



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01977/2019
HU/03049/2019; HU/03052/2019
HU/03053/2019; HU/03055/2019

THE IMMIGRATION ACTS

Heard at Field House
on 24 February 2020

Decision & Reasons Promulgated
On 09 March 2020

Before

UPPER TRIBUNAL JUDGE BLUM

Between

FAHAD [R]

AYSHA [F]

[F F]

[A S]

[M S]

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gajjar, Counsel, appearing on a Direct Access basis

For the Respondent: Ms K Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a remade decision following the identification of a material legal error in the decision of Judge of the First-tier Tribunal Moffat (the judge), promulgated on 4 September 2019, dismissing the appellants' joint appeals against the

respondent's decisions dated 16 January 2019 (in respect of the 1st appellant) and 31 January 2019 (in respect of the 2nd, 3rd, 4th, and 5th appellants) refusing their human rights claims.

2. In an 'error of law' decision promulgated on 2 January 2020 the Upper Tribunal found that the judge made a mistake on a point of law in her assessment of the issue of dishonesty, which arose from discrepancies between the 1st appellant's income disclosed to HMRC and to the respondent covering the same periods of time. It was unclear whether the judge appreciated that the burden of proving dishonesty rested with the respondent and she appeared to conflate the general two stage approach in respect of the application of paragraph 322(5) (the immigration rule upon which the respondent relied in refusing the 1st appellant Indefinite Leave to Remain (ILR)), considered in some detail in **Balajigari v SSHD** [2019] EWCA Civ 673, with the approach to determining dishonesty. Nor was it apparent that the judge approached the 1st appellant's explanation for the discrepancies by reference to the 'minimum/basic level of plausibility' assessment following which the the burden switches back to the Secretary of State to answer that evidence (**Shen (Paper appeals; proving dishonesty)** [2014] UKUT 00236 (IAC), **Abbas, R (On the Application Of) v SSHD** [2017] EWHC 78 (Admin)).
3. Having found the judge's decision to be unsafe and having regard to the Upper Tribunal Practice Statement of the 18 June 2018, the Upper Tribunal retained conduct of the appeal and had it listed for a further de novo hearing.

Background

4. The appellants are all nationals of Pakistan. The 1st appellant was born on 22 October 1977. The 2nd appellant is the wife of the 1st appellant. She was born on 8 April 1985. The 3rd, 4th and 5th appellants are the minor children of the 1st and 2nd appellants. They were born on 22 January 2005, 14 August 2007 and 14 February 2013.
5. The 1st appellant entered the UK as a student on 19 June 2007. He was granted further periods of leave, albeit he had to appeal against two separate refusals of his applications for further leave to remain. One of these related to an application made on 14 October 2013 which was refused on 3 December 2013. In an appeal decision promulgated on 9 September 2014 Judge of the First-tier Tribunal Youngerwood allowed the 1st appellant's appeal finding that the evidence adduced by him demonstrated his income of £53,339.23 as a sole trader for the period 16 September 2012 to 15 September 2013. His last period of leave was as a Tier 1 (General) Migrant and this was valid until 19 November 2017.
6. On 29 October 2015 the 2nd to 5th appellants entered the UK pursuant to a grant of entry clearance as the dependents of the 1st appellant.

