Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/30888/2014
IA/30891/2014

THE IMMIGRATION ACTS

Heard at North Shields	**Determination Promulgated**
On 5 March 2015	**On 22 April 2015**
Prepared on 20 March 2015	

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

REHMENA KHAN
HASHIR KHAN
(ANONYMITY DIRECTION NOT MADE)

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Cleghorn, Counsel instructed by M & K Solicitors
For the Respondent: Mr Dewison, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are mother and son. Both are citizens of Afghanistan, although they also have rights of residence in Pakistan. The First Appellant grew up in Pakistan, and she was living in Pakistan when she first met her husband, Mr Habib, a citizen of Afghanistan, who also has a right of residence in

Pakistan. The couple married in Pakistan in 2008, and Mr Habib was able to visit her there and live with her as her husband. He did so on a number of occasions between 2008 and 2013.

2. Mr Habib presently enjoys a grant of DLR in the UK, expiring on 20 November 2016. The Appellants entered the UK as family visitors in December 2013, following a successful appeal to the Tribunal against the refusal of their applications for a visa. It would appear that the entry clearance officer's suspicions as to their motives were entirely justified, for on 13 May 2014 the Appellants applied for a variation of their leave to remain. In the meantime the First Appellant had borne Mr Habib a second child in January 2014. The Appellants' applications were refused on 18 July 2014.

3. The Appellants brought appeals against the immigration decisions of 18 July 2014 and they were heard on 21 October 2014, and dismissed in a Determination promulgated on 31 October 2014 by First Tier Tribunal Judge Mark-Bell. His conclusion, based upon the admissions made to him in evidence, was that there had been a deliberate attempt to circumvent the requirements of the Immigration Rules, and to deceive the ECO, and that the Appellants had always intended to attempt to settle in the UK [16].

4. By a decision of Designated Judge of the First Tier Tribunal Garratt dated 5 January 2015 the First Tier Tribunal granted the Appellants permission to appeal on the basis it was arguable the Judge had erred in his approach to the proposed removal of the Appellants to Afghanistan, and not to Pakistan where they had previously lived.

5. The Respondent filed a Rule 24 response to the grant of permission on 15 January 2015 in which she argued that there was no error of law. The Judge was entitled to note that the Appellants had Pakistani residence cards, and that Pakistan was their country of habitual residence, and that they could therefore move to Pakistan if they wished to do so. Their husband/father had no settled status in the UK (and was not a British citizen as claimed) and could live with them if he chose to do so.

6. Thus the matter comes before me.

<u>The grounds</u>

7. On any view the grounds are not well drafted and have served to obscure the Appellants' case, and true circumstances, rather than to focus upon and seek to identify an arguable error of law.

8. Thus it is now accepted that the husband of the First Appellant, and father of the Second Appellant is not a British citizen as was asserted in the grounds (although not at the hearing before the Judge).

9. Contrary to the complaints made in the grounds it is also now accepted that the Judge made no error in approaching the appeals as he did, on the basis that Mr Habib was a citizen of Afghanistan with a right of residence in Pakistan, and with DLR in the UK expiring in November 2016.

10. The grounds, and indeed the grant of permission, assume that the Respondent has made removal decisions in relation to the Appellants. It is well arguable that the Notices of Immigration Decision issued to the Appellants and dated 18 July 2014 contain no such decision, formally identified in the usual way. The only reference to any decision having been made pursuant to s47 is under the heading of “right of appeal”.

11. Assuming however that removal decisions were made in relation to the Appellants, the Judge was perfectly entitled to look at the position of the Appellants as he did. They are citizens of Afghanistan with a longstanding right of residence in Pakistan, which they have enjoyed for very many years, and which a large number of their extended family continue to enjoy. The evidence points overwhelmingly to Pakistan being the country of habitual residence for the Appellants; even if they have not yet naturalised as citizens of Pakistan. Ms Cleghorn accepts that there was no evidence that would have allowed the Judge to conclude that they had lost the right of residence in Pakistan by the date of the appeal.

12. Accordingly there was no error in the Judge proceeding on the footing that it was at all material times open to the Appellants to return in safety from the UK to Pakistan, as indeed they had undoubtedly declared an intention to do in their original applications for a family visitor visa, and their subsequent appeals to the Tribunal.

13. Even if the Appellants were to continue to refuse to leave the UK voluntarily, as Ms Cleghorn argued upon instructions that they would do, it would be open to the Respondent to remove them either to Afghanistan, or to Pakistan. It would be her election. In either event, Ms Cleghorn accepted that Mr Habib could travel with them in safety, so that there was no reason for either the Respondent or the Judge to assume in the Appellants’ favour that the First Appellant would be returned to Afghanistan as a single mother of infant children, and without male protection.

14. The Appellants conceded before the Judge that they could not make out the requirements of Appendix FM to the Immigration Rules [8], and also accepted that their removal from the UK should be considered in the context of a removal to Pakistan [9]. That was the basis upon which the Judge approached the appeals, and there was in the circumstances of these appeals no arguable error of law in his doing so.

15. It follows that there was no error in the Judge's decision to dismiss the appeals under the Immigration Rules, and his decision to that effect must be confirmed.

16. Now was there any error in the Judge's approach to the Article 8 appeals. The decision to remove the Appellants would not pose an interference in the "family life" they enjoyed together, or with Mr Habib, since they would be removed together and he was free to travel with them. He could live with them full time in Pakistan, or he could revert to the pattern of visits to them that he has made historically, but either way he could do so in safety, and these removals could not be said to be disproportionate in these circumstances.

17. To the extent that it could be argued the removal decisions constituted interference in the "private lives" of the Appellants, Ms Cleghorn realistically accepted that she could find no support for the positions of the Appellants in the decision of the Supreme Court in Patel [2013] UKSC 72, or the guidance to be found in EV (Philippines) [2014] EWCA Civ 874.

18. In short therefore this was a decision which properly took account of all the material facts, properly applied ss117A-D, and the relevant jurisprudence, and discloses no material error of law. The decision on proportionality was one that was well open to the Judge on the findings of fact he made, which were in turn made on the basis of admissions in the course of evidence. The children of this couple have no right, or legitimate expectation, to education at public expense in the UK, and their best interests are plainly served by growing up with their mother who has no right to remain in the UK. To sum up then, the appeals do not rely upon the core concepts of moral and physical integrity. In my judgement the evidence relied upon does not establish that there are any compelling compassionate circumstances that mean the decision to remove the Appellants, leads to an unjustifiably harsh outcome.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 31 October 2014 did not involve the making of

an error of law in the decision to dismiss the appeals and those decisions are accordingly confirmed.

Deputy Upper Tribunal Judge JM Holmes
Dated 20 March 2015