Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/24117/2018
HU/24116/2018
HU/24120/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 August 2019	**On 04 September 2019**

Before

UPPER TRIBUNAL JUDGE WARR

Between

ZA (FIRST APPELLANT)
AF (SECOND APPELLANT)
ZF (THIRD APPELLANT)
(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Badar of Counsel
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Pakistan born on 5 March 1988, 29 September 2009 and 17 September 2014 respectively. They appeal the decision of a First-tier Judge dismissing their appeals following a hearing

on 11 April 2019. They had appealed the decision of the respondent on 14 November 2018 to refuse their applications for leave to remain in the United Kingdom. Permission to appeal was granted on 17 July 2019 by the First-tier Tribunal.

2. Mr Badar, who appears before me, also represented the appellants before the First-tier Tribunal and the judge referred to his well-prepared skeleton argument in paragraph 43 of his decision which set out the law that the judge said he must apply.

3. The judge found that the appellants' case was well set out in Counsel's skeleton argument. The judge summarised the positive aspects as set out in the skeleton argument as follows:

> "a. Respondent's error of law in not carrying out a Section 55 assessment.
>
> b. Best interests of the child to remain in the UK and the length of residence of the children.
>
> c. The appellants at all time are lawfully residing within the UK.
>
> d. The unusual circumstances of the appellants losing their husband/father, and as a result, would have lost ties to Pakistan/developed deeper ties to the UK.
>
> e. Appellants support network of the sister/brother in law within the UK".

4. The judge considered the points made in respect of the appellants' support network in paragraph 55 of his decision as follows:

> "55. Appellants support network of the sister/brother in law within the UK Whereas the Respondent has not carried out a Section 55 assessment, the Appellants submit that the following factors are relevant to this assessment.
>
> a. Both appellants are going to school. Psychological Assessment Report (p.28 of AB) was provided to the Respondent at the date of application. Report makes various findings such as lack of Urdu (S2 speaks a little French as well), close circle of friends and concludes with 'Any move to Pakistan, I feel would have a detrimental impact on the personal, educational and emotional development of the children (p.35 of AB)'.
>
> b. Whilst the appellants are not qualifying children, it should be noted that second appellant spent her formative years within the UK, equivalent to that if she was born in the UK.
>
> c. The appellants have lost their father tragically. They do not have the father figure that an ordinary family being removed would. Their bonds to the family in the UK, M and S should be given substantial weight.
>
> d. It is clear from the evidence that they see their lives continuing in the UK, with regards to their circle of friends, attachment to their teachers and family in the UK".

5. Having considered the positive features the judge concluded his determination as follows:

> "56. The cons are that Parliament has passed the rules relating to the exit and entry of people into this country and the renewal of leave. The appellant does not meet the rules. The Home Office argues that there are no insurmountable obstacles preventing his private life and family life from being exercised abroad.
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> 57. The appellant's husband died in Pakistan and his death certificate appears in the bundle on the same day the third appellant was born in this country. The first appellant had returned with her children to Pakistan in August 2014 before returning to the U.K. in December. She had made an application on 11 August 2017 and her leave expired on 14 August 2017. She entered as a Tier 1 Entrepreneur and was granted limited leave she can have no expectation to receive any leave beyond this period.
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> 58. She chose to come to this country indeed leave her husband in India presumably because she felt her life would be better here. Her leave was precarious. She has created a situation where she is on her own with two children in this country and she relies on article 8 to remain.
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> 59. Parliament has passed rules and the appellant's children are not qualifying children they have not been here seven years I note the second and third appellants school reports which show they are well settled at school. They apparently speak a little Urdu but the respondent would argue they are young enough to adapt to the country of their mother's origin.
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> 60. We have a psychology report on page 263/8 This is carried out by Kevin O'Doherty psychologist and cognitive behavioural therapist The first appellant presented as a confident well-adjusted individual with a good grasp of the issues There are no psychotic features, delusional ideas or disorders or suicidal ideation .She has normal speech and answered the questions intelligently A summary of his conclusion appears on page 35 and it can records that the first appellant is suffering from anxiety and depression .It is moderate in severity .Her children have a wide circle of friends and have been accustomed to their British way of life It does not conclude she is unable to perform the duties of her chosen profession and should be returned to Pakistan there would be some psychological effect and this is noted
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> 61. The appellant family will be able to assist her. In this country she has one sister and in Pakistan she has her parents two brothers. Her husband's family will only a duty to assist her. She says she is not in contact with her husband's family and they do not look after but we have no independent evidence of this She is educated. She has a BSE in home economics level III childcare works here as a childminder The main reason she cites for not living in Pakistan is her children that they will not be able to adapt to life their the friends and social life here.
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> 62. It is perhaps a good time to remind myself about the law in this area. In **Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 197(IAC)** the Upper

Tribunal in considering the case law in relation to decisions affecting children identified the following principles to assist in the determination of appeals where children are affected by the appealed 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.
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> 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 than 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.'