7. On 9 November 2017 the 1st appellant applied for Indefinite Leave to Remain (ILR) on the basis of his long residence pursuant to paragraph 276B of the immigration rules. On the same date the remaining appellants made human rights claims on the FLR(M) form for leave to remain under Appendix FM based on their relationship with the 1st appellant (and the assumption that he would be granted ILR).
8. In refusing the 1st appellant's application on 16 January 2019 the respondent noted that, in an earlier application made on 4 April 2011 for leave as a Tier 1 (General) Migrant, the 1st appellant claimed to have received an income of £52,100 from his self-employment for the period 5 December 2010 to 29 March 2011. However, the income initially declared to HMRC for the tax year 2010/2011 was £28,651. The 1st appellant amended his tax return on 6 September 2017 to show an income of £52,100. The difference between the two figures was £30,122. In his later application for leave to remain on 14 October 2013 the 1st appellant claimed a self-employment income of £53,339.23 for the period 16 September 2012 to 15 September 2013. This period covered two tax years. For the tax year 2012/2013 the 1st appellant initially declared to HMRC a self-employed income of £12,500, and for the tax year 2013/2014 the 1st appellant initially declared to HMRC a self-employed income of £7,915, making a total income over the two tax years of £20, 415. The 1st appellant amended his tax returns on 6 September 2017 to show a self-employed income of £35,492 for the tax year 2012/2013 and a self-employed income of £32,425 for the tax year 2013/2014. The respondent rejected as incredible a 'clerical mistake' explanation provided by the 1st appellant in a questionnaire completed by him on 20 April 2018. Given the size of the discrepancies, the absence of other supporting evidence, the timing of the amendments (two months before his ILR application was lodged) and the 1st appellant's claim to have checked and signed and reviewed his tax returns (question 12 of the questionnaire) the respondent considered that the 1st appellant had acted dishonestly and that the discretion contained in paragraph 322(5) of the immigration rules (one of the discretionary rounds of refusal) should not be exercised in the 1st appellant's favour. The application consequently was refused under paragraph 322(5) and paragraphs 276B(ii) and (iii) of the immigration rules.
9. The respondent went on to consider the application under paragraph 276ADE of the immigration rules and Article 8 outside of the immigration rules but concluded that there were no very significant obstacles to the 1st appellant's integration in Pakistan and that there were no compelling circumstances outside the immigration rules such that a refusal of his human rights claim would result in unjustifiably harsh consequences for him and his family.
10. As the 1st appellant was not granted ILR, the remaining appellants were unable to meet the relevant eligibility requirements of Appendix FM and their applications were refused accordingly. The respondent also considered their applications under paragraph 276ADE but she was not satisfied that the 2nd

appellant would face very significant obstacles to her integration in Pakistan or that the 3rd to 5th appellants had lived in the UK for a continuous period of 7 years (a necessary requirement under paragraph 276ADE(1)(iv)). Nor was the respondent satisfied there was any evidence to establish the existence of exceptional circumstances outside the immigration rules such that a refusal to grant leave would breach Article 8.

11. The appellants each appealed the respondent's decisions pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002.

Summary of documentary evidence

12. In addition to the respondent's bundle of documents the appellants produced a large bundle of documents containing, *inter alia*, the tax questionnaire completed by the 1st appellant on 20 April 2018, statements from the 1st and 2nd appellants (unsigned and undated), a copy of the decision of Judge Youngerwood promulgated on 4 September 2014, a letter issued by HMRC dated 19 October 2017 indicating their acceptance of an offer of £9,233.79 in respect of the 1st appellant's outstanding tax liability for the tax year 2010/11, letters dated 20 October 2017 relating to additional tax the 1st appellant had to pay in respect of his income for the tax years ending 5 April 2013 and 5 April 2014, various HMRC Self-Assessment Statements and National Insurance documents relating to the 1st appellant, a downloaded document from Companies House website confirming that Pearl Business Solutions Co Ltd was dissolved on 3 May 2016, and a letter from Sarmad & Co, the 1st appellant's current accountants, dated 24 July 2019.
13. The bundle of documents additionally contained details of the 1st appellant's academic achievements and employment related certificates, Disclosure & Barring Service Enhanced Certificates relating to the 1st appellant, and character references from Mohammed Basit Azeem, Mirza Tariq Manzoor, Mr Gull Khan and Nigel and Susan Simon. The bundle also contained evidence relating to the 3rd appellant's attendance and progress within the Norbury Manor Business & Enterprise College for Girls, including evidence of her good behaviour, attendance, achievements and punctuality, and similar documentation relating to her attendance at her primary school. Documents relating to the 4th and 5th appellant's attendance at St Joseph College were also included. The bundle finally included the authority of **Balajigari** [2019] EWCA Civ 673.
14. The appellants served an Independent Social Worker (ISW) report authored by Jasmine Smith dated 17 February 2020. The ISW interviewed the 1st, 3rd 4th and 5th appellants on 15 February 2020. She summarised the 1st appellant's claim that he had been badly affected by the allegations of dishonesty and that his children had fully integrated "within the British lifestyle and culture." He claimed that the 3rd appellant needed to be in school from year 7, 4 years ago, in order to catch up with her peers. The ISW found the 3rd appellant to be a happy and

outgoing young girl who preferred the weather, the lifestyle and the amenities in the UK to those in Pakistan. The 3rd appellant had friends from many other countries and was concerned that she would be unable to go out socially in Pakistan due to a lack of safety the 3rd appellant said she would find it difficult to relocate to Pakistan as she would have to give up school subjects she enjoyed and would be unable to master Urdu. The 3rd appellant said that teachers hit children in Pakistan and that the curriculum was limited. The 4th appellant had more friends in the UK and preferred to the climate in comparison to Pakistan, and also expressed concerns regarding Urdu. He played for his school cricket team and regarded school as a big distraction from the stress caused by their immigration issues. The 4th appellant also preferred the cleanliness of the UK environment and the regularity of electricity and the variety of subjects he could study. He was anxious about returning to Pakistan and remembers being physically chastised at school.

