Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/12822/2016
HU/12070/2016
HU/14149/2016
HU/14176/2016
HU/14158/2016

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 24 October 2018	**On 27 November 2018**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

MUHAMMAD SALEEM-UR REHMAN
MISS ONEZA SALEEM
MISS FILZA SALEEM
MUHAMMAD BILAL SALEEM
MUHAMMAD ALI SALEEM
(No anonymity orders made)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Coleman of Counsel
For the Respondent: Mr Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants were born on 8 October 1962, 8 May 1995, 14 January 1997, 13 November 1997 and 19 February 1999. They are all citizens of Pakistan. The first appellant is the father of the other appellants.

2. The immigration history, in brief, is that the first appellant (Muhammad Saleem-Ur Rehman) and his wife came with a student and dependent wife visa in 2008. His children came as dependents at around the same time. Sadly, his wife died in 2010. He subsequently had leave as a Tier 1 and then a Tier 2 Migrant until April 2017. Applications were made on behalf of the family for further leave on various dates between December 2015 and February 2016. The applications were refused on various dates between 25 April and 27 May 2016. The respondent considered that the appellants did not meet the requirements of Appendix FM or paragraph 276ADE and that there were no exceptional circumstances outside the Rules to justify a leave under Article 8.

3. They appealed.

First tier hearing

4. Following a hearing at Hatton Cross on 18 October 2017 Judge of the First-tier Tribunal Easterman, who heard evidence from all the appellants, dismissed the appeals.

5. His findings are at paragraph [79]ff. In summary, the appellants do not meet the requirements of Appendix FM, in that regard the youngest child (Muhammad Ali Saleem) although under 18 years on application was now an adult.

6. Further, the family would not be split up by return to Pakistan thus there would not be interference with family life. There was no evidence of a close relationship with other family members in the UK.

7. The FtT Judge went on to consider whether there would be very significant obstacles (paragraph 276ADE(1)(vi)) to reintegration to Pakistan and found there would not. The father has an army pension; they have relations in Pakistan who could help; the children's grandfather in the UK could give financial help as necessary. The children, who spent their early years in Pakistan would be able to speak Urdu and continue their lives in Pakistan. It is possible to do external degrees from British universities. There was no evidence to show that their education could not continue in Pakistan. There is no specific right to individuals to enjoy the education in one country over such education in another.

8. The FtT Judge gave detailed consideration to the evidence of the children's higher education, one is studying for an M.Res degree, another a BSc, a third is studying for a degree in medicine and the fourth, the youngest, for a degree in law, and they wish to continue their studies and thereafter

take up their professional lives here. The FtT Judge concluded (at [92]) that under Article 8 "*students cannot necessarily expect further leave either to continue studying or for other purposes, once that leave ended*" not least when courses had been commenced that were bound to finish after their father's leave had expired.

9. He concluded that any interference with private or family lives were they to return to Pakistan was proportionate with the legitimate aim of effective immigration control.

10. They sought permission to appeal which was refused. Permission, however, was granted by Upper Tribunal Judge Freeman on 15 August 2018 following reapplication to the Upper Tribunal.

Error of law hearing

11. The renewed grounds are in homemade narrative form and the only direct complaint of any arguable error of law on the part of the FtT Judge refers to the (main) appellant's command of English and financial independence. However, as UT Judge Freeman noted these can be no more than a neutral factor in the Article 8 equation. UT Judge Freemen went on to note that the appellant had never had more than limited leave to remain so his status throughout for the purposes of section 117B(5) of the Nationality, Immigration and Asylum Act 2002 was precarious and he needed to rely on Article 8 in his application for further leave to remain.

12. Further, the appellant's children are now grown up and so are no longer "*qualifying children*" under section 117D. Not even the youngest had spent more than half his life here so, UT Judge Freeman went on, *"the Judge, looking at each case through the lens of the Rules, was right in saying that they would need to show 'very significant obstacles' to their reintegration in Pakistan, and not arguably wrong in how he treated that question. On the other hand, it is arguable that the judge's very careful and sympathetic decision did not take full account of the unusual position of this family as a whole."*

13. In light of the lack of professional representation in the drafting of the grounds Mr Clarke had no objection to Mr Coleman raising whatever points he considered relevant. He had two points relating solely to the youngest child. First, the FtT Judge had failed to take into account and give weight to the fact that the youngest child had been residing in UK at the date of hearing for some 9 years. In a matter of months he would have been entitled to succeed under paragraph 276ADE(i)(v). Second, the FtT Judge had failed to give powerful reasons for concluding that it was reasonable that the youngest child having been here for more than 7 years should be removed. He was a "*qualifying child*" at time of application which was what paragraph EX.1. required.

