Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/20786/2015
IA/20793/2015
IA/20800/2015
IA/20804/2015
IA/20805/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 May 2018	**On 8 June 2018**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

S I	First Appellant
I B	Second Appellant
A B	Third Appellant
D B	Fourth Appellant

(ANONYMITY ORDER MADE)

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants:	The First Appellant appeared in person and represented all of the appellants
For the Respondent:	Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellants. Breach of this order can be punished as a contempt of court. I make this order because the second and third appellants are minors and publicity that identified them might bring them harm.

2. This is an appeal by members of a family originally from Pakistan against a decision of the First-tier Tribunal dismissing their appeal against the decision of the Secretary of State to allow them permission to remain on human rights grounds.

3. The first appellant appeared before me today. She was not represented. She explained that the firm of solicitors that she had instructed had been the subject of intervention and she was told about the intervention at about the same time as she received notice of the hearing in the Upper Tribunal, that is about a month ago. She had not been able to instruct alternative solicitors because the interveners had not been able to find her file. I accept that. That is the sort of thing that happens when there is an intervention and although it might have been helpful to have made an application in writing before the hearing I certainly do not criticise a litigant in person, which the appellant now is, for not understanding about that.

4. I discussed the case carefully with Ms Everett and reflected on it. I decided to refuse the application because I think this is a strong appeal and I intend to allow it and these are my reasons.

5. The first and second appellants are married to each other and the second and third appellants are two of their three children. They have been in the United Kingdom since March 2010. Their leave was extended and then curtailed to end in February 2015, not very long before it would have ended had it not been curtailed. They applied for leave to remain on human rights grounds and the application was refused and was the subject of an appeal.

6. As far as I am concerned the first appellant and second appellants have no case whatsoever. They came to the United Kingdom for a particular purpose, that purpose has come to an end and they should expect to leave. Where I find the judge has erred is by forgetting to concentrate on the rights of the children who also are appellants in separate appeals. The judge recognises this and has noted the appeal numbers.

7. The three children have started to develop strong and private family lives. The youngest child was born in the United Kingdom but the third and fourth appellants came to the United Kingdom as small children and have accumulated seven years' residence when the judge heard the case more now. They passed the first stages of infancy and the eldest child particularly was, I think, 13 years old and had clearly accumulated a significant private and family life of his own.

8. It is important to remember that we have guidance from the Court of Appeal on the proper approach to take here and in the case of **MA (Pakistan) and Others** [2016] EWCA Civ 705 it was affirmed that there needs to be strong reasons for refusing leave. Strong reasons can include discreditable behaviour by the parents, at least as the law is presently, but this is not that kind of case. The parents are people whose leave came to an end and they asked for an extension in accordance with the law. The case has cranked its way through the system rather slowly but that is not anything to do with them. They have not procrastinated or dallied in any way and I see no detrimental element in this case at all beyond applying for leave on human rights grounds when no other application could have succeeded. There is nothing in their conduct point that requires their removal.

9. The judge correctly recognised that she should have been considering Section 117D of the Nationality, Immigration and Asylum Act 2002 and recognised that where there is a genuine and subsisting parental relationship with a qualifying child and it would not be reasonable to expect the child to leave the United Kingdom then their appeals should have succeeded.

10. The judge took the view it was reasonable to expect the children to leave. I do not accept she was entitled to take that view. She has given reasons why they will cope in Pakistan. I am sure they would. The implication from many strands of evidence is that this is an educated and industrious family who will care for their children in Pakistan as they do in the United Kingdom and no doubt as they would anywhere else in the world but the children are of an age when the courts recognise, and various policies have recognised, that they have rights of their own and rights that should not be interfered with lightly.

11. There are aspects of the decision that concern me.

12. The judge commented adversely on the appellants using the school system and the resources of the National Health Service but that is not to their discredit There is no suggestion they did anything other than take advantage of the opportunities that are given to them and indeed if they had made use of the school system they would probably have been committing criminal offences.

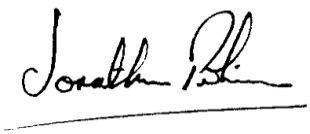
13. The evidence shows that the appellants are people who can speak English and are willing to work. There are no adverse factors except that they have run out of leave. In the case of independent adults that is a very significant point. In the case of children who have accumulated seven years' residence it is not a significant point. In fact it is a point of little value on its own.

14. I am satisfied the First-tier Tribunal should not have concluded that it was reasonable to expect the third and fourth appellants to leave the United Kingdom but should have accepted after seven years' lawful residence that their ages (the third appellant was born in April 2004 and the fourth appellant in 2006) that it was not reasonable to expect them to leave the United Kingdom. Their appeals should have been allowed and their parents' appeals allowed consequently and that their younger sibling consequentially allowed to stay.

15. I therefore find the First-tier Tribunal erred in law. I set aside its decision and I substitute a decision allowing the appeals of each of these appellants.

Notice of Decision

The appeals are allowed.



Signed

Jonathan Perkins, Upper Tribunal Judge Dated: 7 June 2018