



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/15351/2015  
IA/15363/2015  
IA/15358/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 4 December 2017

Decision & Reasons Promulgated  
On 17 January 2018

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

WK

AW

ZW

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr M Murphy, Counsel instructed by Farani-Javid-Taylor, Solicitors LLP

For the Respondent: Mr M Bramble, Home Office Presenting Officer

**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 him 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.

### DECISION AND REASONS

1. The appellants are citizens of the United States of America. WK's date of birth is [ ] 1976. She is the mother of the two child appellants, AW and ZW. AW's date of birth is [ ] 2009. ZW's date of birth is [ ] 2012. They were at the date of the hearing aged 8 and 5. Both children were born in the US. They travelled to the UK on 11 August 2014 having been granted visit visas which expired on 11 February 2015. Prior to the expiry of their visit visas they made an application to remain on family and private life grounds. The applications were refused. They appealed and their appeal was dismissed on 1 April 2015 by Judge of the First-tier Tribunal Ghaffar in a decision promulgated on 5 August 2016. Upper Tribunal Judge Plimmer granted permission on 9 March.
2. The matter came before me on 8 May 2017. I decided that the FtT had materially erred and set aside the decision. The judge concluded that there was family life between the appellants and their relatives here in the UK (WK's sister (AK) and her husband (FA) and their children). They were dependent on the family and they all lived together here. The judge however, went on to conclude that there was no interference with family life should they be removed to the US. However, this conclusion was inadequately reasoned considering the relationship as found by the judge between the child appellants and their extended family. The matter came before me on 4 December 2017 for a re-hearing.
3. I heard evidence from WK, SA and AK.

#### *WK's Evidence*

4. WK gave oral evidence adopting her statement of evidence dated 6 June 2016 as evidence-in-chief. She was born in Pakistan. She married a US citizen on 7 January 2004 in an arranged marriage. She travelled to the US on a fiancée visa in December 2004. Her husband was abusive and violent to her. His family verbally and mentally abused her treating her like a slave from Pakistan.
5. Her sister (AK) in the UK was the only support she had. In 2005 AK sponsored her to travel to the UK on a visit visa. She spent almost three months here. Her husband would not let her return to the US. She returned without his knowledge and stayed with her sister's friend who took pity on her and allowed her to stay with her for a month. She then contacted various women's agencies and told them that she was the victim of domestic violence and that she had nowhere to live. New York Asian Women Shelter arranged for English classes and provided temporary accommodation where she felt safe for approximately six months.

6. WK got a green card in 2007 (on the basis that she was a victim of domestic violence). She applied for a divorce in the US. However, her ex-husband and his family were very angry with her and he would not cooperate with the divorce in the US, having divorced her under Pakistani law. Her family wanted her to re-marry and she returned to Pakistan in order to do so. She returned to the US in 2008 having remarried in Pakistan, but there were problems regarding the lawfulness of the divorce under US law. Her husband could not get a visa to enter the US and remained in Pakistan.
7. Her husband was diagnosed with aplastic anaemia. He needed a bone marrow transplant. WK became an American citizen in 2011. A further application for her husband to join her in the US was unsuccessful because the authorities there were not satisfied that she was divorced. WK remained in the US (her husband remained in Pakistan) in temporary accommodation, between 2006 and 2013.
8. Her ex-husband's family continued to abuse her. AW was born in 2009 and WK came to visit her for four weeks to help her. When AW was 6 months old she started attending the New York City Benefit Programme for job searchers and she put him into day care because there was no one else to take care of him. He was healthy up until this point. He stopped gaining weight. Life was very difficult and stressful at this time because she had no family and was intimidated by her ex-husband. Her husband was critically ill in Pakistan. She was depressed and she could not cope.
9. ZW was born in 2012 and her sister came to help her again. At that time the AW had fractured her foot and was unable to walk. It was at this stage she realised it would be totally impossible for her to manage. She could not stay in the US because of the difficulty of looking after her children without any family support. She returned to Pakistan to live with her husband in September 2013. However, he died following chemotherapy on 22 November 2013 in the Islamabad Army Hospital.
10. Her husband died as a result of negligent treatment, on which they had spent a lot of money. If he had been treated in the US he would have survived. After his death her in-laws behaviour towards her changed following inheritance issues and they took a lot of property belonging to WK and her husband. After the funeral they kicked her out of their home.
11. WK went to live with her married brother who is unemployed and mentally unwell. He lives with their widowed mother. She is partly blind and lives on a small income from her father. She stayed there for a year. During this time she stayed indoors and was very depressed. She was unable to access any of her belongings which were at her in-laws' house. Her in-laws continued to threaten her and ask for money and life insurance documents that her husband left for their children. Her husband's brother filed a petition in Azad Kashmir Court and produced a statement which had been purportedly made by her husband indicating that his property should go to him rather than to WK and children. It became impossible for her to live in Pakistan with

