



**First-tier Tribunal**

**(Immigration and Asylum Chamber)** Appeal Number: IA/16053/2014

IA/16059/2014

IA/16066/2014

IA/16046/2014

IA/16047/2014

IA/16048/2014

IA/16049/2014

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 5<sup>th</sup> December 2014**

**Decision & Reasons**

**Promulgated**

**On 16<sup>th</sup> December 2014**

**Before**

**UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

**MR MAZHAR IQBAL - PRINCIPAL APPELLANT  
MRS SAMINA KOUSAR - SECOND APPELLANT  
MISS KOOMAL MAZHAR - THIRD APPELLANT  
MISS SAIMA MAZHAR - FOURTH APPELLANT  
MISS AISHA MAZHAR - FIFTH APPELLANT  
MISS MONEEBA MAZHAR - SIXTH APPELLANT  
MR MUHAMMAD ZEESHAN - SEVENTH APPELLANT  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T Hussain, of Counsel

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

**DECISION AND REASONS**

1. The Appellants are citizens of Pakistan. The principal Appellant and second Appellant are husband and wife. The remaining five Appellants are their children although the third and fourth Appellants are now adults.
2. The principal Appellant Mazhar Iqbal entered the United Kingdom as a Tier 2 (General) Migrant. The other Appellants entered as his dependents – clearly therefore the outcome of their appeals are dependent upon that of the principal Appellant.
3. The Appellants had appealed to the First-tier Tribunal (Judge Cox) against the decision of the Respondent dated 4<sup>th</sup> March 2014 refusing to grant them indefinite leave to remain in the UK and issuing directions for their removal under section 47 of the Immigration Asylum and Nationality Act 2006.

### **Background**

4. The Appellants cases can be summarised as follows. The principal Appellant is 48 years of age and trained and gained experience of carpentry work in Pakistan. On 4<sup>th</sup> May 2005 he entered the UK to take up employment as a carpenter supervisor at Highgate Beds Limited.
5. He was joined in March 2008 by his wife and the third, fourth, fifth and sixth Appellants who at that point were their dependents. The seventh Appellant was born in the United Kingdom on 23<sup>rd</sup> January 2009.
6. Various applications were made by the principal Appellant to remain in the United Kingdom. Suffice to say for the purposes of this decision, a problem arose in 2009 with a certificate of sponsorship from his employers and for a short period in 2009 he (and therefore his dependents) remained in the UK without leave.
7. In January 2010 all Appellants were granted leave to remain until 20<sup>th</sup> October 2011; subsequently further leave to remain was granted until October 2013.
8. In February 2013 the principal Appellant applied for indefinite leave to remain and his application was followed by those of his dependents on 24<sup>th</sup> October 2013. It is these applications that the Respondent refused under 245HF(c) and 276(ADE) of the Immigration Rules.
9. When the matter came before the FtT, it was accepted by all Appellants that they could not meet the requirements of the

Immigration Rules. This is recorded by Judge Cox in [44] of his determination,

“On the totality of the evidence, I find that I am satisfied that there was a gap in the Appellant's lawful residence in the UK and he therefore failed to meet the requirements of paragraph 245HF(c) and (g) and accordingly, the remaining Appellants failed to meet the requirements of 319E & 319J.”

10. He further said at [50],

“Accordingly, I am satisfied that the Appellants do not meet the requirements of the rules and the Respondent's decision is in accordance with the immigration rules.”

11. Following on from that, there being no issue that the Appellants did not satisfy the requirements of the Immigration Rules, the argument before the Judge centred on Article 8. Having heard evidence the Judge dismissed all appeals.

12. The Appellants sought permission to appeal. Permission was refused initially in the First-tier Tribunal because it was decided that the applications had not been lodged in time. Renewed applications were made to the Upper Tribunal and permission to appeal was granted by UTJ King in the following terms:

“The first appellant applied to remain as a Tier 2 (General) Migrant on 11<sup>th</sup> February 2013 and a similar application was made for his dependents in October 2013. It was accepted that none meet the immigration rules and thus the judge went onto consider Art8 (sic) as set out in *Gulshan*. However I find the conclusions difficult to follow, In relation to the 5<sup>th</sup> Appellant for example the Judge appears to accept that there would be unjustifiable harsh consequences for her on return. It is difficult to understand why such findings in respect of her should not satisfy the appropriate test.”

Thus the matter comes before me to decide whether the determination of FtT Cox discloses an error of law such that the decision needs to be set aside and remade.

### **Error of Law**

13. So far as Article 8 ECHR is concerned, it seems the Judge went on to consider Article 8 as set out in *Gulshan*. He said at [55] of his determination the following;

“The Appellant's Counsel submitted that “*the concept of exceptional circumstances must be assessed from the perspective*

*of proportionality and with Strasbourg jurisprudence in mind*” and that, in effect, the **Gulshan** approach is erroneous. However, in my view **Ahmed** does not suggest that **Gulshan** is wrong and as such I have to consider the 2 stage test set out therein.”

14. However having made that observation the Judge went on to make findings at [58] as follows;

“The Fifth Appellant came to the UK at a formative time of her life. She was ten years old and within a year of her arrival in the UK she started at secondary school. She has two elder sisters and I accept her evidence that she has fundamentally changed since coming to the UK. In my view this is not a surprise. She has enjoyed a way of life that she would not have had in Pakistan. I am satisfied that this goes to the core of her identity and her being. Her experiences in the UK has fundamentally changed her outlook on life. She wishes to pursue her education and have a career. She fears she will simply not be able to do this if she were returned to Pakistan.”

15. He follows this up in [60] by saying;

“In these circumstances, I would also have allowed the other Appellants' appeals (domino effect). Since, as a minor, the Fifth Appellant would have needed her parents to look after her and therefore I would have allowed their appeals. Whilst the sixth and seventh Appellants are minors and are also dependant on their parents, as such it follows that their appeals would have been allowed. In relation to the Third and Fourth Appellants, I found that there is a very close relationship between the three eldest sisters. For example, I observed during the hearing that there were regular glances between the sisters that demonstrated to me that they have a way of communicating and a close bond that goes beyond the normal ties of a sibling relationship. In my view this is not surprising. They are all of a very similar age and would no doubt have all gone through a number of shared experiences during formative stages of their lives. I would have concluded that their appeals should also be allowed, otherwise it would breach the Fifth Appellant’s right to respect for her family life.”

16. It is my finding that the Judge has not adequately analysed whether the Respondent’s refusal of the fifth Appellant’s claim (and therefore those of her parents and minor siblings) results in an unjustifiably harsh consequence such as to be disproportionate. As outlined in the grant of permission, the Judge’s conclusions are difficult to follow, especially those in relation to the fifth Appellant.
17. Although Mr Diwnycz did not strongly press a defence of the FtT’s determination, he did rely upon the Rule 24 response and submitted that when read as a whole it was apparent that the Judge had considered all relevant matters.

18. I do not agree. I am satisfied that the Judge erred in law. He failed to provide adequate reasons for the findings reached and in particular fails to set out why the fifth Appellant's circumstances do not satisfy the appropriate test.
19. So far as disposal is concerned both representatives were of the view that should I find the FtT's determination legally unsustainable because of error of law, then the matter should be remitted to the First-tier for a full and fresh hearing. No findings of fact are preserved.

### **Notice of Decision**

20. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision and remit it to the First-tier Tribunal to be heard afresh.

No anonymity direction is made.

Signed  
**2014**

Date **15<sup>th</sup> December**

Upper Tribunal Judge C E Roberts  
Judge of the First-tier Tribunal