IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/27416/2014
IA/27417/2014
IA/27420/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 20 April 2015	**On 28 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

MS FATIMA ATTIQUE
MR SYED MOOZ UR REHMAN
MR SYED ATTIQ UR REHMAN
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr S Ell, Counsel, Middlesex Law Chambers
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants' appeals against decisions to refuse to vary their leave were dismissed by First-tier Tribunal Judge Nightingale ("the judge") in a decision promulgated on 28 November 2014. The Secretary of State contended that the appellants had no right of appeal following decisions to refuse to grant them leave to remain. The judge decided, as a preliminary

matter, that she had before her valid appeals against decisions to refuse to vary leave, having taken into account guidance given in Syed (Curtailment of leave – notice) [2013] UKUT 00144 (IAC).

2. The appellants' cases were advanced in reliance upon Article 8 of the Human Rights Convention. In this context, they relied on private life ties only and, in particular, on health matters relating to the first appellant, Ms Fatima Attique.

3. The judge made an assessment under the immigration rules ("the rules"), took into account section 117A-D of the 2002 Act and concluded that the adverse decisions amounted to a proportionate response and were lawful. The appellants could not succeed on Article 8 grounds.

4. In an application for permission to appeal, it was contended that the judge erred, particularly in relation to the first appellant and her pregnancy. At paragraphs 52 and 53 of the decision, the judge concluded that, taking into account the date of birth of the youngest child of the family on 8 November 2013, the first appellant would not have been pregnant on 18 February 2013, as claimed. As a result, the reason given by Ms Fatima Attique for failing to study in accordance with the limited leave she had was lacking in credibility. The judge erred here as medical evidence before the Tribunal showed that she was, in fact, pregnant in February 2013.

5. Permission to appeal was granted on the basis that it was unclear what impact the adverse credibility findings, including the finding regarding the pregnancy, may have had on the outcome of the case.

6. In a rule 24 response (prepared by Mr Tufan), the appeal was opposed. The judge made sustainable findings in a well-reasoned decision.

Submissions on Error of Law

7. Mr Ell said that permission was granted on two bases, in relation to Article 8 and the uncertain impact of the adverse credibility findings. Medical evidence before the First-tier Tribunal showed that the first appellant was, as claimed, pregnant on 18 February 2013. The judge found that this aspect was not credible and this coloured the other findings she went on to make. She concluded that the first appellant was not a genuine student and that the appellants overall were not credible but the factual error infected the decision. The judge found, in effect, that the first appellant had never intended to study. The conclusions which followed from the factual error showed that the decision was unsafe. The appellants advanced a case based on private life ties, built on the medical position of Ms Fatima Attique.

8. Mr Tufan said that he had little to add to the rule 24 response. Nazim and Others and Patel and Others [2013] UKSC 72 were clearly relevant

authorities. Even if the judge did err in relation to the pregnancy, this did not take the appellants very far in their Article 8 private life case.

Conclusion on Error of Law

9. I am grateful to Mr Ell for his careful submissions. I conclude, nonetheless, that no material error of law has been shown.

10. It may be accepted that the judge erred in finding that the first appellant, Ms Attique, was not pregnant on 18 February 2013. Medical evidence in the appellants' bundle before the Tribunal showed that she was. What is clear, however, is that the decision is, overall, thorough and cogently reasoned, as one might expect from the experienced judge who wrote it. In making her findings of fact, the judge painstakingly took into account the medical evidence regarding the extent of the ill- health suffered by the first appellant. She had clearly in mind the circumstances of the third appellant, now at nursery school. The family members (save for the child born in November 2013) arrived here relatively recently in January 2013. She considered carefully and made findings about the availability of medical treatment in Pakistan and the circumstances the family would be likely to find themselves in following their return there.

11. The judge was entitled to find that the requirements of the rules in paragraph 276ADE were not met. In weighing the competing interests, she properly took into account section 117B of the 2002 Act. She concluded that the factors set out there weighed against the appellants, overall. That was a conclusion she was entitled to reach notwithstanding a factual error regarding the first appellant's pregnancy. She was also entitled to conclude that the health aspects of the case were relatively weak, as she did at the very end of paragraph 59 of the decision where she mentioned the Upper Tribunal decision in Akhalu (and the health aspects of Article 8 cases have been considered more recently by the Court of Appeal in GS and Others [2015] EWCA Civ 40, the judgments in that case tending to confirm that the judge did not err in the present appeal).

12. Overall, the Article 8 case advanced by the appellants was not a strong one and the private life ties established here since arrival in early 2013 are very modest. Even though the judge erred in finding as a fact that Ms Attique was not pregnant in February 2013, she did not overlook the pregnancy itself or the birth of the child in November 2013. On the contrary, she took these matters into account and gave them due weight. Even removing the adverse credibility findings made by the judge regarding the genuineness of Ms Attique's intention to study, and taking the case at its highest, what remains is, again, a relatively weak Article 8 case. The judge's overall conclusion that the public interest expressed in the adverse immigration decisions (and in the family's removal to Pakistan in consequence) was not outweighed was one which was open to her, notwithstanding the factual error. The proper focus in an Article 8 assessment is on the substance of the ties claimed to have been

established: Patel and Others [2013] UKSC 72. The decision shows that the judge did not err in this regard.

13. No material error of law has been shown and so the decision of the First-tier Tribunal shall stand.

Notice of Decision

14. The decision of the First-tier Tribunal shall stand.

Anonymity

15. There has been no application for anonymity and I make no direction on this occasion.

Signed Date **28 April 2015**

Deputy Upper Tribunal Judge R C Campbell