Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number

IA/37891/2014
IA/37894/2014, IA/37893/2014
IA/37892/2014, IA/37890/2014[1]

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons promulgated**
On 3 March 2016	**On 19 May 2016**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

Mr Wahajat Muhammad Mirza,
Mrs Afshan Mirza
[MFM]
[MZM]
[WM]
(Anonymity orders not made)

Appellants

and

Secretary of State for the Home Department

Respondent

Representation

For the Appellants: Mr C Lam of Counsel instructed by David Tang & Co.

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer.

DECISION AND REASONS

[1] The case numbers are not listed numerically but, following the style adopted by the First-tier Tribunal, reflect the seniority of the family members, as does the case title.

1. These are linked appeals against the decisions of First-tier Tribunal Judge Dennis promulgated on 3 July 2015 dismissing the Appellants' appeals against decisions of the Respondent dated 9 September 2014 to remove each of them from the UK.

Background

2. The Appellants are nationals of Pakistan. Their respective dates of birth and immigration histories are a matter of record and are also summarised at paragraph 1 of the decision of the First-tier Tribunal. It is unnecessary to rehearse all such details here.

3. The background to the Appellants' most recent applications culminating in the Respondent's decisions to remove each of them from the UK is set out in considerable detail at paragraphs 4-13. The Respondent's decisions are summarised – again in some detail – at paragraphs 14-18. As this is a matter of record, is known to the parties, and is not the subject of dispute before me, I do not propose to re-rehearse such matters herein.

4. The Appellants appealed to the IAC against the removal decisions of 9 September 2014.

5. The First-tier Tribunal Judge dismissed the Appellants' appeals for reasons set out in his determination.

6. The Appellants sought permission to appeal which was granted by First-tier Tribunal Judge Landes on 1 October 2015.

Consideration

7. The principal complaint made by the Appellants in their application for permission to appeal – and the basis upon which Judge Landes granted permission – is an allegation that the First-tier Tribunal Judge failed to have due and proper regard to the circumstances of the individual Appellants and in particular [MFM]. Specifically, permission to appeal was granted on the basis that it was considered arguable that the Judge had failed to consider the private lives of the children Appellants, in particular [MFM] who had been resident in the UK between the ages of 3 and 11, and with particular reference to 'best interests' under section 55 of the Borders, Citizenship and Immigration Act 2009, and the analysis in

the decision in **Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 00197 (IAC)**.

8. In the context of 'individual analysis', the Appellants seek to identify a distinction between the individual children on the basis that "*it is unreasonable to assume that they all could pick up the language at the same pace in order to adapt to the school system in Pakistan*" (see Grounds at paragraphs 1 and 2)., Further, particular emphasis was placed on the fact that [MFM] "*acquired his 7 years long residence from the early ages of 3 years and three months*" (Grounds at paragraph 3).

9. I find no merit in these Grounds.

10. As a starting point, in my judgement it is very clear that the First-tier Tribunal Judge had in mind the basis upon which the Appellants' cases were being advanced which essentially focused upon the position of the children and the length of time they had been living in the UK. The Judge is overt in identifying the basis upon which the Appellants' application was advanced on 27 June 2014, and in particular the basis upon which the Appellants sought to argue that there had been a change of circumstances since the last refusal of their case: see decision at paragraph 13. The Judge is again overt at paragraph 22 in identifying "*in this appeal the focus has been primarily on the education of the children*", and goes on to identify in that paragraph the contended issue in respect of potential language problems in adapting to the educational system in Pakistan. See similarly at paragraph 25 recounting the evidence of Mr Mirza. And again it is overt that the Judge has focused on the circumstances of the children in that he states at paragraph 27: "*I consider the circumstances carefully. I acknowledge that the children spent important early years in the UK*".

11. As regards the ability of the children to adopt to the educational system in Pakistan the Judge says this at paragraph 26:

> "*I am satisfied that some practical accommodation must be reached. In respects of language, the principal problem is ever and always general familiarity. I am satisfied that the Appellant children, said to be good students, can apply their minds relatively quickly to the written form of their spoken language. Given their father's ready duplicity, it is possible that they are in fact much more fluent and even literate in Urdu already… All of them are young, all of them are able, and I do not find it unreasonable for them to return to their*

home country as was the ostensible plan of their parents from the very date of entry."

12. In my judgement, the Judge's very clear finding that all of the children are sufficiently able to adapt to the different educational system, even allowing for some initial limitation of language, is such that it is immaterial that he has not made a specific finding as to any distinction as to the exact speed of adaptation as between one child and another. The overarching conclusion that **all** are able encompasses an evaluation of each. The Judge's findings are adequate and adequately reasoned, and on the facts and circumstances here are not to be impugned on the suggestion of a failure to distinguish between the children.