15. The ISW referred to the benefits to the children of studying in British schools and said that the UK had played an integral part in shaping the children's positive attitudes. She referred to general studies concerning the mental health impact on children in immigration cases and claimed that it would be detrimental to the children to relocate to a country that was now outside of their norms, customs, resources and support networks with which they had been familiar for almost 5 years. The ISW referred to general studies relating to the impact that separation and loss as a child can have on individuals in adult life and the impact of immigration cases on the mental health of young people. She found that the 3 children conveyed resilience and identified several factors that make it less likely that children will develop mental health problems including a family environment without severe discord, family support for education, and wider support network within the community, good housing, a high standard of living, arrange a positive sport and leisure activities and high morale in school. The ISW referred to education becoming an umbrella outside of the family unit that has become a pillar of support for the children. The ISW believed the social networks the children had within the UK had supported and encouraged their mental health as well as the bond they had with their parents. She claimed the children were now westernised and that they would be returning to Pakistan as outsiders. Pakistan could not give the children the opportunities or experiences that they have so far obtained in the UK. The ISW concluded that the children should remain in the UK as the UK has and will continue to serve their best interests.
16. Mr Gajjar relied on his skeleton argument prepared for First-tier Tribunal hearing and provided a copy of **Yaseen v Secretary of State for the Home Department** [2020] EWCA Civ 157. Ms Everett relied upon the decision in **Abbasi (rule 43; para 322(5): accountants' evidence)** [2020] UKUT 00027 (IAC).

Evidence given at the hearing

17. The 1st appellant adopted his witness statement which, in turn, adopted the contents of his completed tax questionnaire. In the tax questionnaire the 1st appellant confirmed that his Self-Assessment tax return for the relevant years were submitted by his accountants, both previous and present. The 1st appellant confirmed that he reviewed, checked and signed his tax returns before they were submitted to HMRC. He needed to correct his tax returns because “there was a clerical mistake”. This was discovered in 2017 when the 1st appellant was arranging his documents. He contacted his accountant and amended his tax return.
18. In his statement the 1st appellant denied intending to deceive HMRC or the Home Office. He claimed to have noticed the errors in his tax returns when he was preparing and arranging his documents 2017. These errors were then confirmed by his new accountants. The 1st appellant stated that he had checked his original tax returns when they were given to him and he recalled, as best he could, that they contained figures that seemed accurate and in line with what he told the Home Office. He stated, “I speculated that the errors were clerical, but I am less inclined to believe this.” The 1st appellant made a voluntary payment in respect of the discrepancies relating to the tax year 2010/11. He had been making payments to HMRC prior to the amendment of his tax returns and had paid some tax in 2012/13 and in 2014/15. The 1st appellant indicated that Pearl Business Solutions was dissolved on 3 May 2016 and that HMRC had accepted his amendments without penalising or accusing him of dishonesty. The 1st appellant claimed to have no experience so far as tax was concerned and could not have geared himself up for what his accountants were doing or to identify their errors. The 1st appellant trusted the accountants to do an accurate job. The 1st appellant indicated that he had no criminal convictions and had received endorsements of his character from friends and family. He claimed that his mental health been suffering since the allegation.
19. In respect of his private life he confirmed that he had been in the UK since June 2007 and that his children and partner joined him in 2015. His oldest child, the 3rd appellant, was in secondary school and was making excellent progress. The 3rd appellant had friends and had developed ties outside of the family unit. The 1st appellant described the 4th and 5th appellants activities at school, including academic and sporting achievements.
20. A brief statement from the 2nd appellant confirmed the 1st appellant statement to be true.
21. The 1st appellant was not asked any questions in examination in chief. In cross-examination he explained that he became aware that his 1st accountants had closed he went to see them at their offices and checked online. The 1st appellant claimed that his previous accountants had not submitted his tax returns