a continuous threat from her in-laws and she was unable to obtain her husband's assets. She came to the UK to visit her brother and her two sisters here with a view to return to the US.

12. When he was aged 2 years and 11 months AW was diagnosed with developmental delays and autism. He has motor skills problems as well. He received speech therapy in the US. He attended a special school and two ladies attended the home to give therapy. He needs extra attention that the WK cannot give him. He is very disturbed by the death of his father. In her view removal would have a profound effect on him. He behaves like a 2 year old. He cries about little things. He wants to remain here and live as a family with his aunt and uncle and cousins. She decided to go back to the US after three weeks of being here but he cried and stated that he wanted to stay living with his aunts and cousins. They are now settled here. The children attend ordinary school here. Whenever she is not well and depressed the children are looked after by their aunt. The children are very happy here. They were always getting ill in Pakistan and yet here they remain well. AW is now eating properly. He needs to be with his family here.
13. WK does not have a house or a job to enable her to raise her children in US. They are provided for by her family here. She accepts that the state will support her in the US but because of the difficulties that she faces she would require emotional and moral support from her family which would not be available to her there. She suffers from anxiety, depression and has panic attacks. She finds it difficult to erase things from her mind about what has happened to her over the last twelve years. She has been on medication since 2004. She is currently taking citalopram for depression and co-codamol for pain to help alleviate pain from headaches. She pays for medication here but receives medical assistance on the NHS. She is worried that if she returns to US she will have to look for a job and there will be no one to take care of her children. Her oral evidence was that she still fears the family of her first husband in the US. Her brother-in-law is a police officer.
14. Prior to her first marriage the WK worked as a teacher. She resigned because her ex-husband and his family did not want her to work.

*FA's Evidence*

15. FA (WK's brother-in-law and uncle to the children) gave oral evidence adopting his witness statements of 14 December 2014, 18 May 2016 and 21 June 2017 (which is a joint statement signed by both FA and his wife (AK)) as evidence-in-chief.
16. The appellants live with FA, his wife and their two children. They live together as a family and he and his wife help parent all the children. WK is very depressed about her life. Her first marriage breakdown as a result of domestic abuse and then there was the traumatic death of her second husband as a result of bone marrow failure. She suffers from depression and has panic attacks. She has not been able to properly

grieve because she has had the constant need to be a mother to her children. This has had a damaging impact on her personality and character.

17. The pressure of having to raise two young children one of which has severe behavioural problems makes it impossible for her to take care of her children alone. She is unable to deal with the responsibility of being a single mother. She views it as an impossible burden and FA and his wife provide day to day support for her.
18. WK is very fearful of going back to the US and being alone and this is the main reason for her poor mental condition and depression. FA and his wife are there all the time to support her and the two children. They provide accommodation, food, clothes and their expenses generally including the cost of their immigration matters. Should she return to the US WK is in real danger of falling into a more severe depression. Her first husband and his family are there and they harass her from time to time through family friends.
19. The children are very close to FA and his wife. They consider him to be their father. FA stated in evidence that every couple of weeks he and his wife and their two children visit his parents in Leicester. AW becomes very tearful and upset and does not eat properly until they return. He will contact him and his wife on the phone. Both children have called him 'dad' on a few occasions. He tries to discourage this because he does not want them to become over reliant on him because of the uncertainty of their status here. FA is acutely aware that if he has to leave it will be particularly difficult for him. AW tries to impress him, as he would a father, and wants to spend time with him. In his view AW would become very depressed if he has to leave the family unit. He cries a lot and has tantrums and appears like someone who cannot cope. He looks on AK as an older mother and he also relies on his cousins with whom he plays and eats. FA's view is that WK cannot give AW what he needs because of her own issues. In his view WK would not be able to cope in the US on her own. When she was there previously she found it very hard to look after the children and his wife had to travel there on two occasions in order to assist her
20. FA works full-time but on a Friday he works from home in order to do the school run. During the week the family eat together. At the weekend he normally makes breakfast, talks to the children, takes them to the library, plays games with them and takes the boys shopping. He stated that the boys as distinct from the girls needed to go out of the house and he takes them out at the weekend. He is the only male in the house and he is considered the only male role model as far as the children are concerned.
21. FA earns £135,000 gross per annum and whilst he can accommodate and look after the needs of WK and the children at present within their own home, it would be difficult for him to continue to do this should he have to pay for accommodation and other needs whilst in the US. WK would find it very difficult to have to find a job

