



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

Appeal Numbers: IA/13728/2015
IA/13729/2015, IA/13730/2015
IA/13731/2015, IA/13732/2015

THE IMMIGRATION ACTS

Heard at Field House

On 30 May 2017

**Decision & Reasons
Promulgated
On 21 June 2017**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR A A S (FIRST APPELLANT)
MRS M A (SECOND APPELLANT)
MR H S (THIRD APPELLANT)
H S (FOURTH APPELLANT)
H A S (FIFTH APPELLANT)
(ANONYMITY DIRECTION MADE FOR 3RD, 4TH AND 5TH APPELLANTS)**
Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:

For the Appellants: Mr M Rana, Counsel instructed by Monk & Turner Solicitors LLP

For the Respondent: Mr P Singh, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, all citizen of Pakistan, bring their appeal against the decision made by the respondent on 19 March 2015 to refuse them leave to remain on Article 8 grounds. The first and second appellants are husband and wife; the other three appellants are their children aged 12, 8

and 4. Their appeal had originally been heard by First-tier Tribunal (FtT) Judge Porter who had dismissed it, but, on 24 March 2017, I set aside that decision for material error of law, comprising, in essence, a failure to apply the guidance set out in **MA (Pakistan) [2016] EWCA Civ 705**. I recorded at paragraph 8 that this was “not a case in which there is any challenge to the judge’s finding of fact as regards the family’s circumstances in the UK or Pakistan.” The judge’s findings of fact can be classified into two segments. First, there were findings regarding the first two appellants. The judge did not accept that there would be a total absence of support from family in Pakistan or that they could seek to rely on the asylum-related fears of the second appellant on return, given there had been no asylum application. Second, there were findings concerning the oldest child - that he had basic knowledge of Urdu; that he had not been given information about Pakistan by his parents; and that he was due to start secondary school this year; and that he had written a letter saying that he does not want to leave the UK.

2. It is not in dispute in this case that the first two appellants and the fifth appellant do not meet the requirements of the Immigration Rules. Possible entitlement under the Rules for the third and fourth appellant hinges on whether they meet the requirement of paragraph 276ADE(1)(iv) which apply to children who have lived continuously in the UK for at least seven years “and it would not be reasonable to expect [him] to leave the UK”. All five appellants seek to argue that irrespective of whether any of them can succeed under the Rules, they should succeed in their appeals by virtue of being able to show compelling circumstances outside the Rules. In this regard the first two appellants also seek to rely specifically on S.117B(6) of the NIAA 2002 which provides that the public interest does not require the person’s removal where they have a genuine and subsisting parental relationship with a qualifying child and “(6) it would not be reasonable to expect the child to leave the UK”. It is common ground in this appeal that the key question is whether it is reasonable to expect the two oldest children to leave the UK. It is also common ground that if the answer to that question is yes, all five appellants are entitled to succeed since it would not be in the public interest to remove them.
3. In time for the resumed hearing the appellants submitted recent witness statements from the first two appellants and letters written by the third and fourth appellants, as well as school reports relating to the third and fourth appellants and several documents addressing the issue of the effect of “moving to another country” any children.
4. Mr Singh relied on the respondent’s reasons for refusal. He explained that the first two appellants had remained unlawfully in the UK as overstayers since 2009. As regards the likely circumstances of the appellants in Pakistan, even if they could not look to family members there for support, the family had remained in the UK without their assistance and could be expected to do the same back there. As regards the children, it was clear

from **MA (Pakistan)** that their best interests were not a trump card. None were British citizens and all three could be expected, with the help of their parents, to adapt to life in Pakistan. There was a viable education system in Pakistan. There was available medical services. In considering both the children's best interests and the issue of the reasonableness of their removal, it was relevant that none of the children had reached the critical age of their education when they did O levels or A levels. Both the third and fourth appellants had some basic Urdu.

5. In his skeleton argument and submissions, Mr Rana contended that in line with the guidance given in **MA (Pakistan)** there had to be "strong reasons" for refusing leave to the third and fourth appellant and a very strong expectation that their best interests were to remain in the UK with their parents as part of a family unit. The eldest child had spent over ten years in the UK. None of the children were to blame for the immigration misconduct of their parents. The third and fourth appellants had both written letters making clear that they wished to remain in the UK, that all their friends were here and that they were fearful of their lives being disrupted if they had to move to Pakistan. Neither had more than a basic grasp of Urdu. Both were doing extremely well in school. Both were firmly rooted in the UK and had been brought up in the English way of life. For the eldest child, he was soon to start secondary school having spent all of his life as a school pupil in the UK. Having to move to Pakistan would significantly impact on his education and well-being. The background country information in the case papers showed that Karachi, the parents' home city, was unsafe and insecure with high crime rates and occurrences of kidnapping. Medical treatment was available but people had to pay. The document dealing with the impact on moving to another country on children confirmed that for the children there would be real disruption to their lives.

