests of the children.

19. In my opinion the conclusion the judge reached was within her reasonable scope, it is more than adequately explained, and it involved no error of law which might justify setting it aside.

20. The determination of the First-tier Tribunal shall stand.

21. Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

16 March 2016
Upper Tribunal Judge Macleman