correctly. The 1st appellant was asked whether he requested Mr Khan, his present accountant, to come to the Tribunal and give evidence. The 1st appellant said that Mr Khan just gave him the letter. The 1st appellant had 2 brothers and his father living in Pakistan. When asked whether he expected to return to Pakistan when he 1st entered the UK the 1st appellant onset “no”. The 1st appellant was asked where his family lived in Pakistan. He said he and his family lived in the family house, and that this was where his father still lived. It was a house belonging to his grandfather and the property had now been divided between the family. He claimed that the government schools in Pakistan were not good and that he would be unable to afford private schools. His Family were happy here enjoyed facilities that they would be unable to get in Pakistan. When asked whether he would help his children learn to read and write the national language answered “no”. He explained that they would need to go back to “primary class”. In answer to questions from me the 1st appellant said there were no schools in Pakistan using Punjabi as a language of tuition. He confirmed that he spoke Urdu. He did “not really” have any letters or emails sent between him and his previous accountants. This was because he went to see his previous account at his office and gave him the documents. When asked whether he had a written contract with his previous accountants the 1st appellant said that he may have had one long ago. The 1st appellant confirmed that his previous accountants had submitted his tax returns. The 1st appellant said that, despite the fact that his previous accountants submitted his tax returns, he did not have any documents produced or sent by them, including any asking him to confirm their assessment of his tax liability. There was no re-examination.

22. Both parties made submissions that are a matter of record and which have been fully considered. Mr Gajjar additionally relied on his skeleton argument.

Findings but and conclusions

23. I first consider the issue of dishonesty. The respondent relied on paragraph 322(5) of the Immigration Rules. This provision deals with general grounds of refusal and falls under the heading “Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom should normally be refused.” It is not therefore mandatory ground of refusal. Paragraph 322(5) reads,

(5) the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his conduct (including convictions which do not fall within paragraph 322(1C), character or associations or the fact that he represents a threat to national security

24. The burden of proving that the appellant was dishonest in his conduct under paragraph 322(5) rests on the respondent, and the standard is the balance of probabilities. There is an initial evidential burden upon the respondent to produce evidence capable of supporting a prima facie case of dishonesty. If this

evidential burden is discharged the 1st appellant is required to provide an explanation that meets a minimum or basic level of plausibility, following which the burden switches back to the respondent to answer that evidence. The legal burden rests at all times with the respondent.

25. In his decision promulgated on 9 September 2014 judge Youngerwood accepted that the 1st appellant earned £53,339.23 for the period 16 September 2012 to 15 September 2013. I was not invited by Ms Everett to go behind this finding and I see no reason to do so. I therefore accept the 1st appellant's income during that period as disclosed to the Home Office. Nor is there any strong basis from me to dispute the 1st appellant's claimed income for the period 5 December 2010 to 29 March 2011.
26. In his 2011 application for FLR the 1st appellant claimed to have received an income of £52,100 from his self-employment for the period 5 December 2010 to 29 March 2011. The income he initially declared to HMRC for the same period of time was £28,651. The difference between the two figures was £30,122. This is a significant figure.
27. In his 2013 application for FLR the 1st appellant claimed a self-employment income of £53,339.23 for the period 16 September 2012 to 15 September 2013. The self-employed income he initially declared to HMRC for the tax year 2012/2013 was £12,500, and the self-employed income he initially declared for the tax year 2013/2014 was £7,915, making a total income over the two tax years of £20,415. There is a significant difference of £32,924.
28. The amendments made by the 1st appellant to his tax returned occurred just 2 months prior to his ILR application. In his tax questionnaire the 1st appellant claimed the discrepancies were caused by a 'clerical mistake' but no further information was provided and there was no explanation as to how the mistake could have arisen. In the same questionnaire he confirmed that he reviewed, signed and checked his tax returns. I am satisfied, based on the sizable discrepancies between the figures disclosed to the Home Office and those initially disclosed to HMRC, the timing of the amendments, the fact that the 1st appellant stood to gain financial advantage by under-declaring his income to HMRC, and his claim to have checked the tax returns before they were submitted by his previous accounts, that the respondent had discharged the evidential burden.
29. I now consider whether the 1st appellant has provided an explanation that meets a minimum or basic level of plausibility. He claimed to have no tax experience and to have trusted his previous accountants to have properly assessed his tax liability, and he recalled that the figures when he checked his returns seemed accurate.

