



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/06693/2016
HU/06700/2016
HU/06705/2016
HU/06708/2016
HU/07779/2016
HU/10629/2016

THE IMMIGRATION ACTS

Heard at Phoenix House, Bradford
On 1st August 2018

Decision & Reasons Promulgated
On 13th August 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

RUBINA KAOUSAR
MUHAMMAD MOHI UD DIN
MD
MK
AHMED MOHU UD DIN
HAMAD MOHI UD DIN
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Jafar (instructed by Mayfair Solicitors)
For the Respondent: Mrs R Petterson (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellants in relation to a decision of Judge R. Handley promulgated on 7th April 2017 in which he dismissed the appeals

2. The Appellants are a mother and her five children, all Pakistani nationals who entered the United Kingdom on 12th May 2011 to join their husband/father who was in the UK as a highly skilled migrant. He had an application for ILR pending when they applied and therefore they were given leave for 10 months until February 2012, that being the period left on his leave. He was in fact then granted ILR and subsequently British nationality. They then made an application for further leave to remain in 2012 which was granted and then another application in February 2016 which was refused. It was the refusal against that application which came before the First-tier Tribunal.
3. At the time they entered the UK the children were aged 2 (MD), 4 (MK), 13 (Muhammad) and 15 (Hamed and Ahmed who are twins). By the time of the hearing before the First-tier Tribunal only MD and MK were minors. Mohammed, Ahmed and Hamed were by this time adults.
4. The Secretary of State, in her decision, found that they could not meet the requirements of Appendix FM or paragraph 276 ADE of the Immigration Rules and did not accept the decision breached their rights as protected by Article 8 of the ECHR.
5. Before Judge Handley, the mother and father gave evidence as did the three adult children and an older sibling, not one of the Appellants.
6. The youngest child, MD has significant health difficulties which was accepted by the Secretary of State.
7. The Judge dismissed the appeals on the basis that the children had had limited contact with their father for a lengthy period of time while he was in the UK and they were in Pakistan. He concluded there were no insurmountable obstacle to the Appellants continuing their family life outside the United Kingdom and he noted the sponsor to be a national of Pakistan.
8. The strongest grounds on which permission to appeal was granted argue that the Judge erred in expressing concerns regarding the nature and strength of the relationship between the first Appellant and her sponsoring husband when their relationship was accepted by the Secretary of State; erred in failing to take into consideration that the sponsoring husband is in fact a British citizen, of which no mention is made in the Decision and Reason and that he swept aside the various obstacles for the Appellants on removal, not least of which were the medical difficulties faced by the youngest child.
9. When the matter first came before me in January at Bradford I found the Judge had materially erred in his consideration of the human rights appeal as claimed in the grounds set out above. He had given inadequate consideration to the best interests of the children, he had given no consideration at all to the fact that the sponsoring

husband/father was a British citizen and had not adequately considered the situation that would face the family if they were returned to Pakistan.

10. I therefore set aside the Decision and Reasons and adjourned the matter for a resumed hearing before me in the Upper Tribunal.
11. The matter then came before me in February 2018 when I heard oral evidence. Due to a lack of time in February I heard submissions in Manchester on 1st August 2018.
12. In addition to the oral evidence I had also bundles from the Secretary of State and the Appellants' representatives.
13. Although all the children were minors when they entered the United Kingdom, as at today they are aged 10, 12, 20, 22 and 22. The mother confirmed that she married the Sponsor in Pakistan and that they have six children together, the five Appellants plus one older child. Her husband had entered the UK as a minister of religion and was granted ILR after five years residency in 2010. He then assisted them in making their application to join him. As explained above they were only given a short period of leave initially because his application was then outstanding before the Home Office. However, their leave was then extended until it was finally granted until January 2016 when they made the application, the subject of the appeals.
14. So far as the first Appellant, the mother, is concerned she does not work and is a full-time housewife and mother. Her youngest child, MD, is severely disabled. He has cerebral palsy, epilepsy and difficulties with his eyes and his hearing. She is his full-time carer and he requires constant 24-hour care to meet all of his physical needs. He is unable to get out of bed by himself and unable to get himself in or out of his mobility chair himself. He needs assistance for his personal needs and although he can feed himself if the food is dry, if it is not he requires assistance. He is very close to his siblings and attends a special school in the UK which provides transport. When in Pakistan, although his condition had been diagnosed, the treatment was wholly inadequate. His epilepsy was out of control and he was having regular fits. His sight was worsening and he was deaf. Although his treating doctor ran a school this was some three hours journey from the family home, being in Lahore, and he attended only one day a week.
15. Since the family has been in the UK MD has received specialist medical care, the consequence being that his sight has been treated and, with the aid of glasses he can see, albeit not perfectly. He has hearing aids. His epilepsy is under control. He is progressing well at school where he is very happy.
16. The second youngest child also attend school in the UK.
17. The next child, Mohammed, who is aged 20, is in his second year at the University of Bradford where he is studying for a law degree. His fees as an overseas student have been met by his father, the Sponsor.