13. Moreover, it is clear that the Judge had in mind that a particular approach was being urged upon him in respect of [MFM]: "*Although not contained in his witness statement, at the hearing the principal Appellant is now urging that the older child, in particular, could not be expected to continue his education because he would have to do compulsory Urdu, Sindhi and Islamic studies courses to enrol, evidently, in secondary school*" (paragraph 25). The Judge addresses this both in paragraph 25 and in his conclusion at paragraph 26 that *all* of the children are able to adapt.

14. Although the Judge did not cite **Azimi-Moayed**, in my judgement it is apparent that his decision covers the same territory that is the subject of guidance in **Azimi-Moayed**, and is consistent with the guidance and principles identified therein. In particular the Judge identifies the significance of 7 years residence, whilst uncontroversially also identifying that such a duration of residence does not guarantee a grant of leave to remain: e.g. see paragraphs 14, 16, 19, and 29, and compare with paragraph 13(iii) of **Azimi-Moayed**, "*What amounts to lengthy residence is not clear cut the past and present policies have identified seven years as a relevant period*". More particularly - and echoing the words at paragraph 13(iv) of **Azimi-Moayed**, "*the Tribunal notes that seven years from age four is likely to be more significant to a child than the first seven years of life*" – the Judge observes "*I acknowledge that the children have spent important early years in the UK*" (paragraph 27), also referring to potential "*interfer[ence] with secondary school entry*" (paragraph 29).

15. It is also clear that the Judge was alert to section 55 of the 2009 Act. He makes express reference to section 55 having been considered as an aspect of earlier applications and refusals (e.g. see

paragraphs 4, 8, and 11). The current RFRL – to which it is manifest the Judge has had careful regard in that he has set out its contents in some detail - referred to section 55; moreover the Judge directed himself in respect of section 55 at paragraph 20.

16. More particularly, in his own consideration of the cases, the Judge is overt in having regard to best interests:

> "*I am obliged to consider that should the parent Appellants have elected to comply with their original undertaking and to return on the completion of their leave to remain or, even, upon unsuccessful determination of their second appeal, no-one would or could have concluded that it was contrary to the best interests of the children that they should return to their home country in the company of their parents. That is effectively the circumstance which I see before me, and I can find nothing in it which renders the decision now on appeal unreasonable.*" (paragraph 27);
>
> and
>
> "*For the foregoing reasons, therefore, I conclude, as did IJ Birk, that the best interests of the children have been considered and that there not seen to suffer any disproportionate consequence of the decision to return their entire family to their home country, whose language they speak, at this stage in their lives.*" (paragraph 28).

17. Accordingly I find that on closer analysis than is possible or appropriate at the 'permission' stage, the grounds of challenge that informed the grant of permission to appeal are of no substance and identify no error of law; they essentially constitute an attempt to re-put and reargue the case rejected by the First-tier Tribunal Judge.

18. In addition to the basis of the grant of permission to appeal, Mr Lam sought to raise submissions in respect of Article 8 by way of development of paragraph 7 of the grounds in support of the application for permission to appeal. It is to be observed that the deliberations of the First-tier Tribunal Judge were in the context primarily of considering paragraph 276ADE in respect of the children, with the particular focus on the balancing exercise of reasonableness under paragraph 276ADE(1)(iv) and/or Appendix FM. However, as identified by Judge Landes there is no arguable error of law based on a proportionality submission in the context of Article 8: "*I do not consider that it is an error of law for the Judge to have failed to consider proportionality, If he was correct in finding that it*

would be reasonable to expect the minor appellants to leave the UK then it cannot possibly be disproportionate for them to be removed". This is essentially to identify that the reasonableness test under paragraph 276ADE – which is in any event a paragraph designed to give effect to the UK's obligations under Article 8 – has an 'in-built' proportionality evaluation.

19. Be that as it may, I note that Mr Lam argued that the Judge was in error in essentially relying upon the earlier conclusion in respect of Article 8 of First-tier Tribunal Judge promulgated on 26 March 2013. Mr Lam argued that it was an error for the Judge simply to adopt Judge Birk's findings given that some two years had elapsed which meant also that the seven-year threshold had been passed, and that the children were older and at different educational levels. Mr Lam alights upon the words of Judge Dennis at paragraph 30 – "*I fully approve and adopt the analysis put forward by IJ Birk in the previous decision of 26 March 2013*".

