



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

Appeal Number: IA/19571/2013
IA/19584/2013
IA/19595/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 15th November 2013

**Determination
Promulgated**

On 27th November 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**MK
AK
DK
HK**

(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hussain, Counsel, instructed by Abbott Solicitors
For the Respondent: Mr M Diwnycz, HOPO

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Manuel made following a hearing at Bradford on 12th September 2013.

Background

2. The first Appellant is a 34 year old male citizen of Pakistan. The second Appellant is his wife and the third Appellant and fourth Appellant are his two children.
3. The first Appellant first entered the UK on 16th September 2003 with student leave valid for two years which was subsequently extended until, on 29th December 2007. He applied for further leave to remain under the international graduate scheme, and was refused but by then he had been offered employment as an accounts assistant with Rizvi and Company. He returned to Pakistan on 12 February 2008 to apply for work for entry clearance as a work permit holder and whilst there married his wife on 13th March 2008. He was granted entry clearance and came to the UK on 22nd May 2008 and the second Appellant joined him as a work permit dependent on 17th October 2008. The two children were born in the UK.
4. On 30th April 2013 the Appellants submitted applications for leave to remain on the basis that they had established Article 8 private and family life in the UK and were refused on 3rd June 2013.
5. The first Appellant started working on a self employed basis in February 2010, less than two years into his work permit visa, having left there in March 2010. The family left the UK on a three week holiday and on 2nd April 2010 returned on the work permit visa in the knowledge that the contract with the employer had been terminated and there was no longer any basis of stay in the UK since he had not been given any permission to work on a self-employed basis.
6. The judge took into account the fact that there had been deception of immigration officials when the family returned to the UK. There was no reason their private lives could not continue in Pakistan. They could maintain contact with their friends and social contacts here. They still had family in Pakistan and maintained ties there. She took into account Section 55 of the Borders, Citizenship and Immigration Act 2009, cited the relevant case law and concluded that it would not be disproportionate for the family to be returned.
7. She took account of the fact that both children were very young and had not formed strong ties outside the family. They were not British citizens and would be returning with their parents to the country of their nationality where all the extended family members live including both sets of grandparents. There was no reason why the elder child could not attend school in her own country.
8. She then wrote:

“Taking all factors into account I find that the Appellants have failed to show that there are insurmountable obstacles to continuing private life in Pakistan.”

9. She concluded that it was reasonable for all four to do so and dismissed the appeal.

The Grounds of Application

10. The Appellants sought permission to appeal on the grounds that the First-tier Tribunal had erred in its assessment of the evidence on credibility and secondly had erred in requiring them to pass an insurmountable difficulties test.
11. Permission to appeal was granted by Judge Lewis on 17th October 2013 on the second ground only.

Submissions

12. Mr Hussain submitted that the judge had plainly applied the wrong test. Secondly, she had put undue emphasis on the Appellants' immigration history and had failed to consider their substantial private life in the UK which was not recognised in this determination, which was not as clear as it could have been and the effect of it was that, because the family could not meet the requirements of the Immigration Rules, they could not succeed on Article 8 grounds.
13. Mr Diwnycz submitted that there was no error and the decision ought to stand.

Findings and Conclusions

14. This challenge amounts to a disagreement with the decision. Had the judge made this decision solely on the basis that there were no insurmountable obstacles to continuing private life in Pakistan, the challenge would have had more merit. However, her conclusion was that it was reasonable for them all to continue their private lives there which, on the facts of this case, is unassailable. It was open to the judge to place some emphasis on the fact that the first Appellant chose to enter the UK at a point when he had no basis of stay here.
15. This is a family which has been in the UK for a temporary purpose, with no expectation of settlement. Most of their extended family remain in their country of nationality to which they would be returning. The decision that removal would not be disproportionate was plainly one open to the judge and will not be interfered with by an appellate Tribunal absent legal error.

Decision

There is no error in this determination and the decision stands. The Appellants' appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor