



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

Appeal Number: IA/17607/2014
IA/15806/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 12th January 2015**

**Determination
Promulgated
On 5th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MRS YOUNIS BEGUM
HAIDER ALI
(NO ANONYMITY DIRECTION MADE)**

Appellants

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Bloomer, counsel instructed by Mamoon Solicitors
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, Mrs Younis Begum date of birth 1 January 1958 and Mr Haider Ali date of birth 13 March 1996, are citizens of Pakistan.
2. Having considered all the circumstances I do not consider it necessary to make an anonymity direction.

3. This is an appeal by the Appellants against the determination of First-tier Tribunal Judge Gladstone promulgated on 17th July 2014, whereby the judge dismissed the Appellants' appeals against the decisions of the Respondent dated 28th February 2014 to remove the appellants from the United Kingdom.
4. By decision made on the 12th of November 2014 leave to appeal to the Upper Tribunal was granted by Judge Shaerf. Thus the matter appears before me to determine in the first instance whether or not there is a material error of law in the original determination.
5. Whilst the grounds of the application for leave to appeal had raised issues under the Immigration Rules, it was noted in the leave by Judge Shaerf that the appellant's representative had confirmed at the First-tier Hearing before Judge Gladstone that the appeals were in relation to Article 8 of the ECHR alone.
6. Before me the representative for the appellants also confirmed that the appellants could not meet the requirements of the rules and that therefore the appeals were only being pursued on the grounds of Article 8 of the ECHR outside the rules.
7. Judge Shaerf referred to the fact that Judge Gladstone made extensive examination of the facts and found overall that the general credibility of the appellants and sponsor was seriously damaged. Judge Shaerf states that Judge Gladstone should have identified which specific facts she found as proved. Judge Shaerf also found that Judge Gladstone had applied a threshold test in line with the case of Gulshan 2013 UKUT 00640. The approach advocated in the case of Gulshan has been brought into question by the case of MM (Lebanon) v SSHD [2014] EWCA Civ 985. MM has emphasised that the correct approach is as set out in Razgar 2004 UKHL 27 and Huang 2007 UKHL 11.

Immigration history

8. The appellants arrived in the United Kingdom on 14 June 2012 entering on visit visas valid from 24 May 2012 until 24 November 2012. The appellants were coming to visit Waseem Yaseen the son of the first appellant and the brother of the second appellant.
9. The applications for visit visas had originally been refused. There had been an appeal in the First-tier Tribunal before Judge Davies at which the appeals had been allowed. The sponsor had given evidence at the appeal hearing.
10. Having entered on the 14th June 2012 by the 7 July 2012 the appellants were applying for indefinite leave to remain as dependent relatives of Waseem Yaseen, a person present and settled in the United Kingdom.

11. That application was rejected as the fee in respect of the application was declined. Whilst the applications were resubmitted they were again rejected on 5 November 2012 and 15 November 2012.
12. The applications were finally submitted and accepted on 3 December 2012. Those applications were refused by decisions made on the 24th February 2014. The decisions made were to remove both of the appellants from the United Kingdom
13. The appellants appealed against the immigration decisions and the appeals were heard by Judge Gladstone on 3 July 2014.
14. The second appellant despite being an adult at the time of the hearing before the First-tier Tribunal did not give evidence.
15. The basis upon which the first appellant and the second appellant were seeking to remain in the United Kingdom was on the basis of their Article 8 Rights, family life relating to Waseem Yaseen, the sponsor, and his family.
16. The first appellant had been to the United Kingdom or applied to come to the United Kingdom on a number of previous occasions. Details from previous applications and judgements in respect of appeals were referred to in the determination by Judge Gladstone.
17. In Pakistan in the first appellant had been married but, it is alleged, just prior to her coming to the United Kingdom her husband had divorced her and forced her to authorise the transfer of all her property to him by reason of her thumbprint on legal documents. The first appellant was claiming that she was unaware of the divorce until she arrived in the UK, when papers were discovered in her documents in which was a divorce certificate. The first appellant was therefore claiming that she would have no support back in Pakistan and was reliant upon the sponsor for financial support. The first appellant was also claiming that she was certain medical conditions, which had made it impossible for her to carryout household chores in Pakistan.
18. Reliance was also placed on the fact that the sponsor and his wife had a child that was very sick. It is claimed that the sponsor and his family required the support of the appellants that what was a very difficult time for them. The child that was ill was born in May 2013.

