



IAC-FH-NL-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: OA/19738/2013  
OA/19851/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22<sup>nd</sup> July 2015**

**Decision & Reasons Promulgated  
On 4<sup>th</sup> August 2015**

**Before**

**MR JUSTICE KNOWLES  
UPPER TRIBUNAL JUDGE FRANCES**

**Between**

**W U N A  
M F U A  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER - ISLAMABAD**

Respondent

**Representation:**

For the Appellant: Mr E. W. Fripp and Ms A Nizami, counsel (pro bono)  
For the Respondent: Ms A Holmes, Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The central question that came substantively before First-tier Tribunal Judge Bradshaw on 10<sup>th</sup> September 2014 was whether two of the older children of Dr A, at that point aged 23 and 24, were still part of the family unit headed by Dr A and his wife and comprising also a younger child.

2. Dr A has refugee status and his wife and the younger child have joined him in this country. The proceedings concerned, fundamentally, the question whether the two older children are entitled to join them as well. The family were originally resident in Pakistan. They were Ahmadis. Things developed to a point when Dr A was required to flee the country and at that stage in circumstances to which I will return, and the chronology here is not wholly clear, but the position of the two elder children was that they were still studying full-time at colleges, one of medicine, one of computing, in Pakistan. This was an arrangement that saw them attending their place of study but returning home at weekends and during the holidays.
3. In the course of appropriately succinct and at the same time very helpful submissions from Ms Holmes for the Secretary of State, it was emphasised, rightly, that the nub of the matter focuses on the relationships between the parents and the children. The submission made most shortly in reply by Mr Fripp, who appears with Ms Nazami for the two elder children as appellants, was that it was impossible to tell from the reasoning of the Judge how he had dealt with the issue of family life or whether there was still a family unit. That is not to say that of course this was an issue untouched by the reasons. In particular paragraphs 39 and 40 of the reasons address very sensibly the subject of financial support and pose the question whether the ties between the two adult children and their father or mother went beyond the normal ties that you would expect to see between parents on the one hand and adult children on the other hand, meaning there I think adult children in any circumstances and of any age.
4. However, the required treatment of the issue of family life is on the face of it in the present case rather more involved than those paragraphs or indeed the totality of the decision would reveal. It may be that some of the difficulty began when the Judge noted at paragraph 8 of his decision that at the outset of the hearing before him both representatives agreed that it was not necessary for him to hear evidence but that this was described as being on the basis that the representative then appearing for the Secretary of State "was not accepting the position of the appellants [that is the two older children] not living independent lives in terms of the Rules".
5. The documentation, none of which was tested by the hearing of evidence in the case, includes material that suggests that the period of study of the two adult children began respectively in 2010 and 2007. For the period of study beginning in 2007 the term of study was one of four years and thus on the face of it would have come to an end in 2011. That is the year before Dr A had to leave Pakistan and two years before the decision of the Respondent and three years before the decision of the Judge.
6. On examination of the statement of the elder child who was on the course beginning in 2007, it appears that she was unable to continue with her studies in Pakistan - that being due to a threat to her life and from certain

parties in Pakistan. That was a circumstance that was not confined to her. The threat, in one form or another, was also faced by her brother. It is not clear whether by the date of the Respondent's decision she was still a student or was not, and if she was still a student how that extended term of study came about. And, if she was not still a student, then what is also not clear is how this case could be examined successfully by the Judge in the way in which it was originally opened on this hearing before us by Mr Fripp, which was as though it was a case about two adult children based at the parental home but studying away from home and receiving financial and emotional support from their parents and, on that continuing footing, claiming to be part of the family unit at the date of the Respondent's decision.

7. We say a little bit more about the evidence of "oppression" to use the term used in submissions to describe the environment experienced initially by Dr A and now, on the face of their statements, experienced by the two children. The Judge had, amongst other things, this to say in that connection at paragraph 46 of his decision:

"However it does not seem to me that the Appellants have established the claimed difficulties which they may be having in Pakistan are relevant to the issue of an Article 8 claim on the basis of the adult children's relationship which they have with their father and with their mother."

8. The reference to difficulties was, it appears, a reference to paragraph 45 where there is a reference to persecution, but also a cross-reference to paragraph 19 of a skeleton argument, which also contained a cross-reference to witness statements before the Judge. It is possible to argue that the oppression is a separate matter from the central question which is whether there is a continuing family unit or family life embracing the two elder adult children. But it is also possible that this context of oppression is relevant to the central question, not least because of the potential impact in relation to the study arrangements and behind those the support that was or was not being given to the children depending on whether they were or were not studying.
9. In the present case, Upper Tribunal Judge Grubb recorded when giving permission to appeal that it did seem arguable that adequate reasons were not being given as to why the circumstances of oppression faced in Pakistan were not relevant. Interestingly Upper Tribunal Judge Grubb went on to say when giving permission that he had less enthusiasm for the success of that ground because, having read the judgment, the two adult children "had no personal problems as far as I can see". That is revealing not as any criticism of Judge Grubb but as demonstrating the extent to which the reasoning of the judge below, First-tier Tribunal Judge Bradshaw did not disclose that in fact there was evidence of "personal problems" in this context. It most certainly can be said by reference to some of the material we have seen, including the witness statements albeit that they are expressed at a high level of generality (and that too is not helpful in the present case).

10. Fundamentally, the challenge on this appeal has centred, and the reasons for granting permission have centred, across the board on the question whether the Judge gave adequate reasons for the findings he had reached. Fundamentally, we think that the adequacy of the reasons is compromised by the fact that the evidence before him was in no respect subject to any oral questioning. For practical reasons that might have been confined to Dr A but even that did not happen. In addition, the discrepancies between the written materials are not fully resolved and in addition still, as I have said, some of the written materials are at a high level of generality making it even harder to resolve the questions that arise.
11. We do not propose to enter into further of the facts of the case. It does not seem it will be appropriate for us to do so. We feel compelled to treat this case as one that must go back to the First-Tier Tribunal for a re-hearing and we strongly encourage, without prejudice to any areas of objection, the contribution - as far as possible on both sides but particularly on the part of the sponsor and the two older adult children - of greater specificity and clarity about the facts so that the First-tier Tribunal will be able to resolve that facts one way or another and do so transparently so that both sides can know the reason for the outcome.
12. The overall assessment of the present case is that, without any undue criticism, because First-Tier Tribunal Judge Bradshaw was in a difficult situation, the reasons and therefore his determination of the First-tier Tribunal could lead an objective reader who had had sight of the underlying materials to feel that not all of the matters that needed to be addressed had been addressed and not all the conflicts of fact that surround the key issue had been resolved. That is our decision subject to any further observation from the parties.

### **Notice of Decision**

13. Accordingly, we have decided in accordance with paragraph 7.2 of the Practice Statements of 25<sup>th</sup> September 2012 that the decision to dismiss the appeal on human rights grounds should be set aside and the appeal remitted to the First-tier Tribunal for re-hearing.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Mr Justice Knowles

**DIRECTIONS**

- (i) The Tribunal is directed pursuant to section 12(3) of the Tribunals, Courts and Enforcement Act 2007 to reconsider the appeal at a hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Bradshaw.
- (ii) The parties to serve all further documentary material on which they intend to rely not later than 7 days before the date of hearing.
- (iii) The appeal is adjourned to 25<sup>th</sup> August 2015 at Harmondsworth.

Signed

Date

Mr Justice Knowles