and to cope. She has a first degree in Pakistan but in FA's views this has no value in New York. He has some knowledge of the job market in New York having employed people there. She has not registered her degree at a local college. She was looking for employment at the time she was in New York but it would be a challenge for her. She would only be able to get lower skilled jobs as a house cleaner or something of that nature.

#### *AK's Evidence*

22. AK gave oral evidence adopting her witness statement of 21 June 2017 (a joint statement with her husband, FA) as evidence in chief. Her evidence mirrors that of her husband. AW becomes "mentally disturbed" when she and her husband and their children go away at the weekends to Leicester to visit her in-laws.

#### *Medical Evidence*

23. The appellants rely on a psychiatric report from Dr S N Mohamed, a Consultant Psychiatrist of 8 June 2017 and two addendums of 21 July 2017 and 31 October 2017. The report of 12 June 2017 indicates that Dr Mohamed made a record of WK's background information and personal and family history documenting domestic violence from her first husband and her second marriage and the death of her husband and mistreatment by her in-laws.
24. It is recorded that WK started developing panic attacks and depression during her first marriage. Her condition has been deteriorating over the last few years. She sought medical help in the US, Pakistan and in the UK. A clinical assessment was carried out by Dr Mohamed. He concludes that that the WK has been suffering from symptoms of depression and anxiety including disturbed sleep, varied appetite, lack of concentration and affected memory, irritability and anhedonia, low self esteem and worrying. She has had regular panic attacks and feels "trapped and incapable" at times.
25. In Dr Mohamed's opinion WK is suffering from depression (F32.1) and panic disorder (episodic paroxysmal anxiety) (F41.0), as classified by the International Statistical Classification of Diseases and Related Health Problems, 10<sup>th</sup> Revision (ICD-10). Dr Mohamed indicated that it would be difficult to offer a precise prognosis at this stage, that psychological symptoms started during WK's first marriage and have deteriorated since then following perceived negative events in her life. She seems to have extensive support and care from family members here and feels able to raise her children with the care and support she needs. The uncertainty of her status is exacerbating her psychological symptoms. She would benefit from the prescription of antidepressants such as citalopram as well as well as propranolol to deal with her anxiety and medication to help with sleep disturbance. She should also be considered for a course of culturally appropriate cognitive behavioural therapy.

