



IAC-FH-NL-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/23392/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 29th October, 2014**

**Decision and Reasons
Promulgated On 19th November
2014**

Signed, 17th November, 2014

Before

Upper Tribunal Judge Chalkley

Between

SYED TAHIR ALI SHAH BUKHARI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Nicholson of Counsel instructed by Thornhills Solicitors

For the Respondent: Mr Diwnyc, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan and was born on 6th September, 1969. His wife and three children are dependants. His wife was born on 1st July, 1977. His eldest daughter was born on 22nd July, 1998. His youngest daughter was born on 11th November, 2002 and his youngest child, a son was born in the United Kingdom on 24th May, 2008.

2. The appellant made application to the respondent for leave to remain in the United Kingdom on the grounds that his removal would place the United Kingdom in breach of his obligations under the Human Rights Act 1998. The respondent refused that application in the decision taken on 19th May, 2014, when she also gave directions for the appellant's removal under Section 10 of the Immigration and Asylum Act 1999. The appellant appealed that decision to the First-tier Tribunal and the appeal was heard by First-tier Tribunal Judge Gladstone in Manchester on 25th July, 2014.

Immigration History

3. It is important that I set out fully the immigration history of the appellant and his dependants.

The Appellant

4. The appellant entered the United Kingdom on 28th November, 1999, as a visitor with leave until 28th May, 2000.
5. On 27th February, 2004 the appellant entered the United Kingdom on a multi-entry visitor visa valid from 13th January, 2004 until 13th January, 2009. After each entry, leave was valid for six months or to the end of the visa, whichever is shortest. As such his leave expired on 27th August, 2004.
6. On 11th May, 2011 the appellant submitted an application for leave to remain in the United Kingdom on human rights grounds under Article 8 of the ECHR. On 21st October, 2013 he requested a reconsideration of his previous application for leave to remain in the United Kingdom on human rights grounds under Article 8.

Appellant's Wife

7. The appellant's wife entered the United Kingdom on 27th February, 2004 on a multi-entry visit visa valid from 13th January, 2004 until 17th March, 2004. On 4th May, 2011 she submitted an application as dependant for leave to remain in the United Kingdom on human rights grounds under Article 8 and on 21st October, 2013 requested a reconsideration of his previous application.

The Appellant's oldest Daughter

8. The appellant's oldest daughter entered the United Kingdom on 27th February, 2004 on a multi-entry visit visa valid from 13th January, 2004 until 17th March, 2004 and was a dependant in the application for leave made on 4th May, 2011 made by her father on human rights grounds under Article 8. She was also dependent on the renewed application made on 21st October, 2013.

The Appellant's youngest Daughter

9. Like her sister she entered the United Kingdom on 27th February, 2004 on a multi-entry visit visa valid from 13th January, 2004 to 17th March, 2004 and was a dependant on the application made by the appellant on 4th May, 2011 to remain on human rights grounds under Article 8 of the ECHR. She was also a dependant on the renewed application made on 21st October, 2013.

The Appellant's Son

10. The appellant's son was born in the United Kingdom on 28th May, 2008, but he was dependent also in the application made on 4th May, 2011 and renewed application made on 21st October, 2013.

The Hearing before the First-tier Tribunal

11. The judge had before her a statement prepared by the appellant together with a statement from the appellant's eldest daughter. The judge heard oral evidence from the appellant who had intended to return home when he left Pakistan. His daughter started school in September 2004 and this was when he decided that he had friends living in the United Kingdom and did not wish to return. He concluded that his children would have a better education in the United Kingdom and a better life here.
12. It was accepted on behalf of the appellant that he could not meet the requirements of Appendix FM in relation to family life or under paragraph 276ADE in relation to private life. The judge was urged to allow the appeal outside the Immigration Rules. The judge recorded submissions made to her in respect of *EV (Philippines) & Others v Secretary of State for the Home Department* [2014] EWCA Civ 874 and noted that the best interests of the children are a primary consideration. The judge was referred specifically by the appellant's solicitor to paragraph 35 of *EB* and to paragraph 51. She noted that the appellant and all dependants were citizens of Pakistan and that, to paraphrase paragraph 58 of *EV*, if neither parent had the right to remain then it is the background against which the assessment of the best interests of the children is conducted and the ultimate question would be, is it reasonable to expect the child to follow the parent with no right to remain in the country of origin. The judge noted that neither the appellant nor his dependants were British, nor had any of them the right to remain in the United Kingdom.
13. The judge says at paragraph 88 of her determination that the starting point in the appeal was the best interests of the three children and she believed that their best interests was served by them remaining with their parents. She noted the children's ages and the fact that the two eldest ones had been in the United Kingdom since 27th February, 2004 although they have been without leave in the United Kingdom since 27th August,

2004. The youngest one had been in the United Kingdom since his birth on 24th May, 2006. The judge reminded herself at paragraph 36 of *EV*,

“The longer the child has been here, the more advanced (or critical) the state of his education, the looser his ties with his country in question, and the more deleterious the consequences of his return, the greater the weight falls into one side of the scales.”

