Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number HU/03500/2018
HU/03511/2018
HU/03516/2018
HU/03523/2018

THE IMMIGRATION ACTS

Heard at Field House
On 9th April 2019

Decision Promulgated
On 23 May 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MR SALEEM JAVED et al
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr D Shrestha, Counsel, instructed by Law Lane Solicitors.
For the respondent: Ms S Chuna, Senior Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellants have been given permission to appeal to the Upper Tribunal the decision of First-tier Tribunal Judge Aujla.

2. Application was made on 30 September 2017 for leave to remain on the basis of private life. This was refused by the respondent on 17 January 2018.The appeals were heard at Taylor House on 3 January 2019 and the appeals of the first two appellants dismissed in a decision promulgated on 9 January 2019. That decision is the subject matter of the present proceedings.

3. The 1st appellant is married to the 2nd appellant. The 3rd and 4th appellants are their children, born respectively on 28 December 1994 and 23 July 1993. All are nationals of Pakistan. The couple have 2 other adult children in the United Kingdom who are not party to these proceedings but of whom, SS, is relevant to a claim of family life.

4. The family arrived in the United Kingdom on 26 September 2006 on diplomatic visas, valid until 8 June 2011. Applications for further leave to remain were unsuccessful. On 25 October 2011 the 1st appellant was served with an IS151A Notice, indicating he was an over stayer, liable to administrative removal.

5. The appeal against the refusal of further leave was dismissed by First-tier Tribunal Judge Ruth on 2 February 2012. An appeal to the Upper Tribunal was unsuccessful.

6. On 22 March 2013 a further application was made, which again was refused with no right of appeal. Judicial review proceedings were unsuccessful and enforcement notices were served.

7. The appeal before First-tier Tribunal Judge Aujla considered the appellants family life in relation to SS, the 1st and 2nd appellant's daughter. She had been granted leave to remain on 15 January 2018 on the basis of her private life and as stated was not a party to these proceedings. She was born on 17 September 1999.She continued to live with the family and was in education.

8. It was argued that the 3rd named appellant satisfied the requirements of paragraph 276 ADE(1)(v): she was under the age of 25 and had resided in the United Kingdom for at least half her life.

9. First-tier Tribunal Judge Aujla did not find family life within the meaning of article 8 was engaged for the appellants in relation to

SS. In the alternative, she could maintain contact with her family or return to Pakistan if she so wished.

10. In relation to the 3rd appellant, the judge noted she was almost 12 years of age when she arrived in the United Kingdom. By the time of hearing she was 24 years old and has spent just over 12 years in the United Kingdom. The judge accepted that she had spent at least half her life in the United Kingdom and so satisfied paragraph 276 ADE(1)(v). The judge therefore allowed her appeal.

11. The 4th appellant was born on 23 July 1993 and was over the age of 25. He came to the United Kingdom on 26 September 2006 at the age of 13. Therefore, he had not resided in the United Kingdom for at least 20 years and did not satisfy the requirements of paragraph 276 ADE(1)(v). The judge noted that his leave had expired on 8 June 2011 and various appeals and applications thereafter had been unsuccessful. Consequently, the private life had developed whilst he was an over stayer.

12. At paragraph 50 the judge noted that he was 17 years of age on 8 June 2011 and concluded he could not be held responsible for the actions of his parents. The judge found he had an established private life, albeit not within the rules and his removal would be disproportionate. This meant that the appeals of the children, the third and fourth appellants, were allowed but not the parents.

The Upper Tribunal

13. Permission to appeal was granted by Upper Tribunal Judge Hanson on the basis it was arguable the judge erred in concluding family life did not exist in relation to SS. Arguably, she had not formed an independent life and remained dependent upon her parents. Reaching her 18th birthday was not a bright line for concluding dependency did not exist. It was arguable the judge erred in concluding, in the alternative, that the family life could continue through communication and contact. Permission was also granted on the other ground advanced, namely, a failure to consider the 1st and 2nd appellant unsuccessful applications for leave included technical shortcomings. An application for ILR was rejected in June 2011 as the fee had been declined. A further application was rejected on 11 July 2011 as it was unsigned.

14. At hearing, Mr Shrestha submitted that the First-tier Tribunal judge erred in law by not finding the existence of family life in relation to the appellants and SS. He referred to the grant of permission where Upper Tribunal Judge Hanson who stated that family life within the meaning of article 8 came into existence when the child was born and if SS remained dependent upon her parents

as she had not formed an independent life then such family life may continue. Upper Tribunal Judge Hanson stated that it was arguably irrational for the judge to conclude family life did not exist and referred to her continuing in education and to live with her parents which she had done since the age of 6.

