UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER) **APPEAL NUMBER: IA/04371/2015**
IA/04380/2015
IA/04385/2015
IA/04390/2015
IA/04393/2015
IA/04397/2015

THE IMMIGRATION ACTS

Heard at: Field House	**Decision and Reasons Promulgated**
on 22 February 2016	**on 14 April 2016**

Before

Deputy Upper Tribunal Judge Mailer

Between

A. B.
F. Y.
W. F.
T. F.
S. A.
W. L.
ANONYMITY DIRECTION CONTINUED

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation
For the Appellants: **Dr Anton van Dellen, counsel (instructed by Abbott Solicitors)**
For the Respondent: **Mr L Tarlow, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. I continue the anonymity direction made. This direction is to remain in place unless and until this Tribunal or any other appropriate court, directs otherwise. As such, no report of these proceedings shall directly or indirectly identify the appellants or any of them. Failure to comply with this direction could amount to a contempt of Court.

2. The appellants are a family unit. They are husband, wife and their four children. I shall refer to the first appellant as "the appellant."

3. The appellants appeal against the decision of the First-tier Tribunal Judge promulgated on 17 August 2015 dismissing their appeals against the refusal by the respondent of their applications for further leave to remain in the UK as a Tier 4 student and his dependants.

4. In granting permission, First-tier Tribunal Judge Nightingale found that the Judge's findings on paragraph 276ADE and Appendix FM were accompanied by sustainable reasons open to the Judge on the evidence before him. Accordingly, no error arose on that ground.

5. However, she found it arguable that the Judge fell into error by failing to have regard to s.117 of the Nationality, Immigration and Asylum Act 2002 as amended. She granted permission to appeal on that ground alone.

6. The background to the appeal was that the appellant applied for leave to remain as a Tier 4 (General) student and his wife and four children applied as his dependants. Their applications were refused on 15 January 2015. It had been contended that the appellant used deception as part of his application, by using a proxy to complete his English language test.

7. The Judge however was not satisfied that the respondent had shown to the required standard that the appellant had used deception as part of his application [16-18].

8. The fact remained however that the appellant was still without a valid English language test certificate as his score was cancelled. He therefore failed to meet the requirements of paragraph 245ZX(a) - [19].

9. He further found that the appellants could not meet the requirements of Appendix FM [20]. Nor could they meet the various requirements under paragraph 276ADE of the Immigration Rules. The longest that any of the children had lived in the UK since they re-entered in August 2010 was five years. Nor could the appellants show

that they are between the age of 18 and 25 and have lived in the UK for half of their lives [21].

10. The Judge considered the argument under paragraph 276 ADE (vi) that they have been in the UK for less than 20 years and there would be significant obstacles to their integration on return. He considered it relevant that the appellant has spent a considerable length of time in the UK and it is therefore reasonable to conclude that he has established private life here. However he had no expectation that he would be permitted to remain here permanently or indefinitely [22].

11. He found that the appellant and his family still retain strong ties to Pakistan including parents, siblings and other family members. He noted that his wife and children, who have not been away for a significant period of time, would not find it too difficult to re-settle, as they did on the last occasion when they remained in Pakistan for 17 months before returning to the UK in 2010 [23].

12. The Judge then considered as a primary consideration the position of the minor appellants. Three of them were born in Pakistan, and the youngest was born in the UK. Two of them entered the UK in 2007 and returned to Pakistan as a family in 2008. They remained there with their mother until they returned to the UK in 2010. According to the appellant, their eldest child did not attend school during this time. The Judge considered that this pattern of travel between the UK and Pakistan constituted evidence of their adaptability [24].

13. Although they have been in education in the UK they are entitled to and would receive an education in Pakistan. Although there may be some initial disruption during the transition they would eventually adapt to life in Pakistan and would settle down. Their eldest child, who was out of education for 17 months when she was in Pakistan, experienced no difficulty adapting to education in the UK on her return. In a similar way, the children will before long settle into life and education in Pakistan. To aid the process, they will have the benefit of their parents, grandparents and wider family members at hand. The transition will be aided by the fact that the children speak both Urdu and English so the language will not be an obstacle [25].

14. He was thus satisfied that it is in the best interests of all the children to return with their parents and remain as a family unit. There are no significant obstacles to their integration on return [26].

15. Although the initial transition may be unsettling for all the appellants, they have failed to show that there are significant obstacles to integration [27]. With regard to Article 8 of the Human Rights Convention, he found that there is nothing sufficiently compelling about the case requiring consideration outside the rules.

16. In his submissions Dr. van Dellen noted that the appellant's application for a Tier 1 visa was granted until 15 September 2011. His wife joined him in 2010 along with the children.

17. The appellant has been in the UK for ten years and has established family life here. The children are attending school and have also developed private and family lives here. They would not affect the economic well being of the UK as there would be no recourse to public funds.

18. He noted that permission to appeal was limited to the grounds that the Judge had failed to have regard to s.117 of the 2002 Act.

19. He referred to the full text of s.117A which applies when a Tribunal is required to determine whether a decision made under the Immigration Act breaches a person's right to respect for private and family life under Article 8 and as a result would be unlawful under s.6 of the Human Rights Act 1998.

20. In considering the public interest question the Tribunal must in particular have regard in all cases to the considerations listed in s.117B.

