Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/07946/2016
HU/07951/2016

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 4 October 2018	**On 02 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

MRS AZRA KHAN
MISS UMAMA AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms Norman, Counsel
For the Respondent: Mr Mills, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are nationals of Pakistan. The First Appellant is the mother of the Second Appellant. Both Appellants applied for leave to remain on 31 October 2015 on the basis of their family life in the United Kingdom. The First Appellant applied under the ten-year parent route and the private life route and the Second Appellant applied under the ten-year child route and under the ten-year private life route. The Respondent refused both those applications in a decision letter

dated 8 March 2016. It was not accepted that the first Appellant met the eligibility requirements of the ten-year parent route under paragraph R-LTRPT.1.1.d(ii). Whilst it was accepted that the First Appellant had a genuine and subsisting parental relationship with the Second Appellant who entered the UK on 25 August 2007 and had therefore been in the UK for over seven years it was not accepted that it would be unreasonable for them to relocate to Pakistan as they would be travelling as a family unit. It was also not accepted that the First Appellant met the requirements of paragraph EX.1.(a) because even though she had a genuine and subsisting parental relationship with her child it was not considered unreasonable for them to relocate. It was further concluded that the First Appellant did not meet the requirements of the private life route and it was not accepted that there would be very significant obstacles to her integration into Pakistan. The Respondent also refused the Second Appellant's application on the same grounds, namely that it would be reasonable for her to relocate to Pakistan notwithstanding the fact that she had been in the UK for over seven years.

2. The Appellants sought permission to appeal against the Respondent's decision and permission was granted by Designated Judge of the First-tier Tribunal Peart on 27 November 2017. The reasons given for the grant are that the Judge gave either no analysis or inadequate analysis to the Second Appellant's formative years spent here. He found it arguable that her most formative years were spent here rather than before she arrived in terms of the roots she was likely to have developed.

3. The grounds in support of the application assert that the Judge's decision is an inadequate assessment of Article 8 rights and that the Judge had failed to give proper weight to the long residence of the Second Appellant. It is said that the Judge's finding at paragraph 11 of the decision that the Second Appellant's formative years had been spent mostly outside the United Kingdom was irrational and a misreading of the Tribunal jurisprudence. It is said that the Judge had attached some special significance to seven years between the ages of 4 and 11 and thus unlawfully minimised the significance of the Appellant's residence from the age of 9 onwards. The Judge had, it is said, also failed to consider what was said at paragraph 46 of **MA (Pakistan) and Others, R (on the application of) v Upper Tribunal and Others [2016] EWCA Civ 705** in relation to the application of the reasonableness test. It is further asserted that the Judge failed to give proper consideration to the private life built up by the First Appellant.

The Hearing

4. The appeal therefore comes before the Upper Tribunal to determine whether or not there is a material error in the decision of the First-tier Tribunal and if so what to do about it.

5. I heard submissions from both representatives. Ms Norman for the Appellants submitted that the Judge had approached this case backwards and that the skeleton argument set out the relevant IDIs. At paragraph 13 the IDIs said strong

reasons would be required to refuse a case where a child had accrued seven years residence and what the judge should be doing is starting with the presumption that seven years required strong reasons for refusing a grant of leave. The Judge had misunderstood the issue of age. There was not something special about the seven years from the age of 4. The relevance of the age of 4 was that you start to get a sense of identity and the Judge had completely misunderstood the situation in relation to age. The Judge should have considered that there were seven years after the age of 4. The approach was erroneous and consequently the length of residence was given less weight than required.

6. Mr Mills submitted that the decision was not the best structurally but there were no material errors. There were sufficiently strong reasons to find that the Second Appellant's residence was outweighed by the public interest. The Appellant applied three days short of her 18th birthday and she was almost 20 at the date of the hearing, and all of the circumstances were weighed in the balance. As of the First-tier hearing the Second Appellant was in a family consisting of her parents and other siblings, all of whom were here unlawfully and in the round their immigration history was a sufficiently strong factor to outweigh the interests of the Second Appellant remaining here. The Judge recognised that the Second Appellant's length of residence was a weighty factor and the decision was not an unlawful one and had reference to the test in **MA (Pakistan)**.

