



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: HU/06384/2016
HU/06387/2016
HU/06391/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 4th December 2018**

**Decision & Reasons Promulgated
On 21st December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR S.S.A.Z. (FIRST APPELLANT)
MASTER S.M.S.Z. (SECOND APPELLANT)
MRS A.S. (THIRD APPELLANT)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: No appearance

For the Respondent: Mr S Kotas, Senior Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by me on 8th August 2018. That direction continues.

DECISION AND REASONS

1. In a decision notified on 30th August 2018, I set aside the decision of FtTJ O'Malley promulgated on 7th March 2018 dismissing the appeals of the Appellants against the decision of the SSHD refusing their applications for leave to remain in the United Kingdom on the basis of their private/family life. The SSHD's original decision was dated 17th February 2016.
2. I noted that the issue before me centred on a claim that to remove the Appellants, who are all citizens of Pakistan, would constitute a breach of the second Appellant's private life in that he is a minor and his best interests lay in remaining in the UK.
3. The Appellants are a family of three. They are husband and wife and the second Appellant is their minor son. The second Appellant was born in the UK, has lived here for ten years, and has now acquired British citizenship.
4. The Respondent's decision to refuse the applications was on the basis that neither the first nor third Appellant could meet the Immigration Rules and that despite the second Appellant, at the date of decision, being a qualifying child within the meaning of the Rules, nevertheless it was deemed that he should return to Pakistan with his parents as part of an intact family unit.
5. I made a finding that the FtTJ had taken the wrong approach to the test in **MA (Pakistan) [2016] EWCA Civ 705**. I concluded that this had led to a failure to properly consider and to evaluate whether the second Appellant would be able to enter the educational system in Pakistan without significant disruption, and whether the second Appellant's life in the wider community had been properly factored into the proportionality assessment relating to the whole family.
6. Following those findings I concluded I was not in a position to re-make the decision without a further hearing and decided that the further hearing should be made in the Upper Tribunal.

Resumed Hearing

7. At the resumed hearing before me on 4th December 2018, Mr Kotas appeared for the Respondent. For reasons which will become clear, no-one attended on behalf of the Appellants. Prior to the hearing before me on 4th December 2018, the Respondent wrote to the Tribunal by way of email dated 3rd December. The terms of the correspondence were as follows:

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Date of Hearing: 04.12.18

Further to the error of law decision and directions in the above appeals, in light of the second appellant's registration as a British citizen on 6th August 2018, the SSHD does not oppose the appeals being re-made in favour of all the appellants.

The SSHD's position in this regard has been conveyed to the appellants' instructing solicitors."

Mr Kotas, who appeared before me, confirmed that this correspondence reflects the position.

8. I find I am satisfied in view of Mr Kotas' concession, that in light of the second Appellant being registered as a British citizen, it would not be reasonable to expect him to leave the UK. Accordingly, I find that his parents must also be given leave to remain as part of his family unit.

Notice of Decision

The appeals of Mr S.S.A.Z., Master S.M.S.Z. and Mrs A.S., against the Respondent's decision of 17th February 2016 refusing them leave to remain in the United Kingdom on the basis of their private and family life, are allowed.

Appeals allowed.

An anonymity direction is made.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed
2018

C E Roberts

Date

15 December

Deputy Upper Tribunal Judge Roberts