63. There is limit to how far the interest of the child should outweigh the respondent's concerns. In **EV (Philippines) and Others v SSHD [2014] EWCA Civ 874** it was held that despite finding, in a family's appeal against a decision to remove them, that the best interests of the children lay in continuing their education in the United Kingdom with both parents also remaining in the United Kingdom, the Tribunal had been entitled to find that the need to maintain immigration control outweighed the children's best interests

64. In the present case applying the case law and in particular EV (Philippines the two children are aged 9 and 4 and can adapt to life in Pakistan

65. As was stated in EV (Philippines (para 32 to 37) *'the tribunal is concerned with how emphatic an answer falls to be given to the question: is it in the best interests of the child to remain? The longer the child has been here, the more advanced (or critical)*

the stage of his education, the looser his ties with the country in question, and the more deleterious the consequences of his return, the greater the weight that falls into one side of the scales. If it is overwhelmingly in the child's best interests that he should not return, the need to maintain immigration control may well not tip the balance. By contrast if it is in the child's best interests to remain, but only on balance (with some factors pointing the other way), the result may be the opposite'.

66. I note the case law on children and conclude that the children are young enough to adapt to life in the old country and they have extended family who can assist her on return. They can enjoy the rich cultural heritage of Pakistan. There will return as a family unit and spent a short period of time in this country. It might be financially better to live in this country although there was no evidence of this this is not itself a reason to grant leave under article 8. The rules have not been met. There are no major health considerations relating to her or the children. Parliament has passed laws As section 117(1) makes clear the issue is effective immigration control. I have found the appellant does not meet the immigration rules and therefore at the relevant date there is public interest served by the refusal".

6. The judge accordingly dismissed the appeal.

7. In the grounds it was submitted that the judge had made various slips in his determination, for example referring to India in paragraph 58 rather than Pakistan and it was submitted that the determination showed clear signs of a template decision.

8. In ground 1 it was argued that the judge had failed to consider the psychologist's report and the school reports. There was no engagement with the findings made by the expert. It was acknowledged that the judge had referred to the submissions made as recorded in paragraph 55 of the decision. There had only been a very brief analysis in paragraphs 60 and 61 of the decision.

9. In ground 2 it was argued that the judge had come to an irrational decision with reference to paragraph 58. The appellant's husband had died on 17 September 2014 – the day the third appellant had been born. It was argued in ground 3 that the judge had erred in the application of paragraph 117B(3) in finding against the appellant that the appellant was not employed – the judge had recorded in paragraph 61 that she had worked as a childminder. The judge had further erred in relation to Section 117B(1) of the 2002 Act in noting that the maintenance of effective immigration controls was in the public interest and observing "this consideration weighs against the appellant". In ground 4 it was submitted that the judge had not applied the authorities he had referred to properly and his conclusions at paragraph 66 did not reflect the submissions made on behalf of the appellants as recorded in paragraph 55 of the determination. The judge had erred in concluding as he had done regarding the best interests of the children.

10. Ms Isherwood submitted there was no material error of law. The judge had found the children were not qualifying children in paragraph 59 of the decision. It was plain that the judge had taken into account the psychologist's report. Ms Isherwood referred to the following paragraph in the report at page 31:

> "I am informed that the client was four months pregnant when her husband was given the diagnosis of stage 4 cancer. The client came to the UK with her one daughter, and her husband was to join her if he was medically able to. Unfortunately, he subsequently passed away from cancer in Karachi Pakistan".

Ms Isherwood submitted it was a matter of choice and she had never set up the business as an entrepreneur which was the basis of the grant of her visa. She had not sought to rectify her status. It was accepted by Counsel as recorded in paragraph 36 of the judge's decision that the appellant did not meet the Rules.

11. It was clear that the judge had considered the position of the children as set out in the report, ground 1 and ground 4 needed to be read together. The judge had correctly addressed himself on the case law. The family would face no unusual circumstances in Pakistan.

12. Various points had been taken in relation to slips made by the judge. It was plain that the reference to India was simply a typographical error. It had been open to the judge to find as she did in paragraph 58 of the decision. Both representatives accepted that the judge had mistakenly referred to the date of the appellant's return to Pakistan with her children in paragraph 57 of the decision – the correct date was 9 October 2014. In relation to 117B (6) the judge had been correct in observing that there were no qualifying children. The judge had not erred in the weight given to the public interest. He had referred to EV (Philippines) in paragraph 63 of the decision where the need to maintain immigration control outweighed the best interests of the children. The grounds were simply a disagreement with the decision.

13. In reply, Mr Badar submitted that the judge had not properly engaged with the expert's report and referred to paragraph 3 of the respondent's decision in which consideration had been given to exceptional circumstances. The case had been argued outside the rules. It had never been the respondent's case that the appellant had not worked in accordance with the visa she had been issued with.

14. At the conclusion of the submissions I reserved my decision. I remind myself that I can only interfere with the decision of the First-tier Judge if it was materially flawed in law.

15. I am not satisfied that the various slips identified by Counsel, as well as the apparent lack of proofreading, while regrettable, indicated that the

judge was not properly focused on the case before him or that this was a template decision as contended. It is clear that the judge went carefully through the skeleton argument that Mr Badar had produced and he scrupulously addressed himself to the relevant authorities. He refers to both the psychological assessment report and the school reports. He had full regard to the interests of the children in the light of the case law and was entitled to conclude as he did in paragraph 66 of the decision. I do not find the judge materially erred in his consideration of S117B as contended. I agree with the points made by Ms Isherwood and find that the grounds raise no material error of law.

Notice of Decision

The appeal is dismissed.

It is appropriate to make an anonymity order in this case given that it concerns children.

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

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.

TO THE RESPONDENT
FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed Date 21 August 2019

G Warr, Judge of the Upper Tribunal