



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

Appeal Numbers: IA/04732/2014  
IA/04736/2014  
IA/04741/2014  
IA/04743/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 April 2015**

**Determination  
Promulgated  
On 11 May 2015**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

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A M  
M Z A  
M Y A**

(ANONYMITY DIRECTION MADE)

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Singer, Counsel, instructed by Adam Bernard  
Solicitors

For the Respondent: Mr A Fijiwala, Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellants. Breach of this order can be punished as a contempt of court. I make this order because the case is particularly concerned with the condition of one of the appellants who is a minor with autism.

2. This appeal is brought with permission of Upper Tribunal Judge Allen on the sole ground that:

“Arguably the judge has not considered or therefore properly applied the provisions of Section 117B(6) of the 2002 Act (as amended). This may arguably have impacted materially on the judge’s decision.”
3. This Section provides that:

“In the case of a person who is not liable to deportation, the public interest does not require the person’s removal where –

  - (a) *[irrelevant here]*
  - (b) it would not be reasonable to expect the child to leave the United Kingdom”.
4. The appellants are citizens of Pakistan. The first appellants are married to each other and the third and fourth appellant are their infant children. They have been in the United Kingdom lawfully since the first appellant entered as a student on 6 February 2007. The third appellant was born on 31 August 2006, which made him just over 5 months old when he arrived. The fourth appellant was born in the United Kingdom on 27 March 2009.
5. The first appellant was given leave to remain as a student and the other appellants as her dependants.
6. Although this was not known when he arrived in the United Kingdom, it is now clear that the third appellant is autistic. The first two appellants want the family to stay together in the United Kingdom and a major reason for this is that the third appellant will receive high quality care if he is allowed to remain but little if any support if he is returned to Pakistan.
7. The appeal is against a decision of the First-tier Tribunal dismissing their appeals against the decision of the respondent in January 2014 to remove them from the United Kingdom. It is their case that removal would interfere disproportionately with their rights under Article 8 of the European Convention on Human Rights.
8. Despite Miss Fijiwala’s best endeavours I have no hesitation in saying the First-tier Tribunal did err in law. Although the determination mentions Section 117B of the 2002 Act, I cannot discern anywhere in the Determination a consideration of whether it is unreasonable to remove the child, or either of them, or to let either of them remain but require the parents to go.
9. I want to make it plain that I am not unduly concerned that the relevant section of the Act has not been set out in the Determination. There is no merit in setting out things that are either not considered or which manifestly do not apply. Here the criticism is one of substance not form. Nothing in the Determination shows that the legal test identified above was actually considered.
10. Mr Singer recognised that the strongest element in his case was the disruption to the private and family life of the third appellant but I must consider each of the appellants.

11. This is not a case where the adult appellants have behaved disreputably. From the standpoint of ordinary common decency I can understand them wanting to remain in the United Kingdom where they think the best interests of their child will be met. Autism is a difficult condition that is still not wholly understood but the third appellant is getting good treatment in the United Kingdom that his parents would like to continue. I do not criticise them for wanting that for their child but this is not at all the same as saying that they have established a right to it.
12. I recognise that the fourth appellant has no experience all of life outside the United Kingdom but he is still very small and his private and family life is exercised essentially with his parents within the family and I really cannot see any basis on which it can be sensibly argued that it would not be reasonable for him to go live in his country of nationality with his parents and brother. As this is true for the fourth appellant it is all the more true for the first and second appellants who will be returning to their country of nationality where they have lived for many years.
13. There is really nothing of substance to consider in their cases.
14. The error of law concerns only the treatment of the minor appellants and as far as the fourth appellant is concerned I have no hesitation in saying that the appeal should be dismissed.
15. This case is really about the third appellant and any impact that his removal would have on others or their removal would have on him.
16. I have the benefit of the statements from the first and second appellants. Miss Fijiwala did not wish to cross-examine.
17. The first appellant explained that she considered that she had strong links in the United Kingdom based on her residence.
18. She explained that the third appellant had been diagnosed with autism and has “significant difficulties in language, social interaction and communication and has restricted stereotype behaviours and mannerisms”.
19. He is recognised as having special educational needs.
20. The statement then complains that he will not get proper treatment in Pakistan; rather he would receive “inhuman treatment” because his condition would not be understood and is not treated there.
21. The First Appellant said that the majority of cases of autism are not diagnosed in Pakistan and that many in Pakistan think that a child with condition that would be recognised in the United Kingdom as autism should be kept locked away in the home. This view is often attributed to a misguided belief in magic.
22. It may be that the First Appellant’s case is aptly summarised by paragraph 17 of the statement where she says:

