IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005001
UI-2023-005052
UI-2023-005053
UI-2023-005054

First-tier Tribunal No:
HU/57004/2022
HU/5700
2/2022
HU/57003/2022
HU/57005/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

1st February 2024

Before

UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

HK
UB
AH
PH

(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Raza
For the Respondent: Mr Terrell

Heard at Field House on 4 January 2024

DECISION AND REASONS

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Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants likely to lead members of the public to identify them. Failure to comply with this order could amount to a contempt of court.

1. The first appellant was born in 1980 and the second appellant, born in 1978, is his spouse. The other appellants are their children. The appeal centres on the third appellant, a girl, whom we shall refer to as A, who was born on 21 June 2018. A has a younger sibling who was born in 2020. All the appellants appeal to the Upper Tribunal against a decision of the First-tier Tribunal dated 11 October 2023 dismissing their appeals against a decision of the Secretary of State dated 25 September 2022 refusing the appellants leave to remain in the United Kingdom.

2. The First-tier Tribunal judge summarised the immigration history of the appellants at [2]:

   The first appellant's immigration history is that he entered the United Kingdom on 8 September 2015. He had entry clearance until 15 July 2018. He was granted a exempt diplomat visa from 6 August 2019 until 21 April 2022. The present application made on family and private life grounds is dated 27 August 2021. The second appellant joined him in the United Kingdom on 19 April 2016. The third and fourth appellants were born in the United Kingdom.

3. At [13], the judge wrote:

   At the appeal hearing, Mr Bukhari submitted that he relied only upon paragraph 276 ADE (1) (vi) of the Immigration Rules in respect of very significant obstacles to integration as a result of the third appellant, [A] being diagnosed as autistic. He also relied upon Article 8 ECHR, in the alternative. The first appellant gave evidence at the hearing. The evidence is recorded in the record of proceedings. I do not rehearse it here. I take it into consideration in reaching my determination.

4. Permission was granted in the First-tier Tribunal by Judge Dainty:

   The grounds assert that the judge made an error of law as to best interests/welfare. The judge is said to have confused article 3 and article 8 and the children's medical and social/educational needs. Further it is said that the judged placed weight on a mistaken fact in relation to a misreading of the CPIN on medical care para 4.14.4. 3.

   It is arguable here that the judge, although reciting that the child's best interests, should be a primary consideration, did not then proceed to consider them as such in the article 8 balance. The point in relation to the CPIN is arguably sound – it does relate to epilepsy and if the judge was going to rely on that as a more general proposition as to neurologist care she would have needed to explain that in her reasons and she did not (which suggests she

misread the paragraph). In any event there are also no reasons given connecting the support for autism to paediatric neurology treatment – the child is not ill (as the judge indeed states in her decision). There is an arguable error in considering the autism principally in relation to article 3 (when as the judge had earlier recorded no article 3 claim was being made) and then failing in relation to very significant obstacles and article 8 to consider the impact on the child of the change from the current support system in the UK to Pakistan by reference to the implementation of the child's best interests.

5. At the initial hearing, we heard from Mr Raza, who appeared for the appellants, and Mr Terrell, who represented the Secretary of State. We are grateful to both for their concise submissions.

6. First, we find that the judge's decision is not vitiated by her superfluous analysis of Article 3 ECHR. We accept Mr Raza's submission that the judge may have categorised A's autism as a medical condition, which it is not. However, we take judicial knowledge of the fact that autism, like other examples of neurodiversity, is often diagnosed by medical professionals, namely psychiatrists, and that those same professionals can offer assistance which is similar to treatment, especially in the case of autistic children and young adults. Even if the line between providing assistance for coping with autism and treatment for a medical condition may be slightly blurred, there was no reason for the judge to embark upon an Article 3 ECHR analysis, invoking authorities such as *AM (Zimbabwe)* [2020] UKSC 17. However, this unnecessary 'belt and braces' approach did not prevent the judge from also focusing on the relevant evidence as regards A's autism. Indeed, having cited the Article 3 ECHR caselaw, she immediately reminded herself [33] that A has a 'neurodiversity condition.' Read as a whole, we are satisfied that the judge has not, as Mr Raza submits, completely misunderstood the nature of A's needs such that her analysis is flawed; indeed, paragraphs [31] and [32] of the decision (which do no more than quote from and summarise *AM (Zimbabwe)* and *Paposhvili v Belgium* (App No 41738/10 (13.12.16)) could simply be removed from the decision without distorting or rendering unintelligible the judge's analysis of the actual issues which required determination by the Tribunal.

7. Secondly, we find that the judge's analysis of those issues is cogent, clear and supported by the evidence. The judge noted the limited services available to autistic children in Pakistan [19-20] but noted that 'support is available at the Aga Khan Hospital in Karachi, which has two child psychiatrists' [20]. She noted the current case plan for A provided by Oldham Council [27]. At [30], she recorded that ' the Liaquat National Hospital in Karachi provide support, including speech therapy and access to a paediatric neurologist.' The judge found that the family could relocate to those cities where support would be available or alternatively they 'would be able to return to live in their home area where they have family support and could travel to Karachi for medical reviews and

support for their child. They would also be able to access support from a number of private organisations, referred to above, with knowledge of children with autism spectrum disorder.' We consider that those findings were open to the judge on the evidence.

8. Thirdly, when we asked Mr Raza what the judge had omitted from her assessment of the evidence, he submitted that the judge had failed to consider the effect of change on A and the loss of her existing and any future care plan. As regards the latter, we consider that it was sufficient for the judge to record details of the current plan and to remind herself that ' whilst the facilities for children on the autistic spectrum are not comparable to those in the United Kingdom, that is not the test.' We note that there is no children's services plan yet for A who is being supported by her principal care givers. As regards the impact of change on A, the only reference to this in the evidence is in the care plan [203]:

> Wherever possible, Aayat loves to be outdoors, she likes going to the park and the local shop. Aayat's diagnosis of Autistic Spectrum Disorder (ASD) impacts on her social interactions and ability to cope with change. Alongside these challenges, Aayat does not yet have stranger and danger awareness, and is not yet able to assess risk, therefore, Aayat requires adult supervision at all times.

9. The reference is very general; given that A is still very young, it is perhaps not surprising that the plan is silent as to the effect change may have upon her as an individual. We do not find that the judge's failure to deal with the effect of change (i.e. removal to Pakistan) arises from any misunderstanding of A's autism on the part of the judge nor do we find it amounts a material error of law.

10. Neither of A's parents has any leave to remain in the United Kingdom. At [22] the First-tier Tribunal judge cited *E-A (Nigeria)* [2011] UKUT 00315. We also note the comments of the Court of Appeal in EV (Philippines) [2014] EWCA Civ 874:

> 60. That is a long way from the facts of our case. In our case none of the family is a British citizen. None has the right to remain in this country. If the mother is removed, the father has no independent right to remain. If the parents are removed, then it is entirely reasonable to expect the children to go with them. As the immigration judge found it is obviously in their best interests to remain with their parents. Although it is, of course a question of fact for the tribunal, I cannot see that the desirability of being educated at public expense in the UK can outweigh the benefit to the children of remaining with their parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world.

11. In the circumstances, we are satisfied that the First-tier Tribunal did not err in law such that its decision falls to be set aside. The judge

correctly concluded that A's autism (or indeed any other factor) should not prevent the family continuing their family life together in their country of nationality. The appeals are, therefore, dismissed. We have anonymised our decision given that it mainly concerns A, a minor.

Notice of Decision

The appeals are dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 24 January 2024