



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/06793/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Manchester
On 13th October 2017**

**Decision & Reasons
Promulgated
On 18th October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**SF
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Thornhill of Thornhills Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Ransley of the First-tier Tribunal (the FtT) promulgated on 12th January 2017.
2. The Appellant is a female citizen of Pakistan born 26th November 1967. She applied for leave to remain in the UK based upon family and private life, and this application was refused on 24th February 2016.

3. The appeal was heard by the FtT on 6th January 2017 and dismissed. The FtT considered that the Appellant had three children, born 31st October 1997, 23rd September 2000, and 4th April 2003, who had been in the UK since 9th July 2008. The application for leave to remain was made on 27th October 2015, and therefore the children had been continually resident in the UK for in excess of seven years at the date of application.
4. The FtT considered paragraph 276ADE(1)(iv) and whether it would be reasonable to expect the children to leave the UK. The FtT concluded that it would be reasonable, and the appeal was dismissed, the FtT finding that the removal of the Appellant and her children from the UK would not breach Article 8 of the 1950 European Convention on Human Rights.
5. The Appellant applied for permission to appeal to the Upper Tribunal, relying upon three grounds which are summarised below.
6. Firstly, it was contended that the FtT had failed to properly follow and apply the guidance in MA (Pakistan) [2016] EWCA Civ 705. The FtT had not recognised that the best interests of the children had the status of a primary consideration.
7. Secondly, it was contended that the FtT had made a mistake of fact at paragraph 35 in stating that the eldest daughter had indicated in her witness statement that she came from a wealthy family. This had not been stated in the witness statement, and therefore it was argued that the FtT had erred because there was no evidential basis for concluding that if returned to Pakistan the children would attend the English medium school that had been attended prior to their departure from Pakistan.
8. Thirdly, it was contended that the FtT had erred in finding that there was no evidence to show that the oldest child (who will be 20 years of age on 27th October 2017) would be forced into an arranged marriage against her wishes. It was contended that the FtT had not provided adequate reasoning for this finding, save that the eldest child had indicated in her witness statement that she had minimal contact with her family in Pakistan. It was contended that in the witness statement it had been stated that she had no contact with her father's family in Pakistan but intermittent contact with her maternal grandparents, and therefore it was contended that there was evidence which supported her claim that she would be coerced into an unwanted arranged marriage upon return to Pakistan.
9. In conclusion it was submitted that the FtT had erred in law, when carrying out a fact-sensitive balancing exercise, and had given undue weight to the perceived countervailing factors which primarily concern the Appellant's poor immigration history.
10. Permission to appeal was granted by Judge Hodgkinson of the FtT in the following terms;
 - "2. The grounds argue that the judge erred as follows: Ground 1, in failing to recognise that the best interests of the Appellant's children are a

primary consideration; Ground 2, at [35] of her decision, in wrongly concluding that the Appellant's family was wealthy, which then resulted in an erroneous conclusion that the Appellant would be able to arrange for her children to re-attend a private school in Pakistan, such error being material; Ground 3, at [49], in concluding, contrary to the evidence, that there was no evidence that the Appellant's daughter, M, might be forced into an arranged marriage against her wishes.

3. Ground 1 has arguable merit. Although at [27] of her decision, the judge referred to the decision in MA (Pakistan) [2016] EWCA Civ 705 as indicating that the best interests of children are a primary consideration, it is far from evident, from reading the judge's subsequent reasoning, that she actually treated those interests as such. Ground 2 also has arguable merit. It is correct that M's statement makes no reference to the family being wealthy, contrary to the indication of the judge at [35] of her decision. For reasons stated in the ground, Ground 3 similarly has arguable merit. Permission is granted on all grounds".
11. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. In summary it was contended that the FtT directed itself appropriately and acknowledged that the children had been in the UK for seven years. The FtT had adequately addressed the reasonableness test as set out at paragraph 38. The FtT also had regard to the best interests of the children and factors in support of them remaining in the UK.
 12. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

Submissions

13. At the hearing Mr Thornhill relied upon the grounds upon which permission had been granted. It was submitted that although the FtT had considered the best interests of the children, between paragraphs 27 and 37, the FtT had erred by not reaching a conclusion as to what was in the best interests of the children. The FtT had not stated whether the best interests of the children would be to remain in the UK or return to Pakistan. Mr Thornhill submitted that this amounted to a material error of law.
14. In addition, it was submitted that the FtT had made mistakes of fact as outlined in the grounds, in the conclusions at paragraphs 35 and 49.
15. Mr McVeety relied upon the rule 24 response. It was submitted that the FtT had properly considered the best interests of the children, and appreciated that the issue of reasonableness is a separate consideration. It was contended that there was no error, as the FtT had considered the best interests of the children as a primary consideration, and had then gone on to consider whether it would be reasonable for them to leave the UK.