30. Whilst I am prepared to accept that the 1st appellant has little knowledge of the tax system his educational achievements indicate that he is nevertheless an intelligent man. An individual does not require detailed knowledge of the tax system to know that tax must be paid on their income, or to be aware of what their income is over a period of time, or to appreciate the importance of lodging accurate tax returns. This is particularly so when that individual, such as the 1st appellant, had to inform the Home Office of their income over the same period of time for the purpose of applications for further leave. A person's knowledge of their income is an important element in their lives. It is therefore extremely difficult to see how the 1st appellant could have honestly reviewed, checked and signed off the tax returns submitted by his previous accountants for the year 2010/2011 without being aware of the very significant discrepancy with the income he disclosed to the Home Office in his 2011 application. The same is true in respect of the 2013 application. There is no suggestion that he was rushed when he reviewed the tax returns or that there was any other reason why he would have been unable to give the returns his full attention. This tends to undermine the 1st appellant's claim that his under-reported income declared to HMRC was as a result of a mistake or carelessness on his part.
31. The tax questionnaire completed by the 1st appellant suggests that it was he who discovered the "clerical error" when he was arranging his documents. On discovery of this error he contacted his new accountants and amended his previous tax returns. This is confirmed in the 1st appellant statement at 8.3 where he claimed he noticed the errors when he was preparing his documents and that these errors were "confirmed" by his new accountants. If the 1st appellant himself discovered the inconsistencies in his initial tax returns in 2017, it is unclear why he did not identify them when he reviewed, checked and signed them when they were initially submitted. His claim that they "seemed accurate" and in line with what he told the Home Office lacks plausibility in the context of the size of the discrepancies and the fact that he would have had awareness of his income for the relevant period for the purposes of his FLR applications. The 1st appellant did not explain what caused him to become aware of the errors or why he only became aware in 2017.
32. I accept that Pool Business Solutions Co Ltd dissolved as a company on 3 May 2016. The dissolution of the company does not however adequately explain why the 1st appellant was unable to produce to the Upper Tribunal any documentary evidence, including correspondence, income tax calculations and accounts prepared by Pearl Business Solutions. I have considered the 1st appellant's explanation that he met his accountants at their place of business, and it was for this reason that he did not have any relevant documentation. I do not find this explanation credible. It is highly unlikely that the 1st appellant was not provided with paper copies of his previous accountant's tax calculations and assessment, and it is inherently improbable that the previous accountants would have submitted tax returns on behalf of the 1st appellant without obtaining written confirmation that he had considered and confirmed the details of the tax

returns. I do not accept the appellant's claim that there was no correspondence and no other documentation, either in paper form or email, relating to his involvement with Pearl Business Solutions. It is not credible that there would be no terms of service or other contract details between the appellant and his previous accountants. Nor is it credible that the appellant would not have retained records relating to his instruction of his previous accountants or the information requested by them or the information he provided to them given the importance of declaring accurate tax returns and the consequences for failing to do so.

33. I am not assisted by the letter from Sarmad & Co dated 24 July 2019. The brief letter confirms that the accountancy firm reviewed the 1st appellant's (self-assessment) tax returns in June 2017 and that "some statistical errors in his submitted tax returns" were found. No further details were provided as to the nature of these "statistical errors", how they were discovered, or how they were likely to have arisen. No further evidence was provided by Sarmad & Co and no-one from the accountancy firm attended the hearing to give evidence on the appellants' behalf. The author of the letter, Mr Sarmand Khan, asserted his confidence that the inaccuracy in the 1st appellant's tax returns was "a genuine error" but no explanation was provided in support of this assertion.
34. In determining the 1st appellant's 'innocent' explanation I take full account of the Disclosure & Barring Service Enhanced Certificates relating to the 1st appellant confirming that he has no criminal convictions, cautions, reprimands or warnings, and the character reference from Mohammed Basit Azeem, Mirza Tariq Manzoor, Gull Khan and Nigel and Susan Simon. I accept that these individuals consider the 1st appellant to be an honest person. They did not however attend the hearing and their evidence could not be tested. Nor was it clear from the letters that they were fully aware of the particular basis upon which the appellant's honesty has been impugned.
35. I have also considered the medical documentation relating to the 1st appellant indicating that he is stressed and the impact of the refusal of ILR on his health. This is not however probative of the 1st appellant's honesty but of the consequences of the respondent's decision. I accept that the 1st appellant has discharged his tax obligations in relation to other tax years. This does not however mean that he was unaware of the underreporting of his income in relation to the years in question. The appellant stood to gain a significant financial advantage from the under-reporting of his income to HMRC.
36. Having carefully considered the explanation advanced by the 1st appellant I am not satisfied that it meets the minimum or basic level of plausibility. Having regard to the significant discrepancies in the income declared to the Home Office and that initially declared to HMRC, the timing of the amendments, the absence of any documentary or email evidence at all relating to the 1st appellant's interaction with Pearl Business Solutions, and the absence of any

