Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/34807/2014
IA/34811/2014
& IA/34817/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 11 May 2015	**On 19 May 2015**

Before

Deputy Upper Tribunal Judge Pickup

Between

Farrukh Jamil
Munazza Farrukh
Alima Farrukh
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the appellants: Mr SA Ganter, instructed by Farani Javid Taylor Solicitors LLP
For the respondent: Ms E Sage, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, Farrukh Jamil, date of birth 3.3.74, his wife, Munazza Farrukh, date of birth 4.2.76, and their daughter, Alnina Farrukh, date of birth 18.2.07, now aged 8, are citizens of Pakistan.

2. These are their linked appeals against the decision of First-tier Tribunal Judge O'Hagan promulgated 14.1.15, dismissing their appeals against the decisions of the respondent, dated 16.8.14, to refuse their applications for further leave to remain in the UK, and to remove them by way of directions pursuant to section 10 of the Immigration and Asylum Act 1999. The Judge heard the appeal on 29.12.14.

3. First-tier Tribunal Judge Colyer granted permission to appeal on 3.3.15.

4. Thus the matter came before me on 11.5.15 as an appeal in the Upper Tribunal.

5. The relevant background can be briefly summarised as follows. The first appellant entered the UK on 11.3.02 with entry clearance as a student, subsequently extended to 31.8.08. Meanwhile, the second appellant entered the UK as a family visitor on 14.12.03, thereafter she was granted further leave to remain as the dependant of the first appellant. The third appellant was born in the UK in 2007 and she was also granted leave to remain as the dependant of the first appellant.

6. On 24.9.08 the first appellant was granted leave to remain as a Tier 1 Highly Skilled Post-study Migrant until 24.9.10, with the second and third appellants as his dependants. On 23.9.10 the appellants applied for further leave to remain, but the applications were refused with a limited right of appeal. The appellants became appeal rights exhausted (ARE) on 7.6.11 and from that point have had no lawful right to remain in the UK. On 25.9.12, 15 months after they became ARE, the appellants applied for leave to remain on the basis of human rights outside the Immigration Rules. The applications were refused on 26.6.13, both under the Immigration Rules including Appendix FM and paragraph 276ADE, and no exceptional circumstances were found to justify granting leave outside the Rules on the basis of article 8 ECHR private and family life rights. The decision also considered the best interests of the third appellant child under section 55 of the Borders, Citizenship and Immigration Act 2009. These refusals are the subject of the present appeal.

Error of Law

7. For the reasons set out below I find no material error of law in the making of the decision of the First-tier Tribunal requiring the decision of Judge O'Hagan should be set aside.

8. Judge O'Hagan considered the appeal both under the Immigration Rules, both EX1 of Appendix FM and paragraph 276ADE, and then outside the Rules under article 8 ECHR. The judge did not agree with the submission that the child's position should be considered first before or in isolation of that of the parents. However, the judge accepted that the best interests of the third appellant child were a primary consideration, but not the paramount consideration to override all other considerations.

9. The grounds of application for permission to appeal suggest that the First-tier Tribunal Judge made a number of misdirections in law.

10. It is first suggested that the judge was in error when considering the third appellant child by applying the wrong test under paragraph 276 ADE(1)(iv). The child had by then lived in the UK for 7 years. The issue was whether it was reasonable to expect the child to leave the UK. That issue could not sensibly be considered without considering the situation in relation to the parents. The grounds suggest that the judge wrongly applied a proportionality test rather than that of reasonableness. Mr Ganter drew my attention to §37 of the decision and the judge's references to the well-known caselaw on the best interests of children. He suggested that whilst those cases may be relevant to an article 8 proportionality assessment, they were not relevant to the issue of reasonableness. He suggested that the language of the judge suggests that he was making a proportionality assessment.

11. I do not accept this submission. Reading §36 through to §40 together, it is clear that the judge did consider the reasonableness of expecting the child to leave the UK with her parents, even though she had lived here for 7 years. The judge's conclusion that the best interests of the child were to remain with her parents is unimpeachable and having found elsewhere in the decision that there was no basis to allow the parents to remain, it followed that the best interests of the child were to accompany her parents to Pakistan. The judge relied on the caselaw to draw two particular principles, that the main focus of the child's life thus far would have been her life with her parents, and that whilst the child would not have the benefit of being educated further in the UK, the child has no right to be educated in the UK. The judge stated at §37 that, "I considered that it would be reasonable to expect the third appellant to leave the UK as part of her family," and thus it is clear that he was considering whether it was reasonable or not. Whilst those case authorities are relevant to the proportionality balancing exercise there was no material error in drawing out those principles when assessing the reasonableness of expecting the child to leave the UK with her parents. As Ms Sage submitted, the Rules, including paragraph 276ADE, were designed to incorporate the article 8 ECHR private and family life rights of applicants, so that the decision of the Secretary of State would be article 8 compliant. It was not wrong of the judge to consider the factors he did. I thus find no error of law on this ground.