My Assessment

6. So far as concerns the first two appellants, they have resided in the UK continuously since July 2007 having been granted visit visas on several occasions between 1999 and 2004 (in respect of the first appellant) and between April 2004 and October 2004 (in respect of the second appellant). Both speak English. However, they previously lived in Pakistan for 29 and 23 years respectively and both travelled back to Pakistan more than once after coming to the UK, taking their oldest child with them on two occasions. It was submitted that they are financially independent.
7. The returns to Pakistan are significant because the second appellant had submitted that she could not return to Pakistan due to the fact that she married the first appellant without the permission of her family. In the case of the second appellant she had stated in previous application made in 2011 that she could not return to Pakistan on the expiry of her visa because she would face very serious threats to her family's life. Yet

despite being informed at that time that it was open to her to make an asylum application, she had never done so. I consider that against this background the respondent was fully entitled to reject the appellants' claim that their perceived fear of return to Pakistan would breach Article 3 ECHR. Further, whilst the COI provided by the appellants identifies significant security concerns regarding conditions in Karachi, it falls well short of establishing that conditions in that city would pose any significant difficulties to the appellants when living there. Neither the first nor the second appellant have been able to establish that they have no family members in Pakistan, but even if that were the case, they have not shown that they would be unable to support themselves or have access to schools and healthcare.

8. The first two appellants have remained unlawfully in the UK since 2009 despite repeatedly being required to leave. Even when they were in the UK on visit visas, their immigration status was precarious and accordingly little weight can be attached to their own private life ties with the UK. Both of their cases depend heavily on the circumstances of their children to which I now turn.
9. I first of all consider the best interests of the children. As regards the eldest child, he has resided in the UK for most of his life and later this year will have resided continuously for ten years. The fact that he has been in the UK for this period of time must be given significant weight. There is no doubt that he sees the UK as his home and that he is doing well at school where he has formed a number of friendships. He identifies as English and has little command of Urdu. On the other hand, he was born in Pakistan and was taken back there twice by his parents prior to 2007. Whilst he has little command of Urdu, he does speak some. It is not suggested that he has been raised by his parents without a good understanding of Pakistan culture and the Muslim religion. These factors make it more likely that he would be able to return and integrate in Pakistan society on return. Further, although he has developed significant social ties through schooling, he has not yet completed secondary education and whenever that commences he will have to adapt and adjust to a new environment in any event. Return of him and the other four appellants will be as a family unit. It is reasonable to expect that in Pakistan he and his siblings will be able to enter the education system there and indeed there is also the possibility of schools where the education is in English. In short, I do not consider that his situation demonstrates that the roots he has put down and the social, cultural and educational links he has formed in the UK are such that his removal would be highly disruptive. Considering the relative strength of the factors relating to his welfare and best interests they can be said on balance to be to remain in the UK, but there are factors such as his nationality, cultural history and trips back to Pakistan which indicate that he has significant links to that country, and is likely to be able to adapt to life there relatively quickly. Understandably he is fearful of return to Pakistan but it is reasonable to expect that his fears will be assuaged

once he knows removal will take place and that his family will be resettling in Pakistan. In assessing his best interests I bear in mind that his most important interest is to remain with his parents and siblings as a family unit, wherever they are located.

10. As regards the fifth appellant, it cannot be said that he has reached an age here his interests have significant social or cultural or religious dimension separate from his parents and siblings.
11. As regards the fourth appellant, significant weight must also be given in his case to the fact that he was born in the UK in 2009 and has spent more than seven years continuously resident in the UK. I have already noted the fact that he has done extremely well at school and that he has little command of Urdu. However, his links with the UK are less established than his brother and like his brother I consider it reasonable to expect that he will be able to readjust to life and society in Pakistan like his other two siblings he has no significant health difficulties. Whist on balance his best interests lie in remaining in the UK, there are significant links of culture and religion with his country of nationality and his best interests too are primarily to remain living with his parents and siblings.
12. Carrying forward my assessment of the relative weight of the factors pertaining to best interest of the three children into the wider proportionality assessment, I take into account that there were two of them in respect of whom I have attached significant weight to the fact that they have been in the UK for seven years and that as a result the third and fourth appellants are qualifying children for the purposes of s.117B(6). Linking my assessment of the relative strength of factors relating to their best interests to my assessment of the situation of the parents I consider that notwithstanding that the third and fourth appellants have established significant ties with the UK there are strong reasons for considering that it would be reasonable to expect them to leave the UK. They are not to blame for their parents' immigration misconduct but their own private life ties which (outside their own family circle) are principally with school friends) have been formed when they have had no lawful basis of stay. Neither the third or fourth appellant has reached an age when they are engaged in life-defining school exams. Whilst they identify with the British way of life, they appear to have significant cultural and religious connections with Pakistan, which is of course their country of nationality. I do not consider that taking all relevant facts into account it would be unreasonable to expect them to leave the UK.
13. None of the appellants have shown that they meet the requirements of the Rules and the third and fourth appellants in particular have not shown they meet the requirements of paragraph 176ADE(1)(iv).
13. The above assessment also serves as a basis for considering that the five appellants have failed to establish compelling circumstances such as to

warrant a grant of leave to them outside the Rules. I consider that the decisions refusing them leave to remain were proportionate.

Notice of Decision

14. For the above reasons I conclude that the appeals of all five appellants are to be dismissed.


Anonymity directions are made in respect of the third, fourth and fifth appellants only.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

Signed

Date: 21 June 2017



Dr H H Storey
Judge of the Upper Tribunal