



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

Appeal Numbers: HU/08189/2016
HU/08193/2016
HU/08194/2016
and HU/08197/2016

THE IMMIGRATION ACTS

Heard at North Shields

On 14 September 2018

**Decision & Reasons
Promulgated**

On 26 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

MR PARVEZ IQBAL

First Named Appellant

MR RAJA HAMZA PERVAIZ

Second Named Appellant

MR RAJA AQIB PERVAIZ

Third Named Appellant

MRS SAJIDA PERVAIZ

Fourth Named Appellant

(ANONYMITY DIRECTION NOT MADE)

Representation:

For the Appellants: Ms R Pickering, Counsel.

For the Respondent: Mr Diwnyz, Home Office Presenting Officer.

DECISION AND REASONS

1. The First Named Appellant is Mr Parvez Iqbal whose nationality is Pakistani. The other Appellants are also citizens of Pakistan and they are the wife and dependent children of the First Named Appellant. They made an application to the Respondent for leave to remain which was refused and following a hearing, and in a decision promulgated on 8 June 2017, Judge of the First-Tier Tribunal David C Clapham SSC dismissed their appeals.
2. An application was made for permission to appeal which was initially refused. However, a renewed application was made to the Upper Tribunal and in a decision dated 18 May 2018 Upper Tribunal Judge Gill gave the following reasons for her partial grant of permission to appeal: -

“It is unnecessary to hold an oral hearing of the application for permission to appeal because I consider that it can properly be dealt with on the papers.

Permission to appeal is granted but limited as explained below.

The second appellant (DOB: 11 March 1998) and the third appellant (DOB: 19 November 1996) arrived in the United Kingdom on 8 April 2008. As at the date of their applications (on 18 December 2015) for leave to remain under Article 8, they had both lived in the United Kingdom for 9 years. As at that date, the second appellant was 17 years old but the third appellant was 20 years old. By the date of the hearing before Judge of the First-tier Tribunal David C Clapham SSC, they were both over 18 years of age.

Hence the second appellant was under the age of 18 years as at the date of his application and had lived in the United Kingdom for at least 7 years, his private life claim fell to be considered initially under para 276ADE(1)(iv) and then (if necessary) outside the Rules.

It is arguable that, in deciding the second appellant's case under para 276ADE(1)(iv), the judge may have erred by failing to apply the guidance in MA (Pakistan) [2016] EWCA Civ 704; in particular, para 49.

If (and only if) his claim succeeds under para 276ADE(1)(iv), it may be necessary to consider the impact of this on the family life claims of the remaining appellants.

Permission is therefore granted on the following grounds only:

1. In relation to the judge's assessment of the third appellant's case under para 276ADE(1)(iv) of the Rules.

2. In relation to the family life claims of the remaining appellants.

Permission is otherwise refused for the following reasons:

1. To the extent that the grounds contend that the judge erred by failing to consider the best interests of the children, they ignore the fact that the third and fourth appellants were over the age of 18 years as at the date of the hearing. Accordingly, s.55 was not relevant.

2. It is unarguable that the judge did not consider the position of each of the appellants individually. The mere fact that he referred to them as a family does not mean that he did not decide their cases individually. For example, he referred to the first appellant specifically at para 24 and the third appellant at para 27.

3. The submission that the children should not be blamed for the parents' and their own immigration history ignores the judgment in MA (Pakistan), where the Court of Appeal held that wider public interest considerations are to be taken into account in deciding reasonableness.

Factual comparisons with other cases are unhelpful. They most certainly do not establish that the judge in the instant case arguably erred in law."

3. Thus, the appeal came before me today.

4. Ms Pickering relied upon the grounds seeking permission to appeal emphasising that the Judge had materially erred at paragraph 27 of his decision in considering whether it would be reasonable for the third Appellant to return to Pakistan. The Judge, she said, had focused solely on the issue of his being returned with his parents and had not looked at his circumstances individually under paragraph 276 ADE (1) (iv) of the Immigration Rules and in relation to the family life claims of the remaining Appellants. She referred me to the authority of **MA (Pakistan) & Ors [2016] EWCA Civ 705** and in particular paragraphs 46 to 49. She submitted that the Judge had erred by failing to treat the best interests of the third Appellant as a primary consideration and had not taken into account relevant authorities. Further there was an absence of a holistic assessment and inadequate reasoning for coming to the conclusion that he did. The Judge had failed to make findings of fact on relevant issues which should have been subsumed within his overall analysis.

5. Mr Diwnyz did not resist these arguments. Both representatives urged me to accept that further findings need to be made and that the matter should be remitted to the First-Tier Tribunal on a limited basis. I share that analysis.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside to the limited extent that findings need to be made to assess the third Appellant's case under paragraph 276 ADE (1) (iv) of the Immigration Rules and the impact of any such findings on the family life claims of the remaining Appellants. Beyond this all other findings are preserved. The appeal is remitted to the First-tier Tribunal to be dealt with pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Clapham.

No anonymity direction is made.

Signed
September 2018

Date: 24

Deputy Upper Tribunal Judge Appleyard