26. Dr Mohamed records that AW started to have developmental issues during infant years and concerns were raised by his mother when she realised he would not put on weight as normal. He started walking aged 1 but did not fully communicate through talking until he was over 3 years old. Medical records indicate that he was having developmental issues and he was offered and underwent speech therapy at the age of 2. He was assessed to have "variable attention span in concentration levels". He displayed "low levels of frustration tolerance and was observed to give up almost immediately when challenged". He was reported to "anger easily" and have "difficulty sitting still" and to be "distractible". AW was reported to have become close to his father after he moved to Pakistan to be with him during the last few months of his life and he remembers his father as being a kind man. After his death he lived with his mother, her brother, his maternal uncle and grandmother. His mother would spend most of her time with the children indoors and he remembers this time as "very bad" and that he did not "like it there". AW has a better memory of coming to the UK and living with his aunt and uncle. He enjoys school and playing with his friends and cousins and he has on more than one occasion referred to his aunt's husband as his own "father".
27. Much the of the above information came from information taken from WK and from a document which is attached to the psychiatric report which is an Individualised Education Programme (IEP) relating to AW. Dr Mohamed has made reference to this. This document indicates that AW has been classified as autistic and that he is functioning within the mildly impaired range of cognitive ability with both verbal and non-verbal skills falling within the borderline range. He has significant delays in his expressive, receptive and pragmatic language skills. He is reported to be impulsive with high distractibility; he has difficulty sitting still and refused to follow directions. He exhibits hand flapping behaviours and is easily upset, angered and frustrated and tantrums frequently. Whilst his social skills are delayed he demonstrates adequate motor and daily living skills. He has difficulty participating in interactive play involving initiating, turn taking and sharing. The document reports on a variety of recommended special education programmes and services. I am not sure of the date of the assessment but must predate the 2013 when they left the US. .
28. Dr Mohamed examined AW. From this he reached conclusions independently. He found interaction with him was difficult as a result of his "varied concentration and irritability". He is smaller than average, lacks focus and becomes irritated quickly. He seemed to have a good relationship with both his mother and aunt but they found his behaviour challenging most times. He clung to his mother most of the time and reverted back to her in sight of any difficulty. He demanded attention and took up a lot of his mother's and his aunt's time to control him. He seemed to have had some developmental issues including delayed speech and he has been assessed to be suffering from motor skills problems. He lacked normal attention and concentration and became irritable quickly and demanded a great deal of attention. It appeared that he is developing some behavioural problems which could well have

emanated from his adverse past experience of living in Pakistan and the loss of his father as well as a general lack of family cohesion. Dr Mohamed is of the opinion that “he could well be suffering from some form of attention deficiency and hyperactivity which needs to be explored further”. He concluded:

“74. “He seems to be adjusting well to his new life in the UK and enjoys the family life. He receives help and support from the family here which would not be directly available to him living with his parent either in Pakistan or in the US.

7.5. Furthermore his sole parent and carer, his mother is certainly enjoying the family cohesion and support and a better quality of life here living among and close to her family in such a convivial environment. It is in my opinion important to reiterate that [AW’s] mother’s mental health and peace of mind will be intrinsically connected to [AW’s] wellbeing and future mental health. The recommendation in the report is that [AW] should be fully assessed by a child and adolescent psychologist.”

29. The addendum of 21 July 2017 is concerned with the effect of separation in relation to the children from their aunt, uncle and cousins. Dr Mohamed states as follows:

“It was quite obvious during the assessment that he [AW] has a close relationship with his aunt and listens to her when directed by her. I was told that he maintains a good relationship with his cousins although older but he regards them as part of his own family, seeing them every day and spending time together as ‘siblings’.”

The report goes on to state:

“... [AW] seems to have developed a close relationship to his aunt’s husband (usually called uncle). His uncle has been receptive and supporting filling a much needed father figure for [AW]. I was told that [AW] regards him as a ‘father’ and on more than one occasion has actually called him ‘father’.”

30. Dr Mohamed states that WK is heavily dependent on her sister for support and care and regards the help and support as the only reason she is able to continue. There is a more recent addendum of 31 October 2017 where the doctor considered the effect of long-term separation from the children’s only male role model and the doctor states as follows:

“I am of the opinion that [WK] and her children [AW] and [ZW] have become ‘integrated’ into her sister’s lives to such degree that they regard them as members of their own family. Their separation could implicate serious psychological problems for all three individuals to the extent of affecting much deteriorated mental health issues including depression and anxiety for [WK] and further behavioural and psychological complications for [AW].

Presently [AW] is going through formative stages of his life. These years are regarded psychologically important and are considered the formation of many



foundations of the individual's future mental health. [AW] clearly understands that he does not have a 'father' and considering the greater importance of this issue within the culture and tradition he is brought up, he subconsciously and quite automatically has formed a close relationship with his 'uncle' considering him as a 'father' and by extension the cousins as 'siblings'. It should be noted that the already close relationship between [AW] and his aunt, whom he regards as a second 'mother' has helped to reinforce the said relationship between [AW] and his uncle.