18. The older two boys, the twins, although older than Mohammed, are attending college and have taken A-levels this summer. Both hope to go to university. The reason they are behind Mohammed educationally is because they had catching up to do when they came to the UK.
19. Save for child benefit for the two younger children, to which the sponsoring father is entitled as a British citizen, the family have claimed no benefits whatsoever. In particular, they have made no claim for any benefits in relation to MD.
20. The eldest child, a daughter, not the subject of this appeal, does not work and assists her mother in the home.
21. Since arriving in the UK in 2011 the family have always lived in the same house together. Mohammed, although at University lives at home.
22. The father is employed by a mosque and is paid £15,000 per annum. Additionally, he works on a self-employed basis lecturing and teaching, which I was told secured him an additional £18,000 per annum.
23. All of the children are fluent in English.
24. In Pakistan the family lived in a rented house. The family had owned a property but that was sold when the Sponsor's parents, who lived in it, passed away. Both the Sponsor and his wife have siblings but they are living in various disparate areas of Pakistan or abroad.
25. The Appellant's case is that it would be a disproportionate breach of their right to private and family life if they were to be removed to Pakistan. They also say it would be against the best interests of the two minor children to be removed to Pakistan.
26. In the refusal the Secretary of State accepted that the relationship between the husband and wife was genuine and subsisting.
27. In terms of the requirements of Appendix FM as a partner or children Mrs Petterson's case was that they did not meet the requirements of the Rules; in particular they did not meet the financial requirements. They had not produced the specified evidence with the application and she argued that the evidence before me in terms of the self-employed earnings was inadequate to support the claimed level of income. She accepted that the Sponsor's earnings from the mosque were as claimed.
28. This is a human rights claim which I have to consider first of all through the lens of the Immigration Rules. It is accepted however that the Appellants cannot meet the requirements of the Immigration Rules.

29. I then need to consider Article 8 under the ECHR. It was not argued by Mrs Petterson that Article 8 was not engaged. It was accepted that this case is in truth about proportionality.
30. Mrs Petterson conceded that in so far as the first Appellant, the wife and the two minor children were concerned, they were entitled to succeed on Article 8 grounds. She conceded this on the basis of MD's medical situation and the fact that both of them had been in the UK for more than seven years. I am grateful to her for that concession. It is clearly appropriate on the evidence. MD's medical conditions were confirmed by documents from those treating him. There was also a letter from the doctor who had treated him in Pakistan confirming that the medication that he currently receives is not available there. That letter also confirmed difficulties in his accessing education in Pakistan in addition to the stigma of being disabled.
31. It is of course in the best interests of those two children to remain in the United Kingdom with both of their parents. The first Appellant is of course their main carer and especially in relation to MD providing as she does the 24-hour personal care necessary for him. In light of Lord Justice Elias' comments at paragraph 49 of MA (Pakistan) [2016] EWCA Civ 705 and the Secretary of State's own policy in relation to children who have been in the UK for more than seven years it is clearly appropriate that Mrs Petterson conceded that they are entitled to succeed.
32. Mrs Petterson however argued that, in relation to the three adult children, it would not be disproportionate for them to return to Pakistan and make applications, if they wish to do so, for entry as students. She argued they could be supported in Pakistan by their father as they are in the UK. She argued that the evidence did not indicate that this family was financially independent.
33. Mrs Petterson accepted the Sponsor's income from the mosque; however, she did not accept the claimed income from self-employment. She noted that there was a letter from his accountants but this did not indicate how they were qualified. There was nothing from HMRC indicating his earnings or tax paid. There were no bank statements to confirm his income.
34. I agree with Mrs Petterson that the evidence concerning the Sponsor's self-employed income is scant. However, I have been given no reason to doubt the family's claim that they have not claimed any benefits, even though they would be entitled to some and that they have been entirely self-sufficient. I have been given no reason to doubt the claim that Mohammed has paid university tuition fees as an overseas student and that these have been met in full by his father.
35. I have been provided with a schedule of the family's outgoings by Mr Jafar prepared for the hearing which suggests that the monthly net amount after deduction of mortgage, food, council tax, electricity, gas, telephone and Internet is £1,227. Unfortunately, evidence to support those figures is absent.

36. In their oral evidence all three adult children stressed how close the family unit is and how close they are to their brother MD. I have no reason to doubt that evidence and indeed the whole family was present in court, including MD and the closeness of the family was apparent.
37. The particular dynamics of this family lead me to find that family life does exist between the adult children and their parents and their younger siblings. Mrs Petterson did not seek to argue otherwise
38. The question that I have to decide therefore is whether, Article 8 having been engaged, whether it would be proportionate to remove the three adult children from the UK when their parents and two younger siblings remain.
39. I am required to consider the best interests of any children affected by this decision. MD and MK's best interests have been established as being to remain in the United Kingdom with their parents as accepted by Mrs Petterson. Given the obvious closeness of this family as a whole I also find that it is in their best interests for their three older siblings to remain also. Their best interests, are of course not determinative of their siblings appeals but they are a factor to be taken into account.
40. When considering the balancing exercise which is an assessment of proportionality I am required by section 117 of the Immigration and Asylum Act 2002 to take into account the matters contained in section 117B.
41. Section 117B states:-