Error of Law

19. It is argued on behalf of the appellant that Judge Gladstone has failed to identify what facts she has found proved.
20. The appellants' immigration history has been examined with care by the judge. The judge found that the details provided in support of previous applications for visit visas, including evidence given in an appeal hearing for the visit visa on which the appellants travelled and the details for the present application and appeal were not consistent. The conclusions Judge

Gladstone were to the effect that the appellants and the sponsor were willing to tailor their evidence seeking to meet whichever situation suited the application they were making at the time best. Judge Gladstone clearly found that the credibility of the appellants and the sponsor severely damaged and that central elements of the accounts were not true.

21. An example of this as noted by the judge was the claim by the sponsor that he had been supporting the appellants for some eight years according to the present application and statements of the first appellant and sponsor. However when the judge examined previous applications made by the first appellant there were claims that the appellants lived in a prosperous circumstances with servants and the first appellant's husband, TM, had a transport business and substantial earnings. There were also references to the first appellant having an interest in family lands and to her looking after her siblings' property. The details are set out in paragraphs 100, 103, 105, 106 and 107 of the decision.
22. In paragraph 107 there is reference to the appeal relating to the visit visas upon which the appellant travel. In that determination the evidence was that the first appellant was dependent upon her husband's income from a transport business according to the evidence given by the sponsor before Immigration Judge Davies.
23. Judge Gladstone points out in paragraph 109 that given the appellant's comfortable financial circumstances as evidenced on many occasions previously it was difficult to believe or understand the sponsor's and the first appellant's evidence that the sponsor had been financially supporting the appellants for eight years. Judge Gladstone clearly rejected the claims that the sponsor had been supporting the appellants prior to the appellants coming to the UK.
24. There are further inconsistencies in the evidence as to the state of health of the first appellant. In paragraph 111 there is reference to the first appellant claiming that she was suffering from hepatitis C and had been unable to do any household chores. However as set out in paragraph 110 at the time of originally making the visit visa application she had stated that she had no health problems. The same had been the case with regard to previous applications. The judge in the paragraphs points out the significant changes between the claims made in respect of the first appellant's health between April/June 2012 and July 2012. In the former claiming that she had no medical conditions. Yet in the latter suggesting that because of her hepatitis C she could not undertake basic chores such as cooking and cleaning or bathing. In paragraph 125 the judge notes the ability of the first appellant to undertake physical task in the United Kingdom which she was claiming she could not perform in Pakistan. Again the judge had rejected the evidence of the first appellant and the sponsor.
25. The judge has also noted the inconsistencies and contradictions with regard to the circumstances of the divorce of the first appellant's from her husband. The account being given was that after the first appellant's

husband had died the first appellant had been forced to marry her second husband. The second husband had tricked the first appellant into signing her property over to him and then divorced the first appellant.

26. This second marriage was a marriage that lasted twenty years, in which the first appellant had at least one child, the second appellant. The judge also noted that during the course of the proceedings the property that the first appellant was claiming to be hers was in point of fact joint property owned with her husband.
27. The judge has specifically rejected the claims made by the sponsor and first appellant as to the circumstances of the divorce. Judge noted that when details were put to the sponsor about the timing of events and the effect of property transfers the sponsor sought to change his evidence. The sponsor had not done so prior to be contradictory details being put to him. (See paragraph 113). The judge noted that the first appellant and the sponsor stated that "the document" identified as the divorce certificate, page 38 and dated 11 July 2012, was a document that had been in the first appellant's papers when she arrived in the United Kingdom in June 2012[paragraphs 74 and 75 and paragraphs 116 onwards].
28. Initially the sponsor confirmed this. However when it was pointed out that that could not be the case given the dates on the document, the sponsor sought to suggest that the document was a later translation issued by the Union Council. When asked where the original document was the sponsor was claiming that the document was at home. No good reason had been given as to why the original had never been produced to the Tribunal or the Home Office and was not in the bundle.
29. In paragraph 115 Judge Gladstone had noted that claims made in the first appellant's application had been contradicted by the evidence given by the appellant herself before the judge. Even the dates upon the documents allegedly being the divorce certificate are not consistent with the claims made in the applications. The application dated 5 July stated that the first appellant had been recently divorced. However the divorce certificate is dated 11 July.
30. In substance on each and every claim that was made by the appellants the judge has pointed out inconsistencies within the evidence such that it is clear she did not find the claims or the appellants' and sponsor's evidence credible. The judge has given valid reasons for finding that their accounts were not credible.
31. At paragraph 122 the Judge makes the following material findings:-

Given all the above I do not accept the initial bases of the applications made in December 2012, that the 1st appellant had lost her property, and the TM had divorced her. Even if that were so, which I reject for all the reasons given, the first appellant has an interest in family land, and had also looked after her siblings property in Pakistan (para 99), so she

still has assets in that country, and somewhere to go. The overall credibility of the appellant's has been severely damaged.

32. It is clear that all of the major elements to support the appellants' claim in respect of Article 8 had been found by the judge not to be credible. Clearly the judge was satisfied that the first and second appellants were related to their sponsor. The appellants had entered the UK on visit visas and within a very short space of time were seeking to remain. They had not been supported by the sponsor prior to coming to the United Kingdom. The appellants had lived separately from the sponsor for a significant period of time before coming to the United Kingdom living a separate life in Pakistan with husband and father respectively until coming to the UK. The judge had not found the circumstances with regard to the claim to have been forced to transfer her property to the alleged ex-husband credible. The judge within paragraph 122 specifically rejects the claim that the appellant had lost all her property or that her husband had divorced her. The judge was satisfied that the first appellant continued to have an interest in family land and that she also had siblings in Pakistan and had property of her siblings that she looked after.
33. There was no evidence of dependency of the second appellant upon the sponsor. The second appellant appears to have been supported by his father in Pakistan. No reason appears to have been given other than the fact that he was 16 at the time of entering the United Kingdom as to why he could not return to live with his father in Pakistan. There was evidence that he had entered into an Islamic marriage but as noted in paragraph 130 he was not living with his claimed spouse.
34. The appellants had to prove the basis for claiming that they had family and private life rights in the UK and the judge as clearly rejected the evidence and account given by the first appellant and the sponsor. The judge has clearly rejected all the major elements that the appellants were seeking to advance to support their claims of rights to remain in the UK.
35. The compassionate circumstances with regard to the third child of the sponsor's family are clearly set out within paragraphs 94 and 95 of the determination. Whilst the judge notes that the compassionate circumstances with regard to the child, the child had not been born until 14th May 2013 after the application to remain had been made by the appellants. It became clear within six months of the child's birth that the child was ill. The judge does point out that those issues were not raised until after the decisions had been made. The sponsor has two other children, who at the time of the hearing were five and four. The elder of the two children appears to be in school. It is correct to say that the judge does not challenge that the appellants appeared to be providing some degree of support to the sponsor and his family at a difficult time. However even then as is evident from paragraph 124 the judge questioned whether the second appellant who had originally authenticated his application with the thumbprint but then signed the later statement could possibly be assisting the elder child with her homework.