20. In my judgement that phrase needs to be read not only in the context of paragraph 30, but in the overall context of the decision. The significant words at paragraph 30 are those that immediately follow the quotation above: "*I find no substantial or substantive change in the circumstances to alter that conclusion, whatever the representations put forward by the principal Appellant or his agents in that respect*". Judge Dennis identifies those further representations at paragraph 13 in referring to the supposed change of circumstances relied upon by the Appellants in their application of 27 June 2014. The Judge states "*the only event that appears to have changed is that the children are now older than they were in March 2013. It was now also argued (though this could not be seen to be a change) the children could speak Urdu but were unable to read or write it which would be "a barrier to their future development should they be required to return to Pakistan"*. It is very much the circumstances of the children and their educational opportunities that the Judge focuses upon in the key paragraphs of his decision – as may be gleaned from the analysis above in respect of those grounds of challenge that led to the grant of permission to appeal: it is clear beyond any doubt that when the Judge refers to "*no substantial or substantive change in the circumstances to alter [the] conclusion*" of Judge Birk, that he is reiterating his own finding that the circumstances of the children – notwithstanding the further passage of time – are not such as to make the removal of any or all of the Appellants unreasonable or disproportionate. This is not a simple reliance upon, and repetition of, the earlier finding.

21. Mr Lam sought to raise one further point during the course of his submissions. He argued that pursuant to sections 117A-117C of the Nationality, Immigration and Asylum Act 2002 the public interest considerations had changed since the earlier Article 8 assessment, and that in any event Judge Dennis had not had regard to such provisions in his own deliberations.

22. I observed to Mr Lam that such a submission did not feature in the grounds in support of the application for permission to appeal, and there was no formal application before me to amend such grounds. As such I did not allow such a ground to be developed. In any event, even if it were the case – notwithstanding that the Judge did not embarked a freestanding Article 8 analysis – that it was necessary to have regard to the public interest considerations as non-exhaustively identified in Part 5A of the 2002 Act, in my judgement it could not possibly have made a material difference to the outcome in these appeals.

23. As Judge Dennis identified the Appellants' cases have been put, re-put, and put again at different stages since the expiry of their legitimate leave in October 2011: e.g. "*It was then asserted that the Respondent should re-re-re-consider the Article 8 rights of the Appellants*" (paragraph 13). The Appellants have at no earlier point advanced a compelling case to remain in the UK. Moreover applications were made with false documents, and Article 8 representations were informed by untruthful attempts to explain deception, and were otherwise based on exaggeration of circumstances.

24. Presently – and notwithstanding the clear, sustainable, and unchallenged finding by Judge Dennis that the principal Appellant has continued to dissemble and exaggerate – the family essentially wish to re-present their Article 8 based claim to remain on the sole ground that it is now bolstered by the lapse of time since it was last considered and the consequence of that lapse of time. That is, in effect, *to rely upon* their wilful disregard of the expectation that they quit the UK, and their wilful disregard of the law of the land (i.e. by continuing to work), whilst also seeking to plead in aid the fortuitous access to public services (most notably education) to which, if they had respected immigration control and quit the UK, they would have no entitlement to access.

25. The conduct in remaining in the UK after each successive earlier rejection – working illegally and accessing free public services - strikes at the very core of the public interest imperative of

maintaining effective immigration control. (Judge Dennis appears mindful of this in his observations at paragraphs 12-13 and 29.) To permit this family to remain now – as they seek – would be to permit them to remain essentially on the basis that they have improved their immigration position by reason of their wilful defiance in remaining unlawfully. This would run fundamentally contrary to the wider public interest in effective immigration control.

26. I should add that it also seems to me absolutely clear that the timing of the application on 27 June 2014 – coming just 10 days after the seven-year anniversary of the arrival in the UK of Mrs Mirza and the two older children, gives rise to an almost inescapable inference that the adult Appellants cynically waited out the time between the promulgation of the decision of Judge Birk on 26 March 2013 and the making of these applications some 15 months later precisely because they perceived a favourable significance to the presence of the children in the UK for 7 years. In my judgement this very strongly reinforces the notion that the family should not have any immigration advantage essentially by reason of having remained in the UK cynically in defiance of immigration control, irrespective of the good progress the children may have made academically.

27. In all such circumstances I find no error of law in the approach and findings of the First-tier Tribunal.

Notice of Decision

28. The decisions of the First-tier Tribunal contained no error of law, and accordingly the decisions stand.

29. Each of the appeals is dismissed.

30. No anonymity orders are sought or made.

Deputy Judge of the Upper Tribunal I. A. Lewis 16 May 2016