adequate explanation as to how the 'errors' in the initial tax returns could have arisen or why they were not identified earlier by the 1st appellant, I am persuaded that the respondent has discharged the legal burden of proving that the 1st appellant acted in a dishonest manner rather than merely being careless or making a mistake, and that his presence in the UK is undesirable.

37. Paragraph 322(5) calls for a balancing exercise (**Balajigari**, at [38]). Mr Gajjar submitted that the assessment of the balancing exercise is likely to take into account factors also relevant to the assessment under Article 8, with particular reference to the position of the children. I agree. It is therefore appropriate to make factual findings relating to the children, including their best interests, as this will be relevant both to the balancing exercise under paragraph 322(5) and under Article 8.
38. In determining the best interests of the 3rd to 5th appellants, pursuant to s.55 of the Borders, Citizenship and Immigration Act 2009, I have applied the guidance given in **EV (Philippines) & Ors v Secretary of State for the Home Department** [2014] EWCA Civ 874 (at [35]), and **Azimi-Moayed and others (decisions affecting children; onward appeals)** [2013] UKUT 00197.
39. The children entered the UK in October 2015. They have therefore resided in the UK for less than 4 ½ years. Both their parents are Pakistani nationals who lived in Pakistan all their lives and would be able to assist the children in readapting to life in that country. I accept that all three children are attending school and that they are doing well academically. I take full account of the fact that the 3rd appellant has commenced studying for her GCSEs. I accept that the children have established friendships with other children and have developed relationships with their teachers. There is little evidence however that any of the friendships developed by the children outside of the family unit have any elements of reliance or dependency. There is nothing to indicate that the children have any particular health or welfare needs or that they are not otherwise fit and healthy. Whilst I acknowledge the 1st appellant's health concerns as expressed by him in his statement and the letter from his GP dated 19 July 2019 and the ISW report, there is little if any evidence that he and his spouse cannot ensure the welfare and safety of their children. The 1st appellant has his father and two brothers living in Pakistan who could provide some additional support. Having regard to the ISW report I accept that the children wish to remain in the UK and that they have anxiety about returning to Pakistan because of the climate, fears for their safety, because this would mean leaving their friends and because the quality of their education and their environment would be inferior in Pakistan. The ISW claimed the children were now westernised and would be returning to Pakistan as outsiders. They have resided in the UK for less than 4 ½ years and are, with respect to the ISW, unlikely to have lost knowledge of their Pakistani heritage and culture in this relatively short period of time.

40. The ISW relied upon the information provided to her by the 1st appellant in respect of the educational difficulties his children would encounter if returned to Pakistan, particularly in respect of the issues arising from the children's proficiency in Urdu. There is nothing to suggest that the ISW herself has any personal knowledge or expertise in the Pakistani educational system, particularly in the Punjabi region. Her assessment in respect of the impact on the children of being returned to Pakistan is therefore based on her acceptance of the accuracy of the information provided by the 1st appellant and her brief reference to a 'Humanium' report that was not provided to the Tribunal. There was however no independent evidence provided to the Tribunal confirming the 1st appellant's claims regarding Urdu as the only language of tuition or his claim that the 3rd appellant would have to be put back several school years to enable her to reach a sufficient level of proficiency in the language. There was no consideration by the ISW as to the support the 1st appellant would be able to provide to his children (he is able to speak Urdu and his claim that he would not assist his daughter in learning the language displayed unreasonable intransigence on his part that was inconsistent with his clear devotion and support for his children) or whether there were additional classes or other transitional arrangements that could be implemented to assist the children.
41. I find, having regard to the aforementioned factors and the factors identified in **EV (Philippines)**, that it is in the best interests of the children to remain in the UK, but only just. This assessment has been finely balanced, particularly given the short time that the children have resided in the UK, their familiarity with Pakistan and the support they would receive from their immediate family unit if returned. In reaching this conclusion I place particular weight on the fact that the 3rd appellant is now 15 years old and that, although she has resided in the UK for a relatively short period of time, she is commencing study of her GCSEs, and that all the children wish, quite naturally, to remain in a country where they have developed friendships and where they enjoy a higher standard of living and greater scope in education. The best interests of the children are a primary consideration, but they are not a paramount consideration.
42. In undertaking the balancing exercise under paragraph 322(5) I take account of my finding that it is in the best interests of the children to remain in the UK, that this is a primary consideration, that the 1st appellant is now making good his outstanding tax liability, that he has no criminal convictions or cautions, the character references provided in support of the 1st appellant, that he has lived in the UK lawfully for 12 years, and that he has otherwise paid tax on his earnings. Against these factors I consider the 1st appellant's dishonesty. The degree of the 1st appellant's under-reporting, covering a period of 3 separate tax years, was significant. The 1st appellant only sought to amend his tax returns and make good his tax obligations a short time before he made his ILR application. This suggests that, but for his need to apply for ILR, he would not have disclosed his underreporting.

