



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/04773/2016
HU/04774/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 15 May 2018

Decision & Reasons Promulgated
On 17 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

FAISAL WAZIR
MUHAMMAD HASEEB

Appellants

and

ENTRY CLEARANCE OFFICER
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Najma of Counsel
For the Respondent: Mr Diwnycz a Home Office Presenting Officer

DECISION AND REASONS

1. The brevity of this decision is due to the common sense of Mr Diwnycz.

Background

2. The Respondent refused the Appellants' applications for leave to enter as dependent relative minor children on 19 January 2016. Their appeal against this was dismissed by First-tier Tribunal Judge Caswell ("the Judge") following a hearing on 8 August 2017.
3. In summary the Judge found ([14] of the determination) that the Appellants' father had exercised sole responsibility for them since their mother's death in September

2010. She dismissed the appeal however as she found ([15]) that there was no substantial reason the adults could not join the Appellants in Pakistan and carry on their family life there.

4. Judge Mailer granted permission to appeal (19 February 2018) on the basis that it was arguable that a proper proportionality balancing exercise within article 8 of the ECHR had not been undertaken.
5. Mr Diwyncz conceded that as the Appellants met the terms of the Immigration Rules for entry clearance, and as there were no cogent factors that counterbalanced that weighty consideration, the proportionality balancing exercise within article 8 of the ECHR should have fallen in their favour.

Discussion

6. It is clear that given the weighty fact that the father had sole responsibility for the Appellants, the Judge should have considered what factors counterbalanced that. The finding that the adults could go to Pakistan was plainly not sufficient. This amounts to a material error of law. I set aside the decision.
7. Having heard from the Representatives I decided that it was appropriate to rehear the matter as only one outcome was realistically possible, namely to allow the appeal, which I accordingly do.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I substitute a fresh decision and allow the Appellants' appeals against the refusal to grant leave to enter.

Signed:
Deputy Upper Tribunal Judge Saffer
15 May 2018

