



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

Appeal Numbers: AA/00392/2015
AA/00394/2015
AA/00398/2015
AA/00399/2015
AA/00395/2015

THE IMMIGRATION ACTS

**Heard at Newport
On 27 June 2016
Prepared 27 June 2016**

**Decision & Reasons Promulgated
On 29 July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

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(ANONYMITY DIRECTION CONTINUED)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Dieu, Counsel, instructed by Duncan Lewis
For the Respondent: Mr M Diwnycz, Senior Presenting Officer

DECISION AND REASONS

1. The Appellants, nationals of Pakistan, appealed against the Secretary of State's decisions refusing to vary leave to remain and making removal

directions under Section 47 of the Nationality, Immigration and Asylum Act 2002 dated 12 December 2014.

2. Their appeals came before First-tier Tribunal Judge Knowles, who on or about 10 October 2015 promulgated his decision. The principal ground upon which permission to appeal was given by First-tier Tribunal Judge Reid addressed whether or not the judge had properly assessed the best interests of the children the second to fifth Appellants, and whether there was sufficient or adequate reasoning to indicate that Section 55 Borders, Citizenship and Immigration Act 2007 had been addressed.
3. A subsidiary issue, but one of the principal issues at the time of the hearing before the judge, was the extent to which the first Appellant, the mother of the other Appellants had been the victim of domestic violence and whether or not that was properly rejected by the judge. In the circumstances Mr Dieu has sensibly not pursued that as a ground of challenge but has turned principally to the judge's decision [D 80] wherein the assessment of the position on return for the children
4. Mr Dieu rightly reminded me of the considerations identified by the Tribunal in MK (best interests of child) India [2011] UKUT 475 (IAC) which of course iterates upon the decision in ZH (Tanzania) [reference to be added].
5. It is clear that the exercise of considering best interests requires an assessment of the children's position in the context of each child so far as there is any material difference.
6. In making the overall assessment of the best interests of the children it is clear that it too must feature in the assessment of proportionality.

7. The judge [D 80] said as follows, having rejected a claim with reference to the Immigration Rules:

“I am not satisfied that the first Appellant would face any very significant obstacles to her reintegrating into Pakistan, where she has the support of, at least, her siblings. Nor, for similar reasons, do I consider that it would be unreasonable to expect the second, third, fourth and fifth Appellants to leave the UK. In particular, I am not satisfied that their best interests would be severely compromised by returning to their own country where they have extended family members and where, in particular, they may be reunited with their father, of whom, on the evidence, they are clearly fond. While the second Appellant has lived in the UK for some six years, he has also lived in Pakistan for the first four years of his life. The third and fourth Appellants are probably less familiar with life in Pakistan, while the fifth Appellant knows no country but the UK. In my view, however, all the children are old enough to be able to adapt to life in Pakistan without serious harm to their educational and other aspects of their development. I am not satisfied that the Appellants have any further claim under Article 8 on the basis of their private life. To my mind, all the issues relevant to this case are covered by the requirements of paragraph 276ADE. There is no evidence that the first Appellant’s depression is so debilitating as to render her return to Pakistan a violation of her rights under Article 8. Nor am I satisfied that the second, third, fourth and fifth Appellants are particularly vulnerable for health or other reasons. I find no violation of Article 8.”

8. In fairness Mr Dieu has properly drawn my attention to generalised comments made by an independent social worker called on behalf of the first Appellant and the Appellants as a whole who opines as to the implications of return but who perhaps unfortunately strays from

expressing views and into making findings that domestic violence had taken place between the first Appellant and her husband. Secondly she forms a view that it is not in the best interests of the children to return to live in Pakistan. She also notes in general terms the children's wish to remain in the UK and quite obviously where they are in schooling, have friends and therefore have anxieties about relocation and its consequences for them.

9. It is only open to me to interfere with the decision if there are inadequate or insufficient reasons so as to amount to an error of law, see R (Iran) [2005] EWCA Civ 982 and E & R [2004] QB 1044 (CA). Simply because I might have reached a different decision that is not a proper basis to interfere and the fact that I might have expressed myself differently is similarly not a basis of itself to interfere with the judge's decision.
10. It is clear that submissions were made about the children's best interests and for example as noted [D 52] but it seemed to me the principal focus, looking at the judge's decision, was the core claim by the first Appellant of the risk she faced on return and the implications for her of returning to Pakistan. Nevertheless, whilst I agree with Mr Dieu that there are aspects which are not specifically referred to, I find the broad and thorough approach the judge took to the evidence, which was not otherwise addressed in the grounds as representing a superficial or less than informed approach, was sufficient to show that the best interests were considered by the judge. It might be better if the judge had specifically made reference to their individual wishes but of itself I do not find that were this matter to be put before another Tribunal on the same basis any different outcome is likely to have been forthcoming. In those circumstances I do not find that the absence of express reference as claimed is an indicator that there has been a material error of law in the judge's assessment of the best interests of the children.

11. It is more than obvious that in most cases the best interests of the children are going to feature, given the fact-specific basis remaining in the UK in many cases but I find nothing about their presence in the UK that indicated that the judge has failed to consider an aspect of any of the child Appellants' position for the purposes of determining the appeal.

NOTICE OF DECISION

The Original Tribunal made no material error of law. The Original Tribunal's decision stands. The appeal is dismissed.

ANONYMITY ORDER

An anonymity order was previously made and because of the presence of children I am satisfied that it is appropriate that that anonymity order should be continued.

DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

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

Signed

Date 27 July 2016

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT
FEE AWARD

The appeal has failed and therefore no fee award is appropriate.

Signed

Date 27 July 2016

Deputy Upper Tribunal Judge Davey