16. It was accepted that there was a mistake of fact at paragraph 35 by the FtT, as the witness had not stated in her statement that she came from a wealthy family. She had, however, attended an English medium school.
17. With reference to paragraph 49, Mr McVeety submitted that the evidence gave no indication that if the witness had contact with her maternal grandparents, that they would try and force her into an arranged marriage. Mr McVeety argued that there was no material error of law and the decision of the FtT should stand.
18. By way of response, Mr Thornhill submitted that the eldest daughter had only attended an English medium school in Pakistan when she lived with her father, and her mother was now estranged from her father and would have to go to her own parents. The FtT was therefore wrong to assume that she would go to an English medium school.
19. Mr Thornhill relied upon paragraph 57 of MA (Pakistan) which emphasised that there must be a full and careful assessment of the best interests of a child. Mr Thornhill's point was that when considering the best interests of a child, a conclusion must be reached and a failure to do so is a material error of law.
20. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

21. It is common ground that the best interests of a child are a primary consideration. All three of the Appellant's children in the UK were under 18 when the application for leave to remain was made, although the eldest daughter reached the age of 18 four days after the application was made.
22. The FtT did consider the best interests of the children as a primary consideration. The FtT correctly summarised the legal position at paragraph 28, appreciating that the best interests consideration is separate from consideration of the reasonableness test, and that it may be the case that it would be in the best interests of a child to remain in the UK, but it may still be reasonable for that child to return to their home country with their parent.
23. The best interests consideration commences at paragraph 29, and concludes at paragraph 37. In my view there has been an adequate consideration of the best interests of the children. I do not accept that no conclusion was reached by the FtT and paragraph 37 is set out below;

"37. I give due weight to the fact that the children meet the seven year residence rule, they have been living in the UK continuously since entering on a six month visit visa on 9th July 2008. I accept that the children have integrated into the education system in this country; they wish to continue their education here. I also accept that the children have made friends in this country during their stay. All things being equal it might be possible to argue that it is in the best interests of the children to be allowed to continue their education and private

life here. However, it is material that the children are nationals of Pakistan who can have no entitlement to state funded education in the UK”.

24. My view, although I accept that the FtT could have been more specific, is that it is arguably in the best interests of the children to remain in the UK.
25. My view is that this was the conclusion reached by the FtT, because if the FtT considered that the best interests of the children would be to return to Pakistan, the FtT would not have considered the reasonableness issue at such length. The FtT goes on to consider reasonableness commencing at paragraph 38 and continuing until paragraph 50. If the FtT conclusion on best interests of the children would be to return to Pakistan, the reasonableness test would have been very brief.
26. I therefore reject the contention that the best interests consideration discloses a material error of law.
27. I specifically considered paragraph 57 of MA (Pakistan) in which it is stated inter alia,

“In my judgment all Lord Hodge was saying is that it is vital for the court to have made a full and careful assessment of the best interests of the child before any balancing exercise can be undertaken. If that is not done there is a danger that those interests will be overridden simply because their full significance has not been appreciated”.
28. My reading of the FtT decision, is that the best interests of the children would be served by remaining in the UK, but the FtT then had to go on and consider reasonableness in line with the guidance in MA (Pakistan).
29. The FtT appreciated (paragraph 27) “strong reasons need to be given to refuse leave to remain for children who have lived in the UK for at least seven years due to the foreseeable disruption to their private life formed in the UK”. The FtT appreciated that the reasonableness test does not involve a narrow approach taking into account only the interests of the child, but involves a wider approach taking into account the public interest in enforcing effective immigration control, and the immigration history of a parent if relevant.
30. My view is that there is no material error of law in the treatment of the FtT of the best interests of the children, and in considering the reasonableness of removal, in accordance with the guidelines in MA (Pakistan).
31. Turning to the second ground of appeal, the FtT made a mistake of fact at paragraph 35 in referring to a wealthy family. That is not a material error. The eldest daughter who made the witness statement confirmed that she had attended an English medium school for five years before leaving Pakistan. It was open to the judge on the evidence to find the option of an English medium school would be available in Pakistan.
32. The third ground discloses no material error. Having considered the evidence before the FtT, it is my view that it was open to the FtT to find no

real risk of the eldest daughter being forced to enter into an arranged marriage in Pakistan.

33. The grounds upon which permission to appeal were granted, disclose a disagreement with the conclusions reached by the FtT, but do not disclose a material error of law. The FtT considered all material evidence, applied the correct legal principles, and reached conclusions that could not be said to be irrational or perverse. Sustainable reasons for findings were provided, and therefore as no material error of law is disclosed, the decision of the FtT stands and the appeal is dismissed.

Notice of Decision

The decision of the FtT does not disclose an error of law. The decision of the FtT stands and the appeal is dismissed.

Anonymity

The FtT made an anonymity direction. I continue that direction pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 because the appeal involves consideration of the best interests of minors. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed _____ Date 16th October 2017

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The appeal is dismissed. There is no fee award.

Signed _____ Date 16th October 2017

Deputy Upper Tribunal Judge M A Hall