12. The second ground pursued by Mr Ganter was that at §50 the judge failed to make a real individual assessment of the child's best interests and the generalised assessment of the First-tier Tribunal was insufficient to afford the proper attention to her circumstances. Mr Ganter complained that there was no specific consideration of the child's best interests. However, I find that throughout the decision the judge properly considered the best interests of the child. For example at §33 of the decision, the judge referred to ZH (Tanzania) v SSHD [2011] UKSC 4, and stated that he wished to emphasise that he considered the child's welfare to be a significant factor and one of importance to his considerations. At §36 the judge set out relevant factors of the child's life in the UK, that she has lived here all her life; that although she has

visited Pakistan twice, this is the only country she has known; and the Judge accepted that she would have formed friendships and achieved the degree of integration into school and the wider community that one would expect of a child her age. At §38 the judge accepted that removal might be detrimental to her education. The judge cited the relevant case law and the principles drawn therefrom. In particular, the extract from Zoumbas at §39 was highly relevant and very similar to the facts of this case.

13. It is not necessary for the judge to set out every piece of evidence relied on, provided that it is clear that all relevant matters have been considered and irrelevant matters excluded. In the circumstances, I find no error of law in this ground of appeal.

14. The third ground and submission of Mr Ganter was that at §50(iii) the judge set out partial and selective findings in relation to section 117B of the 2002 Act that were unfavourable to the appellants but ignored those which assisted them. Whilst in considering the public interest question, which is defined as meaning the question of whether an interference with a person's right to respect for private and family life is justified under article 8(2) ECHR, the judge is required by section 117A in all cases to have regard to the public interest considerations listed in section 117B. Mr Ganter's submissions are misconceived. The requirement to have regard to the public interest considerations does not mean that he has to specifically address each one in turn, setting out those that are not relevant to the public interest on the facts of the case. Neither do I accept the contention that somehow an appellant is entitled to have those factors that are not relevant to the public interest converted into some sort of positive finding to be weighed in public interest scales. These are all public interest considerations; in other words consideration of the strength of the public interest in removal of the appellants. That an appellant may be able to speak English, or is financially independent, is not a positive public interest factor that strengthens the claim to remain in the UK, though those may be independently relevant factors to any proportionality assessment.

15. Finally, that the appellants or any of them speak English or are financially independent could not reasonably have result in this appeal being allowed for those reasons or with those reasons included as part of the proportionality assessment. I note that there appears to be no evidence of financial independence in the papers before me. The family life of these appellants was formed or developed in the UK in circumstances of precariousness of the kind referred to in R (Nagre) v SSHD [2013] EWHC 720 (Admin). They were illegal overstayers from the expiry of their leave in 2010. Even prior to that the status of the adult appellants in the UK was entirely temporary and thus precarious. They had no right to remain except in compliance with Immigration Rules, which they cannot meet. It is only if their case is somehow exceptional that they would have been able to establish a violation of article 8. None of their circumstances could be regarded as exceptional for the purpose of article 8, and in my view there was no necessity for the First-tier Tribunal to go beyond the Immigration Rules, as the appellants failed to demonstrate any compelling or exceptional circumstances not adequately recognised by the Rules so as to justify,

exceptionally, granting leave to remain pursuant to article 8 ECHR outside the Rules on the basis that the decision was either unjustifiably harsh or otherwise disproportionate. I refer in particular to the recent discussion of these principles by the Court of Appeal in the case of Agyarko & others v SSHD [2015] EWCA Civ 440. It follows that even if I am wrong and even if the judge should have addressed each of the public interest considerations in turn and listed factors in the appellants favour, there is in fact no material error of law on the facts of this case, as such error of law would and could not have produced any different outcome to the appeal.

16. The one exception to that set out above, is in relation to 117B(6) where the provision specifies that it is not in the public interest in the particular case set out in that subsection, a genuine and subsisting relationship with a qualifying child, which the third appellant is, where it would not be reasonable to expect the child to leave the UK. In that regard, whilst the judge did not specifically address 117B(6), it is clear that it is the same test of reasonableness as already considered under paragraph 276ADE(1)(iv), and thus there can be no material error of law in neglecting to address it.

17. In the circumstances, I find no error of law in this or any of the other grounds of application for permission to appeal.

Conclusions:

18. For the reasons set out above, I find that 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 appeal of each appellant remains dismissed on all grounds.

Signed

Deputy Upper Tribunal Judge Pickup

Dated **21 July 2015**

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 have been dismissed and thus there can be no fee award.

Signed

Deputy Upper Tribunal Judge Pickup

Dated **21 July 2015**