I am therefore of the opinion that [AW's] separation from his adopted family, and particularly his only father figure, will have direct psychological consequences; leaving him with a void that could result in serious psychological problems both in short, medium and long term. The most prominent effect will be on [AW's] behaviour which will deteriorate as a result of such separation. Consequently there is a strong possibility that [AW's] mental health will be affected in later years.

As outlined above [WK] has also developed strong psychological and emotional attachment to her sister and her family. She has had a very difficult life managing it all on her own over the last few years. She found respite in her hectic and chaotic life with her sister and her family in the UK. She has become gradually dependent on the care and support she receives from her sister and her husband as well as the nieces. I am of the opinion that if [WK] is forced to leave the safety and care of this newfound life her mental health will be affected and seriously deteriorated. She will then have difficulty to look after herself and her children effectively which in turn will have a direct effect on her two sons' wellbeing."

31. The appellants relied on a letter from Plumbridge Medical Centre of 28 June 2017 from Dr Hashim which indicates that they are registered as NHS patients and have been in the practice since September 2015. WK is suffering from stress, anxiety and depression due to an "unsettled life". She lived alone in the US with her children and this has impacted on her mentally. The GP states that she is under observation of a psychiatrist in the UK. Her children are well-settled in school here with their family. The concluding paragraph reads as follows:

"She really needs company and will not be able to cope mentally alone and children will be vulnerable of being neglected."

32. Dr Sharpe, Consultant Community Paediatrician from Oxleas NHS Foundation Trust, reviewed AW following a referral from his GP regarding abnormal behaviour, hyperactivity, sweating, bad temper, crying without reason and delay at school. He was under the review of the community paediatric team but was discharged in February 2017 following a review by Dr Choudhury on mutual agreement due to improved symptoms. He was referred back to the community paediatric team in May 2017. The appellants rely on a letter from Dr Sharpe to the appellant's GP 18 September 2017. Dr Sharpe concludes that AW presented social communication and

interaction difficulties. She noted concerns regarding his level of learning which has not yet been formally assessed within the school setting. A care plan was agreed with the WK. The school has recommended obtaining an educational psychology assessment and other matters culminating in the need for a review in six months' time. The problems that she highlights in respect of AW are as follows:

- social communication and interaction difficulties;
- inattentiveness;
- concerns of learning difficulties;
- joint mobility and flat feet;
- improved gross motor skills, and
- A diagnosis of autism in US in 2013.

### *Submissions*

33. The appellants rely on the case of R (on the application of) RK v Secretary of State for the Home Department (Section 117B (6); "parental relationship") IJR [2016] UKUT 31. The respondent relies on the case of Rajendran (Section 117B - family life) [2016] UKUT 00138.
34. Mr Bramble made submissions relying on the decision of the Secretary of State on 1 April 2015. The starting point is that the appellants cannot meet the requirements of the Rules and he referred me to the findings of the First-tier Tribunal at paragraphs 27 to 30. There are no very significant obstacles in the context of paragraph 276ADE (1) (VI). Mr Bramble referred me to the WK's witness statement which indicated that she had worked in the US and has benefited from the welfare system there. It is not arguable that she is at risk from her ex-husband's family. She left America in 2013. The appellants came here as visitors. Mr Bramble submitted that it was not in dispute that there was family life which potentially engages Article 8 of the 1950 Convention.
35. The medical evidence does not assist the appellants. It is speculative. FA does not have qualifications in child psychology. The children could return to the US and continue their lives there. The eldest child has lived longer in the US than in the UK. The appellants' status is precarious. WK has received NHS treatment without paying for. It cannot be said that the appellants do not present a financial burden on the state.
36. Mr Murphy submitted that matters have moved on since the original decision of the Secretary of State three and a half years ago. The evidence establishes that WK could not cope on her own in the US. Whether or not the fear from her ex-husband's family is subjective or objective, it is a relevant consideration to take into account. Should she be returned AW's behaviour will deteriorate. AW looks on his uncle as his father and the only male role model that he has. There is a parental relationship. Removal would be to the detriment of the two children who are blameless as far as

the precariousness of their stay here or their immigration history generally is concerned. The decision would remove the children from a stable family and this would be disproportionate.