117B Article 8: public interest considerations applicable in all cases:

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –
 - (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –
 - (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (4) Little weight should be given to –

(a) a private life, or

(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

42. Section 117B (1) tells me that the maintenance of immigration control is in the public interest.
43. The three adult Appellants speak fluent English.
44. In terms of section 117B (3) concerning financial independence, I note that they do not meet the requirements of the Rules in terms of the amount required under Appendix FM for this family, which I am told by Mrs Petterson would be £33,000 per annum. They had not supplied the specified evidence to the Secretary of State or to me. I cannot be satisfied therefore that they meet requirements of the Rules in this regard. However, the question posed by section 117B (3) is whether they are financially independent. This family has shown that in the seven years it has been in the UK, it is financially independent because there has been no recourse to public funds. I also take note of the fact that Mohammed is studying law and the other two boys intend to go to university. It is likely therefore that they will be in a position to earn reasonable incomes in the United Kingdom to boost the family finances in future. I therefore find that they are financially independent and not a burden on taxpayers.
45. So far as section 117B (4) is concerned the Appellants have been in the United Kingdom lawfully at all times. So much was accepted by Mrs Petterson. There was a brief period when, due to errors by their representatives and the Home Office there was a gap in their leave. However the Home Office waived this in dealing with the application and I therefore do not find that they have at any time been in the UK unlawfully. Mrs Petterson accepted that they had had leave at all times.
46. So far as section 117B (5) is concerned little weight should be given to a private life established when immigration status is precarious. Case law, in particular, AM (section 117B) Malawi [2015] UKUT 0260 states that any form of limited leave is precarious. However, balanced against that, in this case it is of note that the family relocated to the UK at a time when all of the children were minors with a view to

settling with their husband/father. Their lives in Pakistan were closed and it was clearly in their minds that their future was in the UK. That of course would have been dependent upon their meeting the immigration rules.

47. When the family first came to the UK in 2011, all five children were minors. Mohammed then spent five years as a minor and Hamed and Ahmed three. It is inevitable that during that time they would have established a private life and given that they were minors at that time it would be wrong to criticise that fact. They cannot be expected, as minors, not to establish a private life.
48. Moving to section 117B (6) this of course does not apply where the Appellants, as here are adults.
49. The matters contained in section 117B, whilst they have to be taken into account, are not an exhaustive list and other matters can be taken into account.
50. Mrs Petterson confirmed, when I asked, that if a family, such as this one came to the United Kingdom with minor children with a view to settlement with a spouse/father and were given the initial period of leave, then if by the time they sought to convert that initial period of leave to indefinite leave to remain, some of those children were adults, provided they met the financial requirements of the Rules even the adult children would be given leave. The point would not be taken against them that they were now adults.
51. I recognise of course that in this case the requirements of Appendix FM to the Rules otherwise have not been met. However, I have found that the family is financially independent. There is the potential for a real contribution by these three Appellants to the UK. They are clearly very much still a part of this family and dependent upon their father. They are clearly very important to their younger siblings, particularly MD. They came to the UK as children expecting to remain. No member of this family has ever been in the UK unlawfully nor has any member of this family committed any offences. They have no ties or support in Pakistan, the family's life having transferred to the UK.
52. I also consider whether they meet the requirements of paragraph 276ADE of the Rules. Being over the age of 18 they would need to establish insurmountable obstacles to integrating in Pakistan. They have support in the UK and will have no direct support in Pakistan. They will have to establish themselves with accommodation and employment there. They will be apart from their close family for the first time in their lives. In relation to Muhammad he would be obliged to abandon a university degree that he has already spent two years studying and that his father has spent a considerable amount of money funding. Those matters taken together render unduly harsh consequences amounting to insurmountable obstacles such that they do meet the requirements of paragraph 276ADE.

53. Even if I am wrong about paragraph 276ADE, the reasoning adds to the assessment of proportionality under Article 8. In my view it would be wholly wrong when this family's ties to Pakistan have been cut completely, to remove three people, purely on the basis that they are now adults and separate them from their close family members upon whom they are dependent in the UK. I find that the best interests of MD and the other factors I have listed outweigh the public interest in the removal of the three adult children in this case.
54. The facts of this case are unusual and it is on the basis of the very particular facts of this case that I have found as I have, namely that to remove any of these Appellant's would be a disproportionate interference with their rights as protected by Article 8 and in relation to the three adult children it would also be a disproportionate interference with the rights of their parents and younger siblings.

Notice of Decision

Having found a material error of law in the decision of the first-tier Tribunal and having set that decision aside, in re-deciding the appeal against the Secretary of State's decision the appeals are all allowed on human rights grounds.

There having been no application for an anonymity direction and the First-tier Tribunal not having made one, I see no justification for directing anonymity and do not do so.

Although I have allowed the appeal and therefore it is possible to make a fee award, I do not do so as it is only on the basis of the oral evidence and documents provided in the appeal together with the passage of time which is led to the appeal not being allowed.

Signed

Date 1st August 2018

Upper Tribunal Judge Martin