Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05952/2018
PA/05954/2018
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PA/05961/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 14th November 2018

Decisions & Reasons Promulgated
On 6th December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

WAQAS [P]
FAIZA [P]
[A W[1]]
[Z W]
[A W[2]]
(NO ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Miss N Wilkins, Counsel, instructed by Knightbridge Solicitors
For the respondent: Mr. A McVeety, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellants have been given permission to appeal the decision of First-tier Tribunal Judge O R Williams who dismissed the appeal against the respondent's refusal of their protection and human rights appeals. The present appeal takes no issue with the finding that the asylum claim made was a fabrication.

2. The 1st and 2nd appellants are husband and wife and the remaining appellants are their children, [AW¹], born in May 2011, [ZW], born in July 2014 and [AW²], born in December 2017. All are nationals of Pakistan.

3. The 1st appellant came to the United Kingdom in August 2010 to study. His wife joined him with leave as a dependent in January 2011. They were granted various leaves until November 2016. Their claim for protection was made shortly after this expired. The claim was then withdrawn by the respondent in May 2017 because the 1st appellant had failed to attend for interviews. Further representations were made and finally in July 2017 an interview did take place. Subsequently, Alayna was born. The decision refusing the applications was issued in April 2018.

The First tier Tribunal

4. First-tier Tribunal Judge Williams in considering the article 8 claim started by considering the relevant immigration rules. At paragraph 32 the judge noted that the first appellant could not satisfy the partner parent route because his wife was not British nor settled and the parent route did not assist him because he lives as part of a family unit with the children. The judge then turned to private life under paragraph 276 ADE (iv) and (vi). The 1st subsection is directed towards his eldest child having lived in the United Kingdom for 7 years. The judge found he was a qualifying child and the issue under the rules was whether it would not be reasonable to expect the child to leave the United Kingdom. The 2nd subsection is directed towards the appellant and whether there would be very significant obstacles to his integration back into life in Pakistan.

5. The judge referred to PD and Others (Article 8: conjoined family claims) Sri Lanka [2016] UKUT 108 which guided decision makers to 1st apply the immigration rules to each individual applicant and, if appropriate, consider matters outside the rules. Such an exercise would typically involve considering all of the claims jointly. The judge referred to considering the possible future scenario for all of the applicants and concluded that the only realistic scenario was for all the appeals to either be allowed or dismissed and there was no issue

of separating the family. The central consideration was whether family return to Pakistan was reasonable.

6. The judge then took guidance from the decision of EV (Philippines) and others [2014] EWCA 874b in determining the best interests of the children. In line with that the judge adopted a checklist approach. The judge also referred to the respondent's Guidance, applying the version published in February 2018. This stated that the longer a child has resided in the United Kingdom and the older the age at which they have done so, the more the balance will shift towards it being unreasonable to expect the child to leave. The guidance said that and strong reasons will be required to refuse a case where the outcome will be the removal of the child with continuous UK residence of 7 years or more.

The Upper Tribunal

7. The application for permission referred to the decision of NT and ET (child's best interests; extempore pilot) Nigeria [2018] UKUT 00088.That decision referred to MA (Pakistan) and Others v Secretary of State for the Home Department [2016] EWCA Civ 705 where section 117B(6) of the Nationality, Immigration and Asylum Act 2002 was considered . The Court of Appeal held that in determining what was reasonable, the issue is not solely to be looked at from the child's perspective but requires a balancing exercise between what was in the public interest and what was in the interests of the child. At paragraph 46 Elias LJ referred to the August 2015 Immigration Directorate Instructions which stated once the seven years' residence requirement is satisfied, there need to be 'strong reasons' for refusing leave (para 11.2.4). At paragraph 49 Elias LJ said:

> "… the fact that the child has been in the UK for seven years would need to be given significant weight in the proportionality exercise for two related reasons: first, because of its relevance to determining the nature and strength of the child's best interests; and second, because it establishes as a starting point that leave should be granted unless there are powerful reasons to the contrary."

8. The present application submitted that First-tier Tribunal Judge Williams had listed reasons why the family should return to Pakistan but it was contended those reasons did not constitute strong or powerful reasons. Permission was granted on the basis that arguably none of the factors listed by the judge at paragraph 38 to 43 where capable, individually or cumulatively, of amounting to powerful reasons which would render it reasonable to expect the 3rd appellant to leave the United Kingdom. The permission pointed out the 1st appellant had lawful status between 15 August 20010 to 30 November 2016.

9. At hearing, Miss N Wilkins relied upon the points made in the application for permission, arguing that the judge failed to identify strong reasons as opposed to simply giving reasons. She also submitted the judge, whilst referring to the

best interests of the children, does not specifically identify where those interests lie. She also submitted the judge in stating he was looking at everything in the round misdirected himself and that the 1st point for the judge to determine absent the issue of proportionality was the best interests of the children.

10. In response, Mr. McVeety said that the judgements referred to now had to be read in light of the decision of the Supreme Court in KO Nigeria [2018] UKSC 53. Whilst this had not been promulgated at the time of the First-tier Tribunal in considering if the impugned decision errs in the law the evaluation is against the law as now understood. Both representatives made the point that KO Nigeria is a recent decision and the jurisprudence on its application has yet to develop. However, Mr McVeety contended that the present decision accords with that decision which is now directed to include consideration of wider matters.

11. In this regard, paragraph 18 of the decision in KO Nigeria is significant. The court approves the HO Guidance in relation to section 117B(6) and paragraph 276 ADE(1)(iv). Paragraph 11 of the decision refers to an additional paragraph to the HO Guidance which reiterates that the consideration of the child's best interest must not be affected by the conduct or immigration history of the parent. However, such factors will be relevant to the assessment of the public interest and whether it outweighs the child's best interests. Paragraph 18 repeats this by stating that it is inevitably relevant to consider where the parents are expected to be since it will normally be reasonable for the child to be with them.

12. In the present appeal both parents are from Pakistan and have not been here a particularly long time. No obstacles to their integration back into life in Pakistan were identified. Their leave has now expired and, as Mr McVeety pointed out, they had no established right to be here and so the intention was that they be returned to Pakistan. It follows therefore that the children would accompany them. Paragraph 18 poses the question at this stage whether it would be reasonable for the child to leave.

13. It is in this final context of reasonableness that the pros and cons listed by the judge are relevant. It is my conclusion these were matters for the judge and I see nothing about the factors listed which would be outside the realm reasonably open to the judge. The distinction between a reason and a strong reason is a matter of degree but I do not find any material error in the judge placing emphasis on the factors set out from paragraph 38 onwards. I find this accords with what was said in EV Philippines at paragraph 58: that an assessment of the best interests of the children must be made on the basis of the facts as they are in the real world. Related to this is that if neither parent has a right to remain, this is the background against which the assessment is conducted. The ultimate question will be whether it is reasonable to expect the child to follow the parent.

14. At paragraph 45 the judge acknowledges that the primary consideration is the best interests of the 3 children. The judge concluded at paragraph 53 that their best interests would be to be with their parents and to return to Pakistan. The judge has addressed the necessary question and I can find no material error of law established. Reasons for the decision have been given which are sustainable.

Decision

No material error of law has been established in the decision of First-tier Tribunal Judge OR Williams. Consequently, that decision dismissing the appeals shall stand.

Francis J Farrelly
Deputy Upper Tribunal Judge Date 3 December 2018