## Conclusions

### *The Best Interests of the Children*

37. The Supreme Court in Zoumbas v SSHD [2013] UKSC 74 formulated seven principles which are as follows:
- (1) The best interests of a child are an integral part of the proportionality assessment under article 8 ECHR;
  - (2) In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;
  - (3) Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;
  - (4) While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play;
  - (5) It is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations;
  - (6) To that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an Article 8 assessment;
  - (7) A child must not be blamed for matters for such as the conduct of a parent.
38. Zoumbas was preceded by ZH (Tanzania) [2011] UKSC where Baroness Hale stated the following, at [33]:
- "33. We now have a much greater understanding of the importance of these issues in assessing the overall well-being of the child. In making the proportionality assessment under Article 8, the best interests of the child must be a primary consideration. This means that they must be considered first. They can, of course, be outweighed by the cumulative effect of other considerations. In this case, the countervailing considerations were the need to maintain firm and fair immigration control, coupled with the mother's appalling immigration history and the precariousness of her position when family life was created. But, as the Tribunal rightly pointed out, the children were not to be blamed for that. And the inevitable result of removing their primary carer would be that they had to leave with her. On the facts, it is at least as strong a case as *Edore v Secretary of State for*

*the Home Department* [2003] 1 WLR 2979, where Simon Brown LJ held that 'there really is only room for one view' (para 26). In those circumstances, the Secretary of State was clearly right to concede that there could be only one answer."

39. The two children involved in the case of ZH (Tanzania) were British citizens by virtue of having been born to a British citizen father whereas Zoumbas concerned two foreign national parents and foreign national children aged 7, 4 and 6 months who had been here unlawfully throughout the entirety of their short lives.
40. The assessment of a child's best interests must focus on the child whilst simultaneously evaluating the reality of the child's life situation and circumstances. Factors such as parental immigration misconduct must not intrude at this stage. The child's best interests once assessed are an important component to the overall proportionality balancing exercise.
41. AW was aged five when he came here. He is now 8. ZW is now 5. He was aged 2 when he came here. Both boys have been here for 3 ½ years (over half of ZW's life and almost half of AW's). I have taken into account that whilst both children have been here for a relatively short period of time in the life of an adult, and significantly less than seven years, it does amount to a considerable period of their young lives to date.
42. I found the witnesses credible. There was no significant challenge to their evidence. I have attached significant weight to the evidence of the relationship between FA and his two nephews, in particular AW. I have also taken into account their family history to date. AW remembers his biological father and his death. He was diagnosed in 2013 with autism. He has displayed behavioural problems as evidenced by his uncle, mother and his aunt and supported by the evidence of the assessment that was conducted whilst in the US, Dr Mohamed and Dr Lisa-Renee Shaw.
43. AW has formed a parental relationship with his uncle. He sees him as his "father". I find that FA has assumed parental responsibility in the literal sense. I accept that he does not have legal parental responsibility. (It is not necessary for an individual to have parental responsibility in law for there to exist a parental relationship see *R (RK) v SSHD* [2016]). There is a genuine and subsisting parental relationship between FA and AW. If FA has any reservations about this they arise from the uncertainty of AW's status and the impact of separation if his appeal is dismissed. I accept Dr Mohamed's opinion in respect of the adverse effect of separation. I have no doubt that separation would also adversely affect ZW, however; the effects on AW would be more profound because of his age, the attachments he has formed, life experiences and development problems. In this case I do not hesitate to conclude that it would be in the best interests of both children, particularly AW, to remain here in the UK with their mother, aunt, cousins and their uncle (who they consider as a father to them).

*Para 276 ADE*

44. All the evidence points to a likely deterioration in WK and AW's mental health should they have to return to the US and I accept this would be the case. However, the appellants have not established that there would be very significant obstacles to integration in the context of 276ADE (1) (vi). Life would no doubt be very difficult for them on return. However it is unarguable that they would not, as US citizens, receive welfare support, education and medical treatment. In any event, I find that FA and KA would be able to give them financial help.