43. I remind myself that children must not be blamed for matters for which they are not responsible, such as a parent's conduct (**Zoumbas** [2013] 1 WLR 3690). Whilst it is in the best interest of the children to remain in the UK, they have resided in the UK for less than 4 ½ years and would still be familiar with the culture and way of life in Pakistan, including, certainly in respect of the 3rd and 4th appellants, the school system. Although the 3rd appellant has started studying for her GCSEs there was inadequate evidence that she would be unable to take an equivalent exam in Pakistan or that she would be so disadvantaged by her lack of proficiency in Urdu that she would be put back several school years, or that suitable extra classes or other arrangements could not be put in place to ease her transition. Whilst her current studies are clearly a relevant factor, the evidence from her school and the ISW suggests that she and her siblings are intelligent, conscientious, hardworking and resilient, as demonstrated by their ability to cope with a new culture and school system when they first arrived here. There was no evidence that the children were suffering from any physical or mental health problems. Whilst all the children will feel sad that they must leave their friends, there is no reason why they could not continue to remain in contact through remote forms of communication or make new friends in Pakistan. Having balanced all these factors, I find that the balancing exercise falls against the exercise of discretion in the 1st appellant's favour under paragraph 322(5).
44. I now consider Article 8. The 1st appellant cannot meet the requirements for ILR given my assessment above in respect of paragraph 322(5). I note that the 1st appellant was also refused under paragraph 276B(ii) of the Immigration Rules and, following **Yaseen**, a refusal under this paragraph does not require dishonesty to be proved, but that a balancing exercise must still be undertaken. My factual findings could not however result in a different conclusion under paragraph 276B(ii). There was no suggestion from Mr Gajjar, either in his skeleton argument or his oral submissions, that the 1st appellant could meet the requirements of paragraph 276ADE. The 1st appellant has not resided in the UK for 20 years and, in light of my factual findings in respect of paragraph 322(5), he fell afoul of the requirements of S-LTR.1.6. Nor was it suggested that there were very significant obstacles to the 1st appellant's integration in Pakistan. He lived in the country for most of his life, speaks Urdu and Bengali, and is familiar with the culture and the way of life. His educational qualifications suggest that he could find employment and he and his family could be supported by his father and siblings until he obtained employment.
45. There was scant information provided to me concerning the 2nd appellant. There was no suggestion that she could meet the requirements of the immigration rules giving expression to Article 8 rights, either in respect of her private life (under paragraph 276ADE) or in respect of her family life (Appendix FM). No member of the immediate family unit are settled in the UK and none are British citizens or present in the UK with refugee leave or humanitarian protection. The family unit would be returning together. None of the children have lived in the

UK for at least 7 years. They could not therefore meet the requirements of paragraph 276ADE(iv) of the Immigration Rules.