The judge noted that the eldest daughter has just taken her GCSEs and is awaiting the results and is due to start A levels at a new college in September. She noted that this daughter’s attitude to learning was stated to be excellent in the main, one or two being described as being good.

14. The judge had reports in respect of the two younger children, which she carefully examined and considered. She noted that the appellant was educated to degree level and his wife had a diploma in arts. No evidence had been submitted to the judge concerning the education system in Pakistan and noted that the children had a number of cousins in Pakistan, all of whom are attending state schools. She referred to and quoted Lord Justice Levison at paragraph 60 of *EV*. She noted that on the evidence before her the appellant and his dependants appeared to live a very self-contained life in the United Kingdom bordering on the reclusive. The appellant’s wife has been in the United Kingdom for ten years but not learnt to speak English. The judge also noted that the appellant’s eldest daughter appeared to have had more contact with her family in Pakistan than with any friends or others in the United Kingdom. The judge further noted that the appellant’s father and three brothers and their wives and families continue to live communally in Pakistan and that that was where the appellant and his wife and two older children lived before coming to the United Kingdom. The judge pointed out that in making submissions, the appellant’s solicitors submitted that the three children consider the United Kingdom to be their home. She noted that it was a very self-contained life, almost reclusive. She noted that it was the appellant who decided that he and his dependant should not return to the United Kingdom in 2004 and that it was only some seven years later when the appellant sought to rectify his position in an application for leave to remain outside the Immigration Rules.
15. The judge took account of the fact that before coming to the United Kingdom the appellant had only ever been here as a visitor and had no connection with the UK. She did not believe that life would be difficult for the appellant or his dependants were they to return to Pakistan given that they have extensive parental and maternal family and existing home and given the appellant’s qualifications and experiences.
16. The judge concluded on the evidence before her that there was nothing about the appellant, his dependants or their respective circumstances which would properly allow her to allow the appellant’s appeal under Article 8. She dismissed the appeal.

17. Lengthy grounds were submitted by Mr Nicholson extending to some nine pages, the majority of which were quotations from various judgments. As he accepted the complaint he made with regard to the determination and which, he submitted, meant that it could not stand, was that the judge failed to give any consideration to paragraph 276ADE of Statement of Changes in Immigration Rules, as amended, in respect of the children. The Secretary of State had only addressed paragraph 276ADE in respect of the parents in the Reasons for Refusal Letter and the judge had simply failed to address this Rule.
18. I was rather surprised at the brief submission he made, given the lengthy application Mr Nicholson had submitted. In the application he had suggested that the judge had failed to consider the best interests of the children and failed to follow *EH (Tanzania)*, *EV (Philippines)* and *EA* in doing so and had not considered Section 117 of the 2002 Act which, although not in force at the time of the hearing before the judge, was in force when she reached her decision.
19. Responding briefly, the Presenting Officer suggested that the determination contained no material error of law. It was clear from the very extensive examination of the interests of the children that the judge was firmly of the view that it would be reasonable in all the circumstances for the children to return to Pakistan. The family were a self-contained unit and it could not properly be said that this would have been a situation where the judge would have been entitled to allow an Article 8 appeal outside the Rules.
20. I reserved my decision.
21. Paragraph 276ADE of Statement of Changes in Immigration Rules, HC 395, as amended (“the immigration rules”) provides:-
- “Requirements to be met by an applicant for leave to remain on the grounds of private life**
 276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
- (i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and
 - (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
 - (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or
 - (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or
 - (v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or
 - (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant’s integration into the country to which he would have to go if required to leave the UK.”
22. Section 19 of the Immigration Act 2014 inserts paragraphs 117A, 117B, 117C and 117D in Part 5A under the heading “Article 8 of the ECHR: public

interest consideration". It is set out in full in the Appendix to this determination.

23. Paragraph 117C clearly does not apply to this appeal, but paragraph 117B does since it came into effect on 28th July, 2014 and the judge did not sign her determination until 30th July, 2014.