*Proportionality*

45. WK is depressed and has experienced trauma. She would without doubt find it extremely difficult to manage, as she has done in the past, without the help of her family. I accept the evidence of FA and KA in respect of her inability to properly cope on her own in the US (as witnessed by them when visiting her there). She has genuine difficulty in looking after her children, particularly AW, in the absence of their support. She is highly dependent on her sister and brother-in-law here. The fact that she would be without the day-to-day emotional support from her family would have an impact on her ability as a parent and to function generally which in turn would have an adverse effect on her. Whilst there would be sufficient practical and financial support available to her in the US (in addition to any financial support she would be receive from her family here) she would not have the daily practical and significant emotional support of her family on which she heavily relies. I find that there is no objective threat from her ex-husband's family. I accept however, that there is a subjective fear. However, none of this, in itself is sufficient to outweigh the public interest.

46. Since they cannot meet the requirements of the Rules the appellants have to show a compelling reasons to require the grant of leave outside of the Rules: *R (Nagre) v SSHD* [2013] EWHC 720 (Admin), [29]; *SS Congo v SSHD* [2015] EWCA Civ 387; [2016] 1 All ER 706 [33].

47. I must consider article 8 through the prism of section 117B of the 2002 Act<sup>1</sup>. The maintenance of effective immigration control is in the public interest. WK's

---

<sup>1</sup>Section 117B Article 8: public interest considerations applicable in all cases

(1)The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –

(a) are less of a burden on taxpayers, and  
(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –

(a) are not a burden on taxpayers, and  
(b) are better able to integrate into society.

(4) Little weight should be given to –

(a) a private life, or

immigration history is precarious. The strength of the public interest in maintaining immigration control was emphasised by the Supreme Court in *R (Agyarko) v SSHD* [2017] UKSC 11. Where the immigration status of the family or some members of it is such that the persistence of family life within the host state would from the outset be unlawful or as in this case precarious it was stated at [49] that particularly where individuals know this, and absent any protracted delay by the immigration authorities (which there has not been in this case), “it is likely only to be in exceptional circumstances” that the removal of a non-national family member will constitute a violation of article 8.

48. The child appellants cannot be blamed for their precarious status. However, it is a factor to consider when assessing proportionality. Whilst Section 117B (4) (a) and (5) of the Nationality, Immigration and Asylum Act 2002 are confined to private life established by a person at a time when their immigration status is unlawful and precarious, it does not mean when answering the public interest question the Tribunal should not have regard “precarious family life” criteria set out in established Article 8 jurisprudence. However, the judgement in *Jeunesse v Netherlands* (2015) 60 EHRR 17 shows that it may be possible to find in an exceptional case that even a non-settled migrant has a sufficiently strong right to remain under article 8 such that it would be disproportionate to remove them.
49. When considering the phrase “financially independent” in section 117B (3) the Court in *Rhuppiah* [2016] EWCA Civ 803 stated “this is an ordinary English phrase, and the FTT gave it its natural meaning, as indicating someone who is financially independent of others. This is the correct interpretation.” The appellants are not financially independent. This is a factor which counts against them in the article 8 balancing exercise. Whilst they are not at present receiving income support or any other benefit and FA’s earnings are more than sufficient to take care of the family, the appellants are and will continue to be a significant burden on the state in terms of at least education and health provision and this factor weighs very heavily against them. I accept that the burden is less than it might be because FA is unarguably able and willing to accommodate and maintain them.
50. Reasonableness is not the issue here. The children are not qualifying children. They are not British citizens and they have not been here for seven years. However, the facts are unusual because they each enjoy a relationship with their uncle, a British citizen, which is akin to that of father and son and the consequences of separation and return to the US (or Pakistan) must be considered in that context.

---

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

51. I attach appropriate weight to the assessment of the children's best interests. It is not paramount, but it is a primary consideration. Should AW have to return with his mother and brother to the US (or Pakistan), he would be forced to separate from the uncle he now sees as his father and effectively experience the loss of a father for the second time in his short life. The loss would be compounded by his own developmental problems and significantly the inevitable deterioration in his mother's mental health and her poor coping strategies. I conclude in favour of the appellants. If it were not for the children, particularly AW and the relationship he enjoys with his family here, particularly FA, I would have dismissed this appeal. The unusual facts as they apply to AW give rise to compelling and exceptional circumstances outweighing the strong factors that count against the appellants and the public interest in removal.

### **Notice of Decision**

The appeal is allowed under article 8.

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 him 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 *Joanna McWilliam*

Date 16 January 2018

Upper Tribunal Judge McWilliam