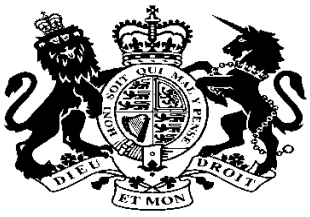

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: PA/02030/2018**
HU/10405/2017

THE IMMIGRATION ACTS

Heard at Field House
On 22 March 2019

Decision & Reasons Promulgated
On 1 April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

MUHAMMAD [I]
RABIA [M]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Alam (counsel) instructed by Alexander James solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Chana promulgated on 2 October 2018, which dismissed the Appellants' appeals.

Background

3. The second Appellant is the wife of the first appellant. The first appellant was born on 23 March 1981. The second appellant was born on 6 June 1985. They are both nationals of Pakistan. On 28 January 2018 the Secretary of State refused the first Appellant's protection claim. On 5 September 2017 the Secretary of State refused the second appellant's application for leave to remain in the UK.

The Judge's Decision

4. The Appellants appealed to the First-tier Tribunal. First-tier Tribunal Judge Chana ("the Judge") dismissed the appeals against the Respondent's decisions. Grounds of appeal were lodged and on 27 December 2018 Judge SPJ Buchanan granted permission to appeal stating *inter alia*

> "It is arguable by reference to the grounds of appeal that there may have been material error of law in the decision. I grant permission to appeal. As may be plain from the operative part of this decision, in granting permission, I do not limit the scope of argument which may be advanced at appeal."

Error of Law

5. In a decision promulgated on 7 February 2019 the Upper Tribunal found that there was no error of law in the First-tier Tribunal's decision in relation to the Refugee Convention and Humanitarian Protection; that there was no error of law in relation to the decision on articles 2 and 3 ECHR grounds, but that the decision in relation to article 8 ECHR grounds of appeal contains a material error of law. The decision is so far as it relates to article 8 ECHR was set aside. The appellant's appeal against the First-tier Tribunal's decision in relation to the Refugee Convention, Humanitarian Protection, and articles 2 and 3 ECHR was dismissed.

6. This case calls before me today so that I can substitute my own decision in relation to the appellants' article 8 ECHR claim.

Findings of fact

7. The appellants are both citizens of Pakistan. They are husband-and-wife. The first appellant was born on 23 March 1981. The second appellant was born of 6 June 1985. They have one child, who is approximately 2 years old. The first appellant entered the UK on 11 March 2011 as a student with leave until 31 July 2014. On 14 July 2016 the first appellant claimed asylum. His asylum claim was refused by the respondent on 28 January 2018.

8. The second appellant was granted entry clearance as a tier 4 student. Leave was extended until 14 July 2015, but on 24 April 2015 her student leave was curtailed so that it expired on 28 June 2015. The second appellant made applications for leave to remain as a tier 2 skilled worker, and then as a tier 4 general student, and was

granted leave until 30 October 2016. On 28 October 2016 the second appellant made an application for leave to remain on article 8 ECHR grounds.

9. In 2010 the second appellant was awarded a diploma in hospitality management. In 2012 the second appellant graduated with an MA in marketing and innovation.

10. The second appellant's brother is a British citizen. He has a daughter who was born on 12 July 2017. The daughter's mother is a British citizen. His relationship with his daughter's mother ended at all about the time the child was born. His former partner rejected the child. The child has been in his care since he brought her home from hospital in July 2017. The local authority, after enquiry, conferred parental responsibility for the appellant's brother's daughter in favour of the appellant's brother.

11. The two appellants, with their young child, live with the second appellant's British citizen brother and his British citizen daughter. The second appellant plays a significant role in the care of her brother's daughter. That child refers to the second appellant as "Mama". The second appellant is involved in the daily routine of care for the British citizen child.

12. The second appellant's brother works. When he is at work the second appellant takes care of his daughter. The second appellant's older brother lives in the UK with his EEA national wife and their three children. The second appellant's uncle is a British citizen who lives in the UK with his wife and three children.

13. Between the birth of the second appellant's brother's daughter and 12 February 2019 the local authority watched over the second appellant's care of his daughter. Documents 18 to 28 of the appellant's bundle (prepared for this hearing) is a closure summary from the local authority summarising the outcome of the local authority's involvement. The second appellant's contribution to the care for the young child is acknowledged in that report. The report also says that the second appellant's brother

> "Wants to have his own place so him and (the child) can have their own home. [B] (the second appellant's brother) needs minimal support in this area and has been very proactive to make the changes necessary to move forward in this area."

14. Documents 29 to 48 of the appellant's bundle for this hearing is the local authority's final statement in relation to the care arrangements for the second appellant's brother's child. That document acknowledges the contribution that the second appellant has made to the care of her brother's child.

15. The two appellant's love their niece. The second appellant has enjoyed her role in helping with the care arrangements for her niece and earnestly hopes to continue to contribute to her niece's care.

16. Neither of the appellants suggest that they can meet the requirements of the immigration rules.

The Immigration Rules

17. It is not argued that either of the appellants meet the requirements of the immigration rules. There is no reliable evidence placed before me to suggest that either of the appellants meet the requirements of appendix FM of the immigration rules. Because neither of the appellants is a British citizen, and as their own child is not a British citizen, they cannot meet the eligibility requirements of appendix FM. Neither of the appellants is a parent of a British citizen child.

18. Because of their ages and the length of time they have been in the UK the appellants cannot meet the requirements of paragraph 276 ADE(1)(i) to (v) of the immigration rules. The First-tier Tribunal's findings in relation to the first appellant's protection claim stands so there are no significant obstacles to integration in Pakistan. Neither of the appellants meet the requirements of paragraph 276 ADE(1)(vi) of the rules.

