



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

Appeal Numbers: IA/16748/2014
IA/16733/2014, IA/16751/2014, & IA/16754/2014

THE IMMIGRATION ACTS

Heard at Stoke on Trent

On 31 October 2014

Determination

Promulgated

On 3 November 2014

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department

Appellant

and

Muhammad Ashraf

Shumaila Ashraf

Rabeeel Farhat

Wadood Aghani

[No anonymity direction made]

Claimants

Representation:

For the claimants: Ms L Mair, instructed by Malik Legal Solicitors Ltd
For the appellant: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The claimants, Muhammad Ashraf, date of birth 10.4.75, his wife, Shumaila Ashraf, date of birth 21.1.80, and their children, Rabeel Farhat, date of birth 18.9.02, and Wadood Aghani, date of birth 27.1.04, are citizens of Pakistan.

2. This is the appeal of the Secretary of State against the determination of First-tier Tribunal Judge Frankish promulgated 21.7.14, allowing the claimants appeals against the decisions of the Secretary of State to refuse their applications for leave to remain in the UK on the basis of family and private life, and to remove them from the UK pursuant to section 10 of the Immigration and Asylum Act 1999. The Judge heard the appeal on 7.7.14.
3. First-tier Tribunal Judge Page granted permission to appeal on 30.7.14.
4. Thus the matter came before me on 31.10.14 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Frankish should be set aside.
6. The grounds of appeal complain that the First-tier Tribunal Judge allowed the appeals on the basis of article 8 outside the Immigration Rules and failed to consider Appendix FM and paragraph 276ADE. That is inaccurate. The appeals of the child claimants were allowed under 276ADE and it was thus only the appeals of the parents that were allowed under article 8 ECHR outside the Rules. Further it is clear that the judge did give consideration to the Immigration Rules.
7. Relying on Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640 (IAC), the grounds go on to argue that the judge made no findings of compelling circumstances before making a free-standing article 8 assessment.
8. There was no application to amend the grounds. Thus there was and can be no challenge to the decision in relation to the child claimants, allowing their appeals under paragraph 276ADE of the Immigration Rules as it was formulated at the date of application, 23.8.12. The statement of changes HC 760 added a reasonableness test to 276ADE from 13.12.12, but providing that applications made before the changes are to be decided on the basis of the Rules in force prior to 13.12.12. Thus no reasonableness test applied and as the child claimants had been in the UK for over 7 years, they were entitled to remain.
9. That of course has knock-on effects for the consideration of the parents' claims, even though they failed to qualify under the Rules on the basis of family life under Appendix FM and EX1, which did have a reasonableness test.
10. The grant of permission found the grounds arguable in the light of what is described as the "paucity of reasoning" on compelling circumstances.
11. For the reasons set out below, I find no error of law in what was a very careful and comprehensive determination by Judge Frankish.
12. The grounds seeking permission are incorrect. The First-tier Tribunal Judge was required in accordance with section 86 of the Nationality Immigration and Asylum Act 2002 to determine the appeal on the grounds advanced, which raised human rights and in particular family and private life. For the judge not to consider the parents' claims under article 8 would

likely render the decision non-compliant with section 6 of the Human Rights Act 1998.

13. In all the circumstances, there being no other ground of appeal, the appeal by the Secretary of State must fail.

Conclusions:

14. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeals remain allowed.



Signed:

Date: 31 October 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeals remain allowed and the First-tier Tribunal gave cogent reasons for refusing a fee award.



Signed:

Date: 31 October 2014

Deputy Upper Tribunal Judge Pickup