21. Part 5A of the Act only applies to Judges. Home Office officials are under no duty to follow the scheme of Part 5A but Judges are. He submitted in his written argument that Judges 'may well treat cases more generously than Home Office officials'.

22. He referred to the paragraph. He submitted that it was incumbent on the Tribunal to consider the appellants' Article 8 rights, given that any decision made by the Tribunal would potentially engage such rights, whether or not such rights were explicitly pleaded. Accordingly, the First-tier Judge should have considered s.117 of the Act.

23. He referred to the decision of the Upper Tribunal in Forman (ss. 117A-C considerations: United States) [2015] UKUT 412 (IAC) at [17]. Section 117B requires identification and analysis of each of the provisions concerned. If not carried out by the Judge and it was not possible to infer that it was conducted, that constitutes

an error of law [18]. In the same paragraph, the Tribunal also noted that while the Judge in Forman did not adopt the sequential and structured approach to all the elements of s.117B this is not fatal per se. Indeed, the Tribunal has held in appeals that the provisions of s.117B-C were applied *in substance* and hence without error of law by the First-tier Tribunal.

24. What was required was identification and analysis (however brief) of each of the provisions concerned. In that case, it was not possible to infer that it was conducted. In that case, where the secretary of state was the appellant before the Tribunal, the Judge attributed substantial weight to the claimant's private life. This assessment is prompted by the detailed rehearsal of the evidence as a strong emphasis on various facets of his private life as set out in the decision appealed against [19]. It was incumbent on the Judge to explicitly acknowledge that the entirety of the claimant's private life in the UK was established during a period when his immigration status was precarious and having done so, to conduct the balancing exercise accordingly. Neither this acknowledgement nor this exercise was contained in the decision.

25. Dr. van Dellen also relied on Bossade (ss. 117A-D – interrelationship of Rules) [2015] UKUT 415 (IAC). There it was held at [50] that the coming into force of Part 5 A of the 2002 Act has not altered the need for a two stage approach to Article 8 claims, but that s.117 has a direct role in the context of a proportionality assessment in accordance with Articles 8(2). Considerations set out in s.117A-D are not determinative of whether or not a person qualifies on Article 8 grounds; they do not set out necessary and sufficient conditions. Rather, they are obligatory (non exhaustive) considerations to be applied when addressing the "public interest question" [38]. The Tribunal rejected any suggestion that a general balancing act is co-extensive with the proportionality assessment [42].

26. Dr. van Dellen contended that the Judge had failed to consider s.117 of the 2002 Act on the basis that each consideration should be identified and analysed; this was an obligatory process.

27. On behalf of the respondent, Mr Tarlow relied on the Rule 24 response. The ground of appeal failed to disclose any material error of law in the determination of the First-tier Tribunal. The Judge did consider Article 8 at paragraphs [20-28]. He took into account relevant factors, arriving at sustainable and well reasoned conclusions.

28. In particular, the Judge found that the appellant had not committed deception. He considered the fact that the appellant and his family retain strong ties to Pakistan and would be able to re-integrate. He has had regard in substance to the provisions

of s.117B. Accordingly, any failure explicitly to have regard to s.117 of the 2002 Act does not constitute a material error in the circumstances.

Assessment

29. The Judge was obliged to have regard to all of the considerations listed in s.117B of the 2002 Act. Other considerations can be taken into account, provided that they are relevant in the sense that they properly bear on the public interest question.

30. The First-tier Judge found that as the appellants have neither qualifying partners nor children in the UK, they cannot meet the requirements of Appendix FM [20]. The Judge also considered paragraph 276ADE of the Rules relating to private life in the UK. He considered whether there would be significant obstacles to their integration on return. The appellants still retain strong ties to Pakistan including parents, siblings and other family members. Nor had the appellant's wife and children been away for a significant period of time. They would accordingly not find it too difficult to resettle, having regard in particular to the fact that on the last occasion, they remained in Pakistan for 17 months before returning to the UK in 2010. [23]

31. He noted that the children speak both Urdu and English [25]. Further, the appellant himself did not obtain his English language certificate by means of deception. (I was also informed that the appellant gave his evidence before the Tribunal in English).

32. The Judge noted that the appellant had applied for leave to remain as a Tier 4 (General) Student Migrant [12]. Accordingly, the Judge was required to give little weight to a private life established at a time when the person's immigration status is precarious. That was clearly the position that applied in this case.

33. The Judge had regard to the fact that the appellant had spent a considerable length of time here [22]. He also noted that the children had been in education in the UK. There was no contention that they were not financially independent or a burden on the taxpayers.

34. The Judge has considered the best interests of the children as a primary consideration in the case [24-25]. Two children entered the UK in 2007 and returned to Pakistan as a family in 2008, remaining there with their mother until returning in 2010.

35. The Judge accordingly considered that the pattern of travel between the UK and Pakistan was evidence of their adaptability [24]. He also considered that there would be no significant obstacles to their integration on return [26].

36. Having regard to the decision as a whole, the First-tier Tribunal Judge has in substance had proper regard to the relevant provisions of s.117B of the 2002 Act.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of any material error on a point of law. The decision shall accordingly stand.

Anonymity directions continued.

Signed Date 8 April 2016

Deputy Upper Tribunal Judge Mailer