“I submit that my child suffers learning inability and has communication difficulties and development related problems which do not enable him to lead fulfilling lives. The biggest problem he will face in Pakistan is lack of awareness for the society and hence lack of early intervention, due to social

stigma, non-availability of trained doctors, expensive/limited therapists and no single physical organisation for all their needs which is why even those parents who are aware of autism must go to many locations and spend a lot of money on incompetent professionals and in most cases given wrong advice.”

23. The second appellant’s statement, although misguidedly referring to a “deportation”, makes essentially the same points. The second appellant also points out that the fourth appellant is well settled in the United Kingdom and has adapted to the British way of life.
24. The Third Appellant’s annual report from his nursery classes prepared in July 2013 when he was not quite 7 years old refers to his beginning to hold a pencil to form letters and to count to 5. It is not necessary to set out in detail all the points that are made there. He presented as a kindly little boy who was making progress but whose development was behind that of his peers.
25. There is advice entitled “Proprioceptive and vestibular input for Z”. I cannot find a date on this report. It emphasises the importance of helping the third appellant by physical stimulation and “deep pressure” to help stimulate his spatial awareness.
26. There are speech and language therapy programme guidelines addressed to schools for the third appellant for the Spring term 2013. This suggests various exercises to assist the third appellant develop and to assess his progress. This included for example strategies to make him ask properly for things that he needed. This appears to be one of a series of similar documents. It is illustrative of the care that is being expended on him.
27. There is a school report dated November 2013 which shows how the third appellant was responding to stimulation given and how he was beginning to grow in strength and to start to manage a pencil well enough to start to think about writing his name.
28. There is a risk assessment dated February 2014 saying how school activities needed to be linked at all times.
29. The documents show that the Third Appellant needed regular therapy appointments and was being offered them by the North East London NHS Foundation Trust.
30. There is a report dated 17 June 2013 from the Hatton School for Special Needs Centre. This confirms that the Third Appellant has one-to-one in-class support as well as one-to-one support in other ways. He was beginning to learn to talk but still only a few words were recognisable.
31. There are reports going back to July 2012 explaining how he had been able to run and walk independently and his mother was no longer complaining of him falling over. The mother is recorded as having “no concerns regarding his gross motor functioning” but his clinical practitioner found him “slightly clumsy”.
32. I do not find it very helpful to list every document. I have worked my way through the bundle provided and I have noted individual educational plans

that have been prepared, for example, from an occupational therapist school visits summary. I note the report from Dr M Finnigan of University College London Hospital who in August 2014 commented on the third appellant's "poor speech development" and confirmed he was diagnosed as having an "autistic spectrum disorder" at the age of 3.

33. There is a report from Hatton School following a meeting on 29 November 2013. This refers to a statement of educational needs being issued first in June 2011 and that provided twenty hours per week and an additional five hours per week for the first year of the statement in order to help him. It also enabled him to take advantage of the speech and language therapist employed at the school. It listed the special care that he needed and the role of one-to-one support. This bundle includes assistance for parents labelled "Maths at Home". I take this as indicative of the kind of high level support available in the United Kingdom. There is similarly a document giving guidance on simple exercises that can be used to encourage fine motor control and build stamina and strength. The exercises to my untrained mind seem simple and are indicative of the level at which the third appellant functions and how this is understood and addressed in the United Kingdom.
34. There is a report being a printout from a website [www.diplomacypakistan.com](http://www.diplomacypakistan.com) referring to the paucity of institutions to train autistic children in Pakistan and how none of the institutions that exist have properly trained staff. The same article warns how untrained instructors can mishandle children and there are even examples of children being beaten.
35. More recently there is a letter from Hatton School dated 12 March 2015 inviting parents and carers to attend the meeting run by the occupational therapist to help understand how children process sensory information. For example there is a document entitled "Turn Taking" which suggests games and strategies to help socialise children by learning to take their turn. Again I see this as an indication of the kind of support that the Third Appellant needs and how it is made available to him in the United Kingdom.
36. The same idea is emphasised in a "play scheme information pack" referring to events in February 2015. There is specifically a note from the head teacher confirming that the Third Appellant attends Hatton School as a physical needs child. He is described as "non-verbal" and is assisted by a speech therapist every week.
37. All of these things I accept for what they are. I do not suggest that they are very different from anything that has been previously considered by the Tribunal or that my findings differ in any material way. I wanted the appellants to be able to realise from the Decision that I have looked at the papers. I do appreciate that the Third Appellant is getting help in the United Kingdom and there is no reason to think there is much chance of him getting it elsewhere. No doubt some provision will be available in Pakistan and no doubt they will do their best to access it but they will be

