Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/00443/2011
AA/00447/2011
AA/00446/2011

THE IMMIGRATION ACTS

Heard at North Shields	**Determination Sent**
On 19 August 2013	**On 20 September 2013**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

MUHAMMAD YOUSUF NASIR KHAN
NAUREEN YOUSUF KHAN
MUHAMMAD UMER YOUSUF KHAN

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: In person
For the Respondent: Mrs Rackstraw, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are citizens of Pakistan. The first appellant is the husband of the second appellant and father of the third appellant. The appellants appeal against a decision of the First-tier Tribunal (Judge Buchanan) which had dismissed their appeals against decisions of the respondent dated 21

December 2010 refusing their claims for asylum and making directions for their removal from the United Kingdom. The first and second appellants had first come to the United Kingdom as students.

2. The initial hearing of the appeal took place in North Shields on 3 August 2011. Following that hearing I set aside the determination of the First-tier Tribunal and made directions for a resumed hearing. Unfortunately, there has been a very considerable delay between the initial and resumed hearings in this appeal. A period of over two years has elapsed during which the first and second appellant have had a further child (Moosa) who was born on 20 February 2012.

3. Notwithstanding the directions which I made for further evidence to be adduced, the first appellant told me that he understood the statement on the face of the notice of hearing ("*the Upper Tribunal will not consider evidence which was not before the First-tier Tribunal unless the Upper Tribunal has specifically decided to admit that evidence*") as meaning that he was unable to adduce new evidence to the Upper Tribunal. It is not clear to me why the first appellant (who is an intelligent educated and resourceful individual) should have failed to understand the meaning of paragraph 2(ii) of my directions of 4 August 2011.

4. The first and second appellants gave oral evidence at the hearing on 19 August 2013. They were cross-examined by Mrs Rackstraw, for the respondent. The first appellant explained that he had, since the date of the initial hearing, lost contact with both of his parents in Pakistan. They had fallen out over questions of money and his marriage. Further, the first appellant explained that he had moved away in social terms from the Pakistani community in the North East of England and had moved towards a greater involvement with the wider community. He had been involved in voluntary work (including work for the Mayor's Charity in Hartlepool) and had also become involved in politics (he has been a member of the Labour Party for the last two years and has been encouraged to believe that he could stand for election as a local councillor, if his immigration status were to be regularised). The second appellant has also been involved in charity work and has used her skills as a qualified accountant to help local organisations.

5. I shall deal first with the error of law of the First-tier Tribunal. Granting permission, Judge Chalkley had criticised the lack of detail in the Immigration Judge's determination. He noted, in particular, that there was no determination of the Article 8 ECHR appeal in respect of the private lives of the appellants. At [20.1] the Immigration Judge had written:

> "There was no suggestion that the appellant and his spouse and his child would be separated on a return to Pakistan. They are a family unit and the appellant's claim having failed their claims fail too. There would be no interference with family life or indeed private life such as to give rise to a potential breach of Article 8 of the ECHR by removal of the family to Pakistan."

6. At [20.2] he went on to say:

> "In my opinion, had the issues turned on proportionality, I would have determined that the legitimate interest of maintaining an effective immigration control would have rendered removal of the appellants proportionate in this case."

7. I find that those paragraphs are insufficient as a determination of the Article 8 ECHR appeal. What the judge says about family life is cogent but very brief and he has not sought at all to examine the interference to the private lives of the appellants which might be caused by their removal. The first appellant had entered the United Kingdom in May 2004, nearly seven years before the First-tier Tribunal hearing; that fact alone should have indicated to the judge that the first appellant had developed some degree of private life in this country. I find that the judge should have considered the private lives of the appellants or, at the very least, have given an explanation as to why he found that any interference which would be caused to those private lives would not be sufficiently grave as to engage Article 8 ECHR.

8. I consider that Judge Chalkley believed that the asylum/Article 3 ECHR determination was not arguably open to challenge, although I accept that the grant of perm is not entirely clear on that matter. The First-tier Tribunal judge has given a number of detailed credibility findings (in particular, from paragraphs 13 onwards) which, in my opinion, fully supported and justified his dismissal of the appeal on asylum and Article 3 ECHR grounds. I can find no error of law in that part of the determination. The resumed hearing in the Upper Tribunal had been concerned only with the appeal on Article 8 ECHR grounds.

9. In her submissions, Mrs Rackstraw referred to the negative credibility findings made by the Immigration Judge. Those findings should, in her submission, be given weight in the Tribunal's assessment of the new evidence relating to the private lives of the first and second appellants, although she did not go so far as to say that I should reject the account of an increased involvement in the local community which those appellants gave to me at the resumed hearing.

10. I find that the appellants could and should have supported their own evidence with evidence from those members of their local community in Hartlepool with whom they claim now to be so actively involved. I am prepared to accept, however, that both the first and second appellants have been involved to a greater extent than before with their local community. There was certainly little evidence of any such involvement at the time of the first appellant's asylum interview (13 December 2010). In answer to question 18 ("*have you made any other significant relationships in the UK?"*) the first appellant had replied, "*Not really. I have not such a strong circle. I have friends obviously they support a little bit."* The appellants' increased involvement, therefore, seems to have occurred since that date and, from the oral evidence given, would appear to have

gathered pace during the two years since the initial hearing in the Upper Tribunal.

11. I agree with Mrs Rackstraw that the appellants' poor credibility cannot be ignored. Whilst I accept the account of the recent involvement of the appellants in local affairs I find that their lack of credibility as witnesses as identified by the Immigration Judge touches upon the question of motive. I find it likely that the appellants have increased their involvement very largely with a view to impressing this Tribunal with the extent of their new private life ties in Hartlepool. That finding, in turn, leads me to conclude that those private life roots are not as strong or as durable as the appellants would have me believe. But for the existence of these proceedings, I do not believe the appellants would have been involved in the local community in Hartlepool to anything like the same extent. If they are removed to Pakistan, I accept that they will lose those private life ties but, given what I find to be their motivation for creating them in the first place, I do not find that the distress or inconvenience the severing of those ties will cause will make a significant impact upon their private lives.

12. I acknowledge that the third appellant is doing well at school. This is perhaps not surprising given that his parents are themselves intelligent and well-educated individuals. The first appellant told me about his interest in knowledge of information technology. His skills in this field would be easily transferrable to business life in Pakistan. The same is true for the second appellant's qualifications in accountancy. I agree with Mrs Rackstraw that this family will find little, if any difficulty reintegrating into the Pakistan workplace and society and I find that the first appellant, as a resourceful individual, would rapidly find employment with which to support his family.

13. Set against the (relatively modest) interference which would be caused to the appellants by their removal to Pakistan is the public interest concerned with that removal. The first and second appellants came to the United Kingdom as students and I find that they can have had no justifiable expectation of being allowed to remain here indefinitely. They have advanced an asylum claim which has been found to be false. I find that the public interest concerned with the removal of such individuals in the furtherance of immigration control is a strong one. In my opinion, that interest outweighs any inconvenience and disruption which would be caused to the private lives of these appellants as a consequence of their return to Pakistan. Their family life may suffer some dislocation but they will, of course, be removed together. The Article 8 ECHR appeals are dismissed accordingly.

DECISION

These appeals are dismissed.

Signed Date 1 September 2013

Upper Tribunal Judge Clive Lane