Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/44794/2014
IA/44810/2014
IA/44811/2014
IA/44812/2014

THE IMMIGRATION ACTS

Heard at Birmingham
On 3 September 2015

Decision & Reasons Promulgated
On 7 September 2015

Before

UPPER TRIBUNAL JUDGE PITT

Between

MZK
NFK
MAK
LK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Pipe, instructed by Bushra Ali Solicitors
For the Respondents: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision promulgated on 13 February 2015 of First-tier Tribunal Judge Burns which refused the appeals under paragraph 276ADE and on Article 8 ECHR grounds.

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2. The appellants are a family from India. MZK and NFK are father and mother to MAK and LK. MAK was born on 6 September 2007 and LK was born on 26 September 2012. Both were born in the UK. As of the hearing before the First-tier Tribunal, therefore, MAK had been in the UK for over 7 years and fell to be considered under paragraph 276ADE(iv). As identified by Judge Burns at [6] this required an assessment of whether it would be "reasonable to expect" MAK (and therefore the rest of the family) to leave the UK.

3. The family argued that it would be unreasonable to expect MAK to live in India where the marriage of the parents was not approved of and where MAK had medical problems. The family would be doubly stigmatised because of the disapproval of the parents' marriage and the children's difficulties.

4. The family also argued that a second stage Article 8 assessment succeeded for the same reasons, the best interests of both children clearly being to remain in the UK and because LK also had complex medical needs.

5. Judge Burns found that the best interests of the children were in remaining with their parents, that it was reasonable to expect MAK to return to India and that the decision did not amount a disproportionate interference with the family's Article 8 rights.

6. As conceded for the appellants, Judge Burns decision is very detailed. To my mind it was also entirely sound and the grounds of appeal somewhat in line with those identified in VHR (unmeritorious grounds) Jamaica [2014] UKUT 00367 (IAC) which stated in the head note:

> "Appeals should not be mounted on the basis of a litany of forensic criticisms of particular findings of the First Tier Tribunal, whilst ignoring the basic legal test which the appellant has to meet"

and at [24]:

> "This is not how appeals should be mounted. As McCombe LJ in VW (Sri Lanka) [2013] EWCA Civ 522 said: "Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgement, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact".

7. The first ground of appeal states that the judge failed to make an assessment of the children's best interests and that this "should have been considered first and informed the Judge's assessment of reasonableness under the rules."

8. Judge Burns indicates at [15] in the very first paragraph under the heading "Findings of Fact" that "I am mindful that my primary consideration is the welfare of the children and will deal with the two minor appellant's welfare first." What follows at [16] to [47] is an assessment of the children's best interests including consideration of all the material issues raised. It is simply wrong to assert that the best interests were not assessed first and did not inform the assessment of reasonableness of return of MAK.

9. The second ground argues that Judge Burns made a material error as to the country evidence on corporal punishment in Indian schools. The grounds state that the judge "made sweeping assumptions about the education system in India, which do not engage with the country or expert evidence." On analysis, those "sweeping assumptions" are limited to comments made at [25] about corporal punishment in Indian schools and [55] about India having a functioning education system.

10. The evidence before the First-tier Tribunal contained in the expert report of Dr Holden at pages 43 to 69 of the appellant's bundle and in media articles on corporal punishment was not such as to oblige Judge Burns to find that it showed it would be unreasonable for MAK to go to school there. On the contrary, at page 60 of the appellants' bundle Dr Holden does not does not make a clear statement about a high level of corporal punishment in Indian schools. She states "maybe it just depends on the school." She does not state that corporal punishment was "pervasive" as suggested in the grounds.

11. Given that evidence it was open to Judge Burns to find that the fears of MAK of being subject to corporal punishment on return were not objectively well-founded. Much was made at the hearing of failure to refer to the media articles provided on corporal punishment in Indian schools but even a decision as detailed as that of Judge Burns cannot address every piece of evidence and those articles are not, when considered with the appellant's expert report on the Indian education system, capable of showing that Judge Burns made a material error of law regarding the evidence of corporal punishment and MAK's concerns about it.

12. The objection in the grounds to the comment at [55] that India has a functioning education system has no merit whatsoever. It was not the view of the appellant's experts or the other country evidence (see [10], for example) that India does not have a functioning education system.

13. The third ground argues that the First-tier Tribunal at [26] took an incorrect approach to MAK's possible diagnosis of ADHD, made at [310] of the appellant's bundle. A diagnosis of ADHD was rejected in the more recent report of Dr Newth at page 83 of appellant's bundle, however. The judge was therefore entitled to find that it had not been shown that MAK had a diagnosis of ADHD. It is not the case that if she accepted that part of Dr Newth's report she had to accept all of it and was not entitled to distinguish the comments about MAK's fear of corporal punishment. The

conclusion at [26] that MAK did not have ADHD was not solely based on Dr Newth's report in any event but also on a teacher's report and there being other social stressors that could account for his behaviour.

14. Ground 4 maintains that the First-tier Tribunal erred at [29], [30] and [45] in not accepting Dr Newth's comments about difficulties for the children on return as a result of their disabilities and the stigma arising from the marriage of their parents. Firstly, the marriage of MZK and NFK was arranged by the NFK's parents. Even if her wider relatives do not approve and will not assist the family on return, that cannot be the case with her parents. MZK's family are not stated to disapprove of the relationship at all and family support has been offered whilst the family has been in the UK. The case for difficulties arising due to a lack of family support for the marriage is not made out, therefore, those facts not being addressed in the report of Dr Holden on the point. It was also manifestly open to the judge to find that MZK could be expected to find work where he is qualified IT engineer who has found work in that field in the UK and where family support has not been shown to be absent it was entirely open to Judge Burns at [29] and [45] to find that the family would not be living in poverty and unable to provide for the particular needs of their children on return.

15. The submission made at paragraph e. of the grounds about an incorrect date being ascribed to a payment in a bank statement has no merit at all. It is a very minor point, there being a number of other findings as above and at [38] more than justifying why the judge found that the family would have funding on return. Mr Pipe conceded at the hearing that this was not his strongest point.

16. For these reasons, I did not find that the decision of the First-tier Tribunal disclosed an error on a point of law such that it should be set aside.

Decision:

The decision of the First-tier Tribunal does not disclose an error on a point of law such that it should be set aside and it shall stand.

Signed:
Upper Tribunal Judge Pitt 4 September 2015