7. Ms Norman replied that the requirement to consider powerful reasons was not just the Secretary of State's own guidance but was endorsed in **MA (Pakistan)**. At the date of the hearing there were no determinations in respect of the other family members. The older brother and father had now been granted leave. The approach Mr Mills was taking was to ask for the case to be rejected because it was a close call in relation to the second Appellant's age on application.

Discussion

8. In coming to my conclusions I have taken the arguments of both representatives into account. The First-tier Tribunal correctly addressed the best interests of the child as a primary consideration and set out the relevant case law at paragraphs 7 to 14. The best interests of the Second Appellant were assessed on the basis that she was 17 at the time of the application which was the relevant date for the purposes of the Immigration Rules and 19 at the date of the hearing and therefore an adult. At paragraph 11 of the decision the First-tier Tribunal considered the relevance of the Second Appellant's age to the best interests consideration. I set out the impugned reasoning here:

> "11. Umama was 9 years old when she came to the UK. She was born in Saudi Arabia where she spent most of her childhood although she is a Pakistani national. In terms of her formative years – seven years from the age of 4 – these have mostly been spent outside the UK – with the exception of the latter two years. Since the age of 9, Umama has lived and studied in the UK. She has made friends – many of whom she considers to be family and who were present in court to support her application to remain in the UK."

9. The reasoning that is impugned is in relation to the significance the Judge gave to what is said to have been her formative years, namely what are said by the Judge to be seven years from the age of 4. I agree with the Appellant's assertion that this betrays a misunderstanding of the significance of the seven years. The Upper Tribunal stated in **Azimi-Moayed [2013] UKUT 00197** that seven years from the age of 4 was likely to be more significant than the first seven years of life as very young children are focused on their parents rather than their peers and are adaptable. I consider that the Judge's conclusion that most of the second Appellant's formative years were spent outside the UK, namely those from the age of 4 to the age of 9, meant that the significance of the seven years residence was not given sufficiently significant weight in the balancing exercise. The fact that the Appellant spent seven years, or eight years in her case, in the UK from the age of 9 rather than the age of 4 does not mean that less weight should be given to those seven years because the purpose of the Rule is to recognise the development of social, cultural and educational ties that it is inappropriate to disrupt. The older a child gets the more likely it is that private life is established away from the parents and with the peers. Further the First-tier Tribunal Judge did not I conclude, recognise therefore that the seven years residence is relevant to determining the nature and strength of the child's best interests as stated by the Court of Appeal at paragraph 49 of **MA (Pakistan)**. In the circumstances I find that inadequate weight was given to the length of residence of the Second Appellant in the best interests consideration and the fact that most of her formative years were spent here rather than before she arrived in the UK in terms of the development of her roots. Given that the best interests consideration was flawed, it follows that the assessment of proportionality also cannot stand because the seven years residence is required to be given significant weight in the proportionality exercise because it establishes as a starting point that leave should be granted unless there were powerful reasons to the contrary.

10. In the circumstances I find that there was a material error of law in the decision of the First-tier Tribunal such that it must be set aside. Mr Mills agreed that if I were to find a material error of law in the decision of the First-tier Tribunal the appeal should be allowed in the light of the present circumstances and facts which are undisputed. I have been served with a bundle of documents in respect of this hearing. The Appellant's father was granted leave to remain on 30 August 2018 and her younger brother, who is a year younger than her, was granted leave to remain on the same date. Whilst the Second Appellant is now an adult it is accepted by the Respondent that if she were to make an entry clearance application for leave to remain now she would be granted leave because she has spent more than half her life in the UK. As such this is a weighty if not determinative factor in the proportionality exercise. It is not in dispute that the First and Second Appellant have family life with the Appellant's father and brother who have both been in the UK since 2007. Mr Mills has not sought to argue that it would be proportionate for the Appellants to return to Pakistan without the father and brother or for them to follow the Appellants to Pakistan. In the circumstances and in view of the fact that Mr Mills accepts that the appeals

should be allowed, I find that the decision to remove the Appellants is disproportionate.

Notice of Decision

There was a material error of law in the decision of the First-tier Tribunal and I set it aside.

The appeal is allowed on human rights grounds.

No anonymity direction is made.

TO THE RESPONDENT

FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award of £140 in respect of each Appellant as I have allowed the appeals on the basis of the evidence at the date of the decision.

Signed Date 15 October 2018

Deputy Upper Tribunal Judge L J Murray