Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number
AA/08510/2014

AA/08111/2014

THE IMMIGRATION ACTS

Heard at Centre City Tower Birmingham
On 28th May 2015

Decision and Reasons Promulgated
On 9th June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

NUSRAT RAFIQUE

First Appellant

And

RAFIQUE SHAIKH

Second Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity direction not made

Representation
For the Appellant: Ms D Morroh (Counsel, instructed by Shehzad Law Chambers Ltd)
For the Respondent: Mr N Smart (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal by Nusrat Rafique and Rafique Shaikh against the decision of First-tier Tribunal Judge Mather who dismissed the Appellant's appeal against the Secretary of State's decision refusing the Appellants' applications to remain in the UK as refugees and under article 8.

2. The Appellants' immigration history and the basis of their claim is set out in the Tribunal papers and summarised in the First-tier Tribunal decision, there is no need to repeat all the information in this decision. The First Appellant entered the UK as the dependent of a Tier 4 migrant on the 31st of May 2011 the other Appellants are her children.

3. The Appellants' asylum claim was rejected and there is no appeal against that decision. The Second Appellant's claims to remain in the UK were rejected for the reasons given in the decision at paragraphs 31 to 36. The Judge found that there was no arguable case to consider the Appellants circumstances under article 8 outside the rules but did so in the alternative and found that their removal would be proportionate.

4. The Grounds of Appeal asserted that the Second Appellant is settled in the UK and in education. They assert that she and her younger brother are settled in their education and do not wish to leave the UK and that the Judge had not properly considered their position.

5. Permission was granted by Judge Denson on the 19th of January 2015. He did so on the basis that no consideration had been given to section 55 of the 2009 or the case of EV (Philippines) & ors [2014] EWCA Civ 874. Permission was limited to the Appellants limited to article 8 and ECHR.

6. At the hearing the Appellants' counsel renewed an application for an adjournment. This was on the basis that her instructing solicitors had only recently been instructed by the Appellants and they had not received the Respondent's bundle. The application was refused as the Appellants had had ample time to prepare and would have had the paperwork to pass on to the representatives. The submissions are set out in the Record of Proceedings and referred to where relevant below.

7. The Judge did not mention section 55 of the 2009 Act but that is not itself an error. The important question is whether the Judge gave substantive consideration to the relevant issues and came to a decision that is sustainable and in accordance with the relevant law having applied the facts. It is clear from the decision that the Judge had regard to all of the relevant facts and considered them in context.

8. The Appellant were admitted to the UK on a temporary basis with no expectation of being permitted to remain on any other basis. The breakdown of the First Appellant's marriage is regrettable but not a matter for the Secretary of State except that it explains how the present situation arose. The Appellants have remained without leave have pursued educational opportunities but have had no expectation of being permitted to do so or to be permitted to complete any course.

9. The case of Patel [2013] UKSC 72 makes it clear that a desire to continue with education is not itself a protected right and it would only be in very limited circumstances that a person would be permitted to remain in the UK to complete a course that had been started and which may be the culmination of a protracted period of study at a high level nearing its conclusion. That is not the position here for either the Second Appellant or her brother.

10. Neither of the Appellants nor the Second Appellant's brother could meet the requirements of the Immigration Rules. They have not been here for 7 years and came on a temporary basis. Much of the evidence relating to their circumstances in Pakistan was rejected and it had been found that they could be expected to return there.

11. The Appellants are not assisted by the case of EV (Philippines) which, in line with the case of Zoumbas [2013] UKSC 74, indicates that the removal of those in the UK without leave is disproportionate in only a small number of cases and in limited circumstances. The Appellants have no independent right to remain in the UK and no right to receive education or any other state provided advantages.

12. There is nothing unusual about their circumstances and nothing that would suggest that article 8 was engaged independently of the rules, as the Judge found, or that would make their removal disproportionate if article 8 were to be considered independently. In any event the Immigration Rules still form the backdrop for the assessment of the proportionality of the removal of the Appellants. The Appellant were not in a situation that was not contemplated by the rules, they could not meet the rules.

13. In summary the decision of the First-tier Tribunal shows that the Judge considered all the relevant facts and applied the relevant law. It is not an error that specific cases or statutes were not listed, the principles were applied. The decision contained no error of law and the decision of the First-tier Tribunal shall stand.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no direction.

Fee Award

In dismissing the appeals I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 4th June 2015