15. The judge also said it was arguable that the alternative findings were irrational in concluding that any emotional dependency can be satisfied indirectly when this was not set out precisely. Mr Shrestha referred to the decision of Kugathas -v- SSHD [2003] EWCA Civ 31 and subsequent case law, notably, Ghising (family life- adults- Gurkha policy) where the Upper Tribunal at paragraph 56 said that the judgement in Ghising had been interpreted to restrictively in the past. He also provided me with a copy of the decision in Ria v ECO [2017] EWCA Civ 320 where the authorities were set out. In his submissions he indicated that SS's brother, NS, who is 10 years older had married a British national and was living in the United Kingdom.

16. Ms Chuna opposed the appeal and suggested it mounted to no more than a disagreement with the outcome. The judge had indicated there were ties within the family based upon emotions, finances and the fact they all live together. However, the children were adults who had their own private life. Notably, the appeals of the 2 children were allowed on the basis of their private lives which was not at odds with the rejection of the existence of a family life within the meaning of article 8. Whilst the family live together and there were ties he did not go beyond the norm.

17. Ms Chuna pointed out that in the appeals the children were in reality the sponsors of their parents. However, whilst the children had now been granted leave this was for a fixed period and therefore their status continue to be precarious. The judge found the 1st 2 appellants did not meet the requirements of paragraph 276 ADE and at paragraph 40 set out the reasons. They had been here 12 years not the required 20 years. The judge did not find very significant obstacles to their reintegration into Pakistan. They were fit and well and were educated and her family in Pakistan.

18. At paragraph 41 the judge then went on to consider if there were any exceptional circumstances outside the rules. Judge referred to their precarious immigration status which would relevant to the public interest factors in section 117B. They had been here without leave since 8 June 2011.

19. In summary, Ms Chuna submitted that the appeal was a disagreement with the judge's findings rather than a demonstration of an error of law. I was referred back to paragraph 36 onwards with

the judge considered the question of family life between SS as an adult and her parents and the guidance given in Kugathas and the relevant case law cited. She submitted the fact that the parties lived together in the same household did not mean there was a dependency. I was referred to paragraph 38 and the judge was not simply deciding the appeal because SS was now considered an adult.

20. In response, Mr Shrestha referred me to the facts of the decision in Ria, where the parties had been apart for 4 years and yet family life was still fun to exist. He said in the present case the family had lived together as a unit continuously. He said there were no contrary section 117 B factors.

Consideration.

21. The principal argument advanced is that the First-tier judge materially erred in law in concluding family life within the meaning of article 8 did not exist between the first two appellants and their daughter, SS. She had lived with her parents all her life and continue to do so. She came to the United Kingdom after her 6th birthday. There is evidence from the 3rd appellant about a close bond she had with her sister. Whilst she spoke English and Urdu she could not read or write in Urdu. She continued in her studies and was financially dependent upon her parents.

22. There is no legal or factual presumption as to the existence or absence of family life for the purposes of article 8. All depends upon the facts. The love and affection normally flowing between an adult and their parents or siblings will not of itself justify a finding of family life. Something more is required.

23. At paragraph 36 onwards the judge refers to the decision in Kugathas and replicates paragraph 19, 24 and 25. In paragraph 38 judge refers to factors considered relevant. SS became 18 on 17 September 2017. The judge did not see evidence of any normal emotional dependency. The judge acknowledged that she recently became 18 but nevertheless was an adult.

24. I do not find any legal error in the approach taken by the judge. An awareness of the jurisprudence was indicated. The judge stated the factors that were relevant. Referred to paragraphs 37 and 38 of the decision. It is possible a different judge may have gone to a different conclusion. However, that is not the issue.

25. The judge posed the alternative, had family life been found. The existence of family life was not determinative but was the starting point in the Razgar sequential approach. Moving through the stages

the issue would be the proportionality of the decision. The judge made the observation that financial support from parents could continue if they were in Pakistan. The judge considered emotional support and referred to moderate means of communication. The judge made the observation that she was now an adult and able to fend for herself. She had the option of returning to Pakistan to be with her parents. The judge set out the reasons why there would be no difficulty with her reintegration. I find these were legitimate observations and did not find an error of law demonstrated. It is also consistent with the judge's view that the 2nd and 3rd appeals were allowed on the basis of private life rather than family life.

26. I do not see any merit in the ground that 2 of the applications made were unsuccessful on what could be considered technical grounds. Irrespective of this, the appellants have overstayed for some time. The judge had correctly factored in section 117 B in the decision.

27. Ultimately, I am in agreement with Ms Chuna's opinion that the challenge is basically a disagreement with the outcome. As I have stated, a different judge could have arrived at a different conclusion. However, this does not mean there is any material error of law in the decision made by this judge.

Decision

No material error of law has been demonstrated in the decision of First-tier Tribunal Judge Aujla. Consequently, that decision dismissing the appeals of the 1st 2 appellants shall stand.

Deputy Upper Tribunal Judge Farrelly. Date: 23 May 2019