46. I must consider whether, although the appellants cannot meet the other requirements of the Immigration Rules, a refusal to grant them further leave to remain would breach GEN.3.2 of appendix FM as it would result in unjustifiably harsh consequences and therefore be disproportionate under Article 8. In undertaking the proportionality exercise, I must also consider the factors identified in s.117B of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act).
47. I note that the 3rd to 5th appellants cannot meet the definition of 'qualified child' in s.117D(1) of the 2002 Act because they have not lived in the UK for a continuous period of 7 years. Although the assessment of 'reasonableness' in s.117B(6) of the 2002 Act remains a relevant factor in the overall proportionality exercise the 'reasonableness' test, as considered in **KO (Nigeria)** [2018] UKSC 53, which focuses exclusively on the impact on the children, has no applicability. Neither representative demurred from this observation at the hearing.
48. I nevertheless consider whether it would be reasonable for the children, and in particular the 3rd appellant, to leave the UK. Much of this assessment has already been undertaken above, when I considered the balancing exercise under paragraph 322(5). I find, for the reasons given above, that the best interests of the children are to remain in the UK, and I remind myself that the best interests assessment focuses exclusively on the children and does not take into account the conduct of the parents.
49. Without unnecessarily repeating my earlier assessment, I find, whilst it is in the best interests of the children to remain in the UK, and that this is a primary consideration, it would nevertheless be reasonable to expect them to return to Pakistan. In reaching this conclusion I take into account that the children have only lived in the UK for a relatively short period of time and that they are unlikely to have lost their knowledge of the culture and way of life in Pakistan, that their parents are both Pakistani nationals who have no right to remain in the UK and who would be able to assist their children in re-integrating (there is no suggestion that the children have anything other than strong and loving and supportive relationships with their parents, a point emphasised by the ISW), and that the family unit as a whole are likely to receive at least some initial support from the 1st appellant's family and possibly from the 2nd appellant's family who also live in Pakistan. Whilst the 1st appellant informed the ISW that he had sold the family home in Pakistan he gave evidence at the Tribunal that his family still own the home in which he lived prior to coming to the UK and in which his father continues to reside, although it has been divided up between the family. The children are not of an age where they have established significant relationships outside the immediate family unit, although I accept

the evidence given to the ISW that the children do have good friendships formed at school at through cricket clubs.

50. I have again taken account of the stage of the 3rd appellant's education. I note that she has commenced her first year of GCSE study and that this is an important examination for her. As already indicated, I was not provided with any research undertaken by the 1st appellant in respect of any equivalent examination or transition arrangements that could be applied to her to ensure she was sufficiently proficient in Urdu to participate in the relevant classes, and I rejected the 1st appellant's surprising assertion that he would not help his children in learning Urdu. In light of the above assessment, and having regard to the factors in **EV (Philippines)**, I find it would be reasonable for the children to return to Pakistan, even were I to apply the **KO (Nigeria)** test and discount entirely the other relevant public interest factors.
51. I must nevertheless take account of the public interest factors when undertaking the full proportionality assessment, including the 1st appellant's significant dishonesty. S.117B(1) indicates that the maintenance of effective immigration control is in the public interest. None of the appellants meet the substantive requirements of paragraph 276ADE. I have little evidence relating to the 2nd appellant's proficiency in English, but I am satisfied that the remaining appellants are all proficient in English (s.117B(2)). I am additionally satisfied that the 1st appellant has the capacity to be financially independent (s.117B(3)). These are however neutral factors. None of the appellants have ever been in the UK unlawfully (s.117B(4)). The private lives established by the appellants has occurred when their immigration status was precarious (**Rhuppiah** [2018] UKSC 58; s.117B(5)), although I acknowledge and take into account that in considering this provision in respect of the children, they had no control over their immigration status and that they have always been lawfully present. I again remind myself that a child must not be blamed for matters for which he or she is not responsible, such as a parent's conduct.
52. Whilst I have considerable sympathy for the children, and the 3rd appellant in particular, I am not satisfied, having regard to the balancing exercise undertaken above, that the refusal of leave to remain would result in unjustifiably harsh consequences. Although the 3rd appellant may encounter some difficulty in becoming proficient in Urdu, she is a bright child who will have the support of her family in learning the language. I have not been provided with adequate evidence that appropriate arrangements for her transition to the Pakistani school system could not be made. Whilst all the children are likely to enjoy a better quality of education in the UK, this must be balanced against their relatively short residence here, their family connections in Pakistan, their knowledge of the country and culture, and the real world situation that their parents are Pakistani citizens with no right to remain in the UK. I consequently find that the decisions under appeal are proportionate under Article 8 and dismiss the appeals.

Notice of Decision

The human rights appeals are dismissed.

D. Blum

Signed
Upper Tribunal Judge Blum

27 February 2020

Date