removed from the expertise available in the United Kingdom and this will impact on them and impact particularly on the third appellant.

38. My difficulty lies in assessing how I process this information. I have to ask myself whether the appellant has shown that "it would not be reasonable to expect the child to leave the United Kingdom". As far as I am aware the word "reasonable" is not explained anywhere in the legislation and I know of no authority that will help me understand it. Certainly nothing was cited before me.
39. I remind myself that I am dealing with an asserted right. The Third Appellant's case is that he has a right under the ordinary provision of the Rules because it would "not be reasonable to expect" the third appellant to leave the United Kingdom.
40. Clearly this is not a case that would succeed if the appellants were relying on Article 3 grounds. Although there is going to be a significant diminution in his care it is nothing like the kind of diminution necessary to engage that high threshold.
41. Mr Singer recognised that and reminded me that this is a claim brought on Article 8 grounds. It may be that the rule is a little different from the extra-regulatory obligation to consider whether removal is proportionate. The fact is the appellant is a citizen of Pakistan. His presence in the United Kingdom was with permission for his mother to attend a particular course and it has come to an end.
42. Mr Singer suggested that I contrast his position with that of the fourth appellant who might also want to remain in the United Kingdom but about who much less can be said because he is not an autistic child. Certainly the fact that the third appellant is getting and needs this extra treatment makes a difference but I do not accept it is a difference that makes it unreasonable to remove him. It is not suggested that a short stay would address the difficulties. This is not, for example, like a young person who might be about to complete a crucial stage in his education or even about to complete a step in medical treatment. It is about his being able to remain in the United Kingdom presumably until the end of his education and no doubt after that. It is to treat him as if he were a citizen of the United Kingdom solely because he has been here for some years and is a child with special needs. I cannot see where the reasonableness lies here. What is reasonable or not reasonable may well be something incapable of accurate definition that something will be much easier to recognise than to attempt to define.
43. I also recognise that the first and second appellants are acting out of love for their child and I also recognise that although they may well have been advised they made an application which has little chance of succeeding (I do not know what they have been advised, it is not for me to speculate) they have certainly done nothing shameful, still less dishonest. Anyone with ordinary human feelings will feel a degree of pity for them and understanding, maybe even respect for their desire to do everything they can for the child, but none of this comes near to making it not reasonable to expect the child to leave the United Kingdom. His special needs will not

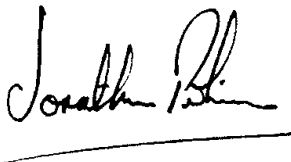
be addressed in Pakistan as they are addressed in the United Kingdom. However I do find it reasonable to expect him to leave the United Kingdom and to go to his country of nationality. I see nothing in this case which gives him a right to remain that he so wants.

44. I have set aside and remade the decision of the First-tier Tribunal because the need for reasonableness had not been considered. I consider it right in other respects. It is just something that was missed out. I applied my mind specifically to the additional requirement that it has to be reasonable to expect the child to leave the United Kingdom and I am satisfied it is reasonable to expect the child to leave the United Kingdom. It is sad for the child and frustrating for the parents but people who enter the United Kingdom on a temporary basis should expect to leave at the end of it and the fact that one of them has a particular social need does not change that.

45. It follows therefore that I dismiss the appellants' appeals.

Signed

Dated 30 April 2015

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Jonathan Perkins  
Judge of the Upper Tribunal