36. In the circumstances the judge took account of all the evidence and has made adequate and sufficient findings of facts on the major elements of the appellants' claims to deal with the appeal.
37. The second ground relied upon by the appellants is that the judge has followed the case of Gulshan (Article 8-New Rules-correct Approach) UKUT 00640. In following the case of Gulshan it is argued that the judge has applied a threshold test and failed to follow the guidance given in the cases of Razgar 2004 UKHL 27 and Huang 2007 UKHL 11.
38. The decision of MM 2014 EWCA Civ 985 indicates that there is no justification for an additional threshold in the approach advocated in Razgar and emphasises that the final criteria in Article 8 is always whether the decision is proportionately justified.
39. On an examination of paragraph 131 of the decision it is clear that Judge Gladstone has not gone through all the stages advocated in the case law. However the judge does as a final matter make a decision that taking account of the findings the case would in any event have failed on proportionality.
40. It is clear that whatever else was a consideration in the case the judge was satisfied that given the circumstances the decision by the respondent was proportionately justified. Given the findings of fact made that was a decision that the judge was entitled to make on the evidence. Whilst there may be issues as to whether there is a family life and whether the decision interferes with that sufficiently, it was for the appellants to prove such and the judge's approach in not examining those issues was to the benefit of the appellants. There was no issue that the decision taken was in accordance with the law and that it was for the purpose of maintaining immigration control as an aspect of the economic well-being of the country. The final issue to be determined was whether the decision was proportionately justified. The judge has made sufficient findings to enable her to deal with article 8.
41. Given that the judge has fully justified the decision that the decision is proportionately justified, there is no material error of law in the approach of the judge.
42. I did at the conclusion of the hearing indicate to the representatives that if there were an error of law, which I do not find to be the case, I had all the evidence before the First-tier Tribunal and the findings of fact by Judge Gladstone and that I felt in the circumstances I could go on to the remake the decision. I am satisfied on the basis of the evidence, if there had been an error, I could remake the decision on the basis of the evidence currently lodged in any event.
43. In any event even if there had been an error of law and the case had to be re-assessed on the basis of the findings of fact made, given the findings I would not have found that there was a close family unit between the

appellants and the sponsor. It is clear that at the time of coming to the United Kingdom as found by the judge the appellants were independent of the sponsor financially and had not lived closely to the sponsor and his family for a substantial period of time. Whilst the help and assistance that they provided in looking after the children, whilst the child that was ill was cared for, may have helped the family there is no right to pick to have family members in the United Kingdom to assist in that manner. Similarly there was no evidence that other family members in the United Kingdom already could not have provided that assistance. There are also in the United Kingdom social services and other organisations that may assist.

44. For the purposes of Article 8 to establish family life it has to be proved that there is financial dependence and dependence otherwise going beyond the normal ties of family after a member has left to establish his own family unit. Given the circumstances there is no financial dependency on the basis of the findings by Judge Gladstone and whilst support and assistance has been provided I do not find that such goes beyond that which could be expected in a family situation. I take the approach advocate did in the case of *Kugathas* 2003 INLR 170.
45. By reason of the matters set out I would not have found that there was a family life under Article 8. If there were a family life, the decision would significantly interfere with that family life, I would in any event have found that the decision was in accordance with the law and for the purposes of maintaining immigration control as an aspect of the economic well-being of the country. The final issue to be determined to gain is the issue of proportionality.
46. In assessing proportionality I do take account of the circumstances both of the appellant and the sponsor's family. However I am satisfied on the evidence that it is clear and evident that the appellants came to the United Kingdom seeking to remain here. I am satisfied however are that the appellants have financial means and accommodation back in Pakistan with which to support themselves and have family members in Pakistan on whom they can rely for assistance and support. Whilst I take account of the compassionate circumstances, I am satisfied in all the circumstances that the decision to remove each of the appellants is proportionately justified.
47. For the reasons set out there is no material error of law within the original determination and the decision to dismiss the appeals on all grounds stands.

Signed

Date

Deputy Upper Tribunal Judge McClure