IAC-PE-AW-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/38476/2014
IA/38479/2014
IA/38481/2014
IA/38487/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 14 July 2015	**On 18 August 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR SYED RASHID ALI (FIRST RESPONDENT)
MRS TANZILA RASHID (SECOND RESPONDENT)
MISS RABINA RASHID (THIRD RESPONDENT)
MISS HAFSA RASHID (FOURTH RESPONDENT)
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:
For the Appellant: Mr McVeety, Senior Home Office Presenting Officer
For the Respondents: Mr Johnson, Johnsons Solicitors

DECISION AND REASONS

1. The respondents are citizens of Pakistan. The first respondent is 42 years old and the second respondent (his wife) is aged 32 years. The third and fourth respondents are aged 8 years and 6 years respectively. The

respondents appeal against the decisions of the appellant dated 20 August 2014 to refuse them indefinite leave to remain in the United Kingdom on the basis of their private and family life and Appendix FM and paragraph 276ADE of HC 395 (as amended). The First-tier Tribunal (Judge Crawford) in a determination promulgated on 22 December 2014 dismissed the appeals under the Immigration Rules (save that of the third respondent) but allowed all the appeals on Article 8 ECHR grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. I shall hereinafter refer to the Secretary of State as "the respondent" and to the Respondents as "the appellants" (as they appeared respectively before the First-tier Tribunal).

3. The judge found that the third appellant satisfied the requirements of paragraph 276ADE. None of the other appellants succeeded under the Immigration Rules [27]. The judge accepted [25] that the first and second appellants could not satisfy the requirements of paragraph 276ADE; they had not lived in the United Kingdom for over twenty years nor had they severed ties with the country where they had spent most of their lives (Pakistan). The judge also noted the first and second appellants had not provided evidence that they had passed the relevant English tests or life in the UK test in order to satisfy the requirements of Appendix FM of HC 395. The judge did not accept [22] that the three daughters of the first appellant could not speak Urdu. The judge found that the children would speak Urdu to their parents at home. Having regard to sections 117A and 117B of the Immigration Act 2014 [28] the judge found that the public interests in this case did not require the removal "of the three children of the first and second appellants". The child of the first and second appellants Arhama Rashid had not made a valid application to remain in the United Kingdom so no decision had been made in respect of her by the Secretary of State.

4. The appeals turned upon the ability of the appellants to satisfy the requirements of the exceptions (EX) available under Appendix FM. The third appellant had spent more than seven years in the United Kingdom. Both in relation to the parents and to the children, the judge had to consider whether it would be reasonable to expect the children to leave the United Kingdom. The judge concluded that it would not be reasonable to expect the children to leave and consequently allowed the third appellant's appeal under the Immigration Rules and the appeals of all the remaining appellants under Article 8 ECHR. The Secretary of State argues that the judge's assessment was flawed by an "over-emphasis" of the importance of the third appellant remaining in the United Kingdom to complete her education. The judge found that the third appellant had been educated in English and that she had strong ties to the United Kingdom (in terms of friendships and her education) and that this made it unreasonable for her to return to live in Pakistan. The judge did not accept that it would be reasonable to expect the third and fourth

appellants to "enter the Pakistani education system from scratch having never attended school in Pakistan". The judge found that it would not be "reasonable for them to completely uproot themselves from the only life they have known to live in Pakistan. I consider there are serious and insurmountable problems for them leaving the UK to go and live in a strange country where they have never attended school" [26].

5. Whilst I hesitate to interfere with the reasoning of the First-tier Tribunal, this is a rare case where I find that the judge has placed too much emphasis upon the fact that the third and fourth appellants have been educated only in the United Kingdom. In *EV (Philippines)* [2014] EWCA Civ 874, the Court of Appeal considered the fact that the education which the children in that case had enjoyed in the United Kingdom would not be as good as that which they might experience in the Philippines was "not determinative" [44] [60] but Lewison LJ noted:

> "That is a long way from the facts of our case. In our case none of the family is a British citizen. None has the right to remain in this country. If the mother is removed, the father has no independent right to remain. If the parents are removed, then it is entirely reasonable to expect the children to go with them. As the immigration judge found it is obviously in their best interests to remain with their parents. Although it is, of course a question of fact for the tribunal, I cannot see that the desirability of being educated at public expense in the UK can outweigh the benefit to the children of remaining with their parents. Just as we cannot provide medical treatment for the world, so we cannot educate the world."

6. The same principles apply in the present case. As in *EV*, it may well be that the judge considered that it would be in the best interests of the children to remain and continue their education in the United Kingdom. However, such a consideration, in circumstances where family life with siblings and parents will continue abroad, will rarely outweigh the public interest concerned with the maintenance of immigration control. Although the children in this case would "completely uproot themselves" from the only life which they have experienced hitherto, it simply cannot be said that such a course of action would be unreasonable where the children's parents, whom they will accompany to live in Pakistan as a family, have no immigration status in the United Kingdom entitling them to any leave to remain. There will, of course, be disruption to the children's lives but there was in this case no evidence that there were "serious insurmountable problems" as the judge found to be the case at [27]. Likewise, the quality of the education in Pakistan may be inferior but again there was absolutely no evidence before the judge that the children's "education would be gravely interfered with and there would be serious emotional and social problems that they would encounter through such a dramatic upheaval" [27]. This latter finding is particularly worrying given that there was no independent expert evidence before the judge which might have led her to conclude that the children would suffer "serious emotional and social problems". That finding is based on nothing more than speculation on the part of the judge.

7. As I have said, the Upper Tribunal should hesitate before interfering with the considered assessment of the First-tier Tribunal but this is one of those rare cases where the judge's analysis is so seriously flawed for the reasons which I have stated above that it is necessary for the Upper Tribunal to intervene and to set aside the judge's decision. In the light of my observations, I remake the decision and find that it would be reasonable to expect the third and fourth appellants to relocate with the remainder of their family to Pakistan and, in consequence, the appeals of all the appellants on Immigration Rules and Article 8 ECHR grounds must be dismissed.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 22 December 2014 is set aside. I remade the decisions. The appeals of the appellants are dismissed under the Immigration Rules. The appeals are also dismissed on human rights grounds (Article 8 ECHR).

No anonymity direction is made.

Signed Date 13 August 2015

Upper Tribunal Judge Clive Lane