14. Mr Clarke, in reply, disagreed. On the first point a claimed "near miss" was irrelevant. On the second, this is a human rights appeal, thus, the appropriate date was the date of hearing by what time the youngest child was an adult. The decision showed detailed and careful analysis and his conclusions were open to him on the evidence.

Consideration

15. I see no material error of law in the FtT Judge's decision. As UT Judge Freeman stated it is a "*very careful and sympathetic decision.*" It is not clear what UT Judge Freeman meant by his comment that the decision may not have taken "*full account of the unusual position of this family as a whole*"and as indicated, Mr Coleman did not take that point. However, I do not find merit in the points he did take.

16. As Mr Coleman noted the youngest child was born in February 1999 and arrived in October 2008. He had thus spent 9 years and 8 months in Pakistan. By December 2015, the date of the application, he was 16 years and 10 months old having spent 7 years and 2 months in the UK. By date of hearing in October 2017 he was 18 years old and had spent 9 years in the UK.

17. Paragraph 276ADE states the requirements to be met by an applicant for leave to remain on the grounds of private life. Such must be "*at the date of application*." Paragraph 276ADE(1)(iv) requires that the applicant is "*under the age of 18 years and has lived continuously in the UK for at least 7 years…and it would not be reasonable to expect the applicant to leave the UK*." Paragraph 276ADE(1)(v) requires him to be "*aged 18 years or above and under 25 and has spent at least half of his life living continuously in the UK."*

18. Failure to meet the requirements of the Rules as at date of application means that the Rules are not satisfied. The Rules are broadly compliant with Article 8 for which the relevant date is date of hearing. If the Rules are satisfied at date of hearing such may have a bearing on the outcome under Article 8.

19. In this case, as the FtT Judge found, the youngest child failed to satisfy the relevant sub paragraphs of 276ADE (1) either at date of application or decision. Under sub paragraph (iv) he gave reasons why even though the youngest child, then under 18, had been here for 7 years it was reasonable to expect him to leave with the rest of his family. He did the same in his consideration of Appendix FM, section EX.1/section 117B in respect of the youngest child (a "qualifying child" because he had lived in the UK at least the 7 years immediately preceding the application). Indeed, he dealt with it specifically at [85] where he stated: "*the wish to continue living here, coupled with a promising career does not…make it reasonable for him to remain when he does not meet other requirements*

of the Immigration Rules." Such a conclusion was open to the FtT Judge on the evidence.

20. I would add that in respect of the youngest child being only a few months short at date of hearing of satisfying paragraph 276ADE(1)(v) and the FtT Judge failed to consider a "near miss" argument, it not apparent that such was raised with him. In any event, in ***SS (Congo) and Others*** **[2015] EWCA Civ 387** it was held that the fact that a case was a "near miss" in relation to satisfying the requirements of the Rules would not show that compelling reasons existed requiring the grant of leave outside the Rules.

21. The position, in summary, is as follows. The appellants cannot satisfy the Immigration Rules (Appendix FM, paragraph 276ADE(1)). The detailed reasons the FtT judge gave for reaching that conclusion were open to him on the evidence before him. As for Article 8, the family if removed would not be split, there would be no interference with family life. As for private life, the appellants have throughout had limited leave, thus their immigration status has been precarious with the result that little weight be given to their private life (section 117B(5)). Their knowledge of English and their financial independence are neutral factors.

22. The FtT Judge did not consider that the children's desire to continue studying and for other purposes particularly, as indicated, when courses were due to finish after the father's leave had expired without any guarantee that it would be renewed amounted to compelling circumstance such that leave should be granted outside the Rules. Again, such were findings open to the FtT Judge on the evidence applying the appropriate jurisprudence.

23. It was noted that the appellants, who arrived in 2008, now have available to them an application for leave to remain on the basis of 10 years continuous lawful residence.

Notice of Decision

The decision of the First-tier Tribunal Judge shows no material error of law and the decision dismissing the appeals shall stand.

No anonymity orders made.

Signed Date 22/11/2018

Upper Tribunal Judge Conway