Tribunals Service
Asylum and Immigration Tribunal

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers:
IA/51944/2013

IA/51949/2013
IA/51952/2013
IA/51956/2013
IA/52091/2013

THE IMMIGRATION ACTS

Heard at Field House **Determination Promulgated**

On 23rd July 2014 **On 4th August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

ZAHID IQBAL
FARHAT NAZ
MUHAMMAD ZAYAN IQBAL
MUHAMMAD SARIM IQBAL
SPOGAMI KHATTAK

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Blundell, instructed by Maliks and Khan Solicitors
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellants are citizen of Pakistan. They are husband, wife and three children aged 8, 5 and 11 respectively. They appeal against the determination of the First-tier Tribunal dated 14th May 2014 dismissing their appeals against the Respondent's decision of 22nd November 2013 refusing leave to remain and the decision to remove them to Pakistan under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. On 1st March 2005, the Second Appellant [the Appellant] arrived in the UK with leave to enter as a student. The First Appellant, her husband, and the Fifth Appellant, Spogami, were her dependants. The Third Appellant, Zayan, was born on 29th March 2006. The Appellant's leave was extended on various occasions until 10th November 2013. The Fourth Appellant, Sarim, was born on 20th March 2009. The Appellant applied for further leave to remain on 4th October 2013. The Respondent refused the application under Appendix FM, paragraph 276ADE and Article 8 of the European Convention of Human Rights.

3. First-tier Tribunal Judge Edwards found that the Appellant and her husband were unimpressive witnesses; they had changed their accounts which were contradictory and they were evasive. The Judge found that their evidence could not be relied upon. He found that the Appellant and her husband had relatives in Pakistan and had visited Pakistan twice. They spoke the language and were educated there. The husband and children were dependants on the Appellant's application and the application could not succeed under Appendix FM. The Judge found that it would not be unreasonable for the Appellant and her family to move to Pakistan. The children's education was not at such an advanced stage that leaving now would put it in jeopardy. There were perfectly good educational facilities in the Appellant's home country.

4. The Judge concluded that there were no compelling circumstances not covered by the Immigration Rules to allow an inquiry as to whether leave should be granted outside the Rules. In any event, the decision was a proportionate one. The Respondent had considered section 55 of the Borders Act 2009. The family would be removed as a unit and it was in the best interests of the children to remain with their parents.

5. Permission to appeal was granted by First-tier Tribunal Judge Brunnen on 5th June 2014 on the grounds that it was arguable the Judge erred in law in failing to consider the best interests of the children, Zayan and Spogami, who had both been in the UK for over 7 years, in concluding that it would be reasonable to expect them to leave the UK.

6. Mr Blundell relied on the three grounds in the application for permission to appeal, but only made submissions in relation to ground 1: the best interests of the children. He submitted that the Judge's reference to section 55 was inadequate and his finding that it would not be unreasonable for the children to move to Pakistan because their education was not at such an advanced stage that leaving now would put it in jeopardy was lacking analysis within the terms of Azimi-Moayed (decisions affecting children; onward appeals) [2013] UKUT 00197 (IAC). The two older children had put down roots and had reached the seven-year benchmark. Spogami was not a young child who focussed on her parents; she was at an advanced stage of her primary school education and about to move to senior school. She had only known the UK system

of education.

7. Mr Blundell relied on EV (Philippines) v SSHD [2014] EWCA Civ 874 at paragraphs 31 to 47. The best interests of the children required a multifaceted approach. All but one of the factors referred to at paragraph 35 of the judgment pointed in the children's favour. The Judge had failed to carry out a detailed assessment (MK (Best interests of the child) India [2011] UKUT 00475 (IAC)) and had he done so he would have allowed the appeal.

8. Mr Duffy submitted that although the Judge's findings were brief, he had relied on the reasons for refusal letter which was sufficient to show that he had considered the best interests of the children. Paragraph 276ADE was a two limb test; seven years residence was not sufficient in itself. It was reasonable to expect a child to follow parents who had no right to remain in the UK to the country of origin (paragraph 58 of EV). Neither parent in this case had any reason to be in the UK and they were seeking to remain on the basis of their children (paragraph 60 of EV). If there was an error it was not material because it was in the children's best interests to accompany their parents to Pakistan and re-adjust to life there.

9. Mr Blundell submitted that, in adopting the reasons for refusal letter, the Judge's analysis of the best interests of the children was insufficient. The Judge proceeded on the wrong assumption that it was in the children's best interests to be with their parents. According to EV (Philippines), the assessment had to be more refined. The starting point in this case was that the children, particularly Spogami, had put down their own roots and they were not parcels to be transported with their parents. The Judge's inquiry was brief and inadequate as a matter of law. The Appellant was not an overstayer, nor had she acted deceitfully. The factors in favour of the children militated in favour of a positive outcome. There were no adverse features in this case. The Judge had failed to consider the factors at paragraph 35 of EV (Philippines).

Discussion and conclusions

10. I find that there is no merit in grounds 2 and 3 of the application for permission to appeal. The Judge found that the Appellants had ties to Pakistan, over and above nationality, and that the Appellant and her husband were not credible. These findings were open to the Judge on the evidence before him and he gave cogent reasons for his conclusions.

11. The Judge's consideration of the best interests of the children is brief. However, his finding that it was in the children's best interests to remain with their parents was open to him on the evidence. Mr Blundell submitted that the Judge had ignored the fact that Spogami was at the

end of her primary school education and had made friendships and set down roots outside the family unit. He submitted that the Judge failed to take into account the fact that the children had only been educated in the UK and had become westernised. On the contrary, the Judge was well aware that the children were only educated in the UK and took into account their school reports (paragraph 13). The Judge also took into account the letter from Spogami at paragraph 22 of the determination.

12. The Judge properly directed himself following Azimi-Moayed. His starting point that the best interests of the children were to remain with their parents was open to him on this evidence. Mr Blundell submitted that Spogami had developed ties outside the family unit. That may well be the case, but she was still only 11 years old and there was insufficient evidence before the Judge to show that Spogami had developed ties outside the family unit such that it would not be in her best interests to remain with her parents. Spogami and Zayan had lived in the UK for over seven years, but this in itself was not a compelling circumstance.

13. The Judge took into account the evidence in the witness statements and the skeleton arguments at paragraph 6 of the determination. The evidence before the Judge was that the Appellant and her family had lived in the UK lawfully for nine years. The children were settled in school and were doing well. They were fully integrated into the UK educational system and the UK way of life. Spogami had lived in Pakistan as a baby, but had spent her formative years in the UK. She was about to finish primary school and move to secondary school. Zayan had some medical issues which were being monitored in the UK. There was no evidence that this could not continue in Pakistan. The Appellant and her family had developed close friendships and strong ties to the UK. The Judge's finding that the Appellants' removal was proportionate in all the circumstances was open to him on this evidence.

14. Taking the Appellants' case at its highest they had failed to show that there were compelling circumstances not recognised under the Immigration Rules or that their removal would be disproportionate in all the circumstances.

15. The Judge made no error on any point of law which might require the determination to be set aside. The appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal dated 14th May 2014 shall stand.

Deputy Upper Tribunal Judge Frances

31st July 2014