19. On the evidence placed before me, neither of the appellants meet the requirements of the immigration rules.

Article 8 ECHR.

20. In Hesham Ali (Iraq) v SSHD [2016] UKSC 60 it was made clear that (even in a deport case) the Rules are not a complete code. Lord Reed at paragraphs 47 to 50 endorsed the structured approach to proportionality (to be found in Razgar) and said "what has now become the established method of analysis can therefore continue to be followed…"

21. In Agyarko [2017] UKSC 11**,** Lord Reed (when explaining how a court or tribunal should consider whether a refusal of leave to remain was compatible with Article 8) made clear that the critical issue was generally whether, giving due weight to the strength of the public interest in removal, the article 8 claim was sufficiently strong to outweigh it. There is no suggestion of any threshold to be overcome before proportionality can be fully considered.

22. I have to determine the following separate questions:

(i) Does family life, private life, home or correspondence exist within the meaning of Article 8

(ii) If so, has the right to respect for this been interfered with

(iii) If so, was the interference in accordance with the law

(iv) If so, was the interference in pursuit of one of the legitimate aims set out in Article 8(2); and

(v) If so, is the interference proportionate to the pursuit of the legitimate aim?

23. Section 117B of the 2002 Act tells me that immigration control is in the public interest. In AM (S 117B) Malawi [2015] UKUT 260 (IAC) the Tribunal held that an appellant can obtain no positive right to a grant of leave to remain from either s117B (2) or (3), whatever the degree of his fluency in English, or the strength of his financial resources. In Forman (ss 117A-C considerations) [2015] UKUT 00412 (IAC)

it was held that the public interest in firm immigration control is not diluted by the consideration that a person pursuing a claim under Article 8 ECHR has at no time been a financial burden on the state or is self-sufficient or is likely to remain so indefinitely. The significance of these factors is that where they are not present the public interest is fortified.

24. This case is plead before me on the basis that the second appellant has a de facto parental relationship with a British citizen child. I am mindful of Section 55 of the Borders, Citizenship and Immigration Act 2009, and the case of ZH (Tanzania) v SSHD [2011] UKSC 4. . I remind myself of the cases of Azimi-Moayed and others (decisions affecting children; onward appeals), [2013] UKUT 00197 and PW [2015] CSIH 36**.**

25. In Kaur (children's best interests / public interest interface) [2017] UKUT 14 (IAC) it was held that the "little weight" provisions in Part 5A of the 2002 Act do not entail an absolute, rigid measurement or concept; "little weight" involves a spectrum which, within its self-contained boundaries, will result in the measurement of the quantum of weight considered appropriate in the fact sensitive context of every case.

26. The evidence of the appellants and the second appellant's brother is that the second appellant stepped into the shoes of her niece's mother. The young child thinks the second appellant is her mother and the child of these two appellants is her twin. Social work department records are placed before me. Those social work department records demonstrate that the second appellant's brother has parental rights and responsibilities and is the primary carer for his daughter. There is no relationship between the second appellant's brother and the mother of his child. There is no relationship between the British citizen child and her own natural mother.

27. What is beyond dispute is that the two appellants and their own young child live with the second appellant's brother and his daughter. The weight of reliable evidence indicates that the second appellant has provided daily care to her British citizen niece. Both appellants have showered the British citizen niece with love and affection, and do not want their relationship with the little girl to come to an end.

28. Both appellants and the second appellant's brother told me that the cannot foresee the current arrangements ending, and that the second appellant is crucial to the care of the second appellant's brother's daughter.

29. The problem with that evidence is that it is directly contradicted by the local authority's records. On 18 February 2019 (just one month ago) the local authority recorded that the second appellant's brother is seeking his own accommodation for the child and that the clear plan now is that the second appellant's brother and his daughter will live separately to both appellants.

30. That evidence draws me to the conclusion that the second appellant has helped her brother look after the appellant's British citizen niece, but that is a temporary arrangement and plans are already afoot to end that arrangement. Were it not for that evidence I would wrangle with whether or not there is a genuine and subsisting parental relationship with a British citizen child. There is not a genuine and

subsisting parental relationship. There is the ordinary relationship of caring affection between an uncle and aunt and their niece. The second appellant stepped into a role which was invaluable to the British citizen niece and greatly helped her brother, but the plans, as the appellants and the second appellant's brother made known to the local authority, are that the end of that arrangement is planned. As soon as the second appellant's brother find suitable accommodation he is moving out and taking the second appellant's British citizen niece with him.

31. The family life which exists in this case within the meaning of article 8 is family life between both appellants and their own child. All three are Pakistani nationals. The respondent intends to remove all three together so that there will be no interference with that family life. The respondent's decision is not a breach of article 8 family life.

32. The appellants argue that private life is created solely because of the length of time that they have lived in the UK. Passage of time in the UK is not, on his own, sufficient to create article 8 private life. When I consider each strand of evidence I still do not know enough about the appellant's home, their habits and activities of daily living, any significant friendships, any integration into UK society, or any contribution to the UK local community. There is no reliable evidence of the component parts of private life within the meaning of article 8 of the 1950 convention before me. The appellants fail to establish that they have created article 8 private life within the UK.

33. When I weigh all of these matters, I can only come to the conclusion that the respondent's decision is not a disproportionate breach of article 8 family life. On the evidence placed before me the respondent's decision does not breach any article 8 private life that the appellants might have established in the UK.

34. The First-tier Tribunal's decision in relation to article 8 ECHR grounds of appeal was set aside the Upper Tribunal's decision promulgated on 7 February 2019. I now substitute my own decision.

Decision

The First-tier Tribunal's decision in relation to the refugee convention & humanitarian protection stands.

The appellants appeals are dismissed on article 8 ECHR grounds.

Signed Date 28 March 2019

Deputy Upper Tribunal Judge Doyle