24. At paragraph 105 of the judge's determination she said this:-

"105. In summary, the best interests of the children are a primary consideration but not the only consideration. I have found that their best interests lie in remaining with their parents. It does not follow that this means that they should remain in the United Kingdom. I have taken account of the length of time they have been here. I have found that, in that time, the family has lived a self-contained life. I have taken account of what stage their education has reached. I reiterate that N and F [the two older children] have come to the end of their specific age of their education. S [the appellant's son] has completed only one year of primary school and is of an age where he can be expected to adapt, bearing in mind that N (his older sister) was of a similar age when she was taken from Pakistan and placed in school in the UK. They have retained the ability to speak Urdu. Here is knowledge of the family within Pakistan, with some limited contact. I consider that there is nothing in the evidence to indicate that the children would not adapt to life in Pakistan, particularly as they would be returning to family members. Contact in other forms can be maintained with A [a close school friend of the appellant's oldest daughter], given that the physical contact between her and N [the appellant's oldest daughter] has come to an end."

25. The judge said at paragraph 106 that she believed that the appellant would have a reasonable prospect of obtaining employment in Pakistan, given his qualifications and previous experience and his ability to adapt as he had done in the United Kingdom and in paragraph 108 she said:

"Having considered and endeavoured to balance all of the above, I do not find that there are compelling circumstances not sufficiently recognised under the Rules. Nor do I find that there are any 'insurmountable obstacles' in relation to practical issues with reference to the circumstances to which the appellant is likely to return in Pakistan. There is nothing to indicate that the children are likely to encounter any serious difficulties in Pakistan. **I find that it is reasonable in all the circumstances for them to be expected to live in Pakistan with their parents.**" [My emphasis]

26. The judge reached these conclusions having very meticulously examined the evidence before her. She quotes extensively from *EV* and demonstrates that she has very much had it in mind. She has examined the children's school reports and the evidence submitted to her. She carefully looked at the application letters, the appellant's circumstances in the United Kingdom, his dependants' circumstances and the situation that the children would face on their return to Pakistan and was entitled to find, having examined that evidence, that it would be reasonable for the children to be expected to live in Pakistan with their parents.

27. The judge has not set out paragraph 276(iv) of the Immigration Rules, but I do not believe that to be a fatal flaw. She has very carefully considered the evidence and it is clear from her determination that whilst she did not particularly address her mind to the requirements of paragraph 276ADE(iv), she did consider whether, in all the circumstances it would be reasonable for them to be expected to live in Pakistan with their parents. In the circumstances I am afraid that I do agree with the Presenting

Officer. The grounds disclose no material error in the judge's determination which I uphold.

Richard Chalkley

Upper Tribunal Judge Chalkley

17th November, 2014

The **Appendix** above referred to

“19 Article 8 of the ECHR: public interest considerations

After Part 5 of the Nationality, Immigration and Asylum Act 2002 insert—

“PART 5A Article 8 of the ECHR: public interest considerations

117A Application of this Part

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—

(a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), “the public interest question” means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

117C Article 8: additional considerations in cases involving foreign criminals

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where—

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

117D Interpretation of this Part

(1) In this Part—

- "Article 8" means Article 8 of the European Convention on Human Rights;
- "qualifying child" means a person who is under the age of 18 and who—

(a)

is a British citizen, or

(b)

has lived in the United Kingdom for a continuous period of seven years or more;

- “qualifying partner” means a partner who—

(a)

is a British citizen, or

(b)

who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 — see section 33(2A) of that Act).

(2) In this Part, “foreign criminal” means a person—

(a) who is not a British citizen,

(b) who has been convicted in the United Kingdom of an offence, and

(c) who—

(i) has been sentenced to a period of imprisonment of at least 12 months,

(ii) has been convicted of an offence that has caused serious harm, or

(iii) is a persistent offender.

(3) For the purposes of subsection [\(2\)\(b\)](#), a person subject to an order under—

(a) section 5 of the Criminal Procedure (Insanity) Act 1964 (insanity etc),

(b) section 57 of the Criminal Procedure (Scotland) Act 1995 (insanity etc), or

(c) Article 50A of the Mental Health (Northern Ireland) Order 1986 (insanity etc),

has not been convicted of an offence.

(4) In this Part, references to a person who has been sentenced to a period of imprisonment of a certain length of time—

(a) do not include a person who has received a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect);

(b) do not include a person who has been sentenced to a period of imprisonment of that length of time only by virtue of being sentenced to consecutive sentences amounting in aggregate to that length of time;

(c) include a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders) for that length of time; and

(d) include a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period, provided that it may last for at least that length of time.

(5) If any question arises for the purposes of this Part as to whether a person is a British citizen, it is for the person asserting that fact to prove it.”

