



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

Appeal Numbers: IA/18344/2014  
IA/18357/2014  
IA/18349/2014  
IA/18341/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 26 March 2015**

**Prepared on 26 March 2015**

**Determination**

**Promulgated**

**On 8 May 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**MISS SHAHEEN RAZZAQ  
MISS MEHWISH RAZZAQ  
MISS BEENISH RAZZAQ  
MR SHAH FAHAD RAZZAQ  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr Z Nasim, Counsel instructed by Direct Access,  
Milestone Chambers

For the Respondent: Mr P Nath, Senior Presenting Officer

**DECISION AND REASONS**

1. The first and second Appellants are nationals of Pakistan, dates of birth 24 February 1987, 19 December 1989, the third Appellant's date of birth is disputed as between 1993 and 1995 and the fourth Appellant's date of birth is 14 January 1996. The Appellants appealed against decisions made by the Respondent dated 3 April 2014 to make removal directions, forms IS.151A having been served.
2. Their appeals against the Respondent's decisions appeared to have been made, if the grounds which I have been provided with are representative of each of the Appellants, with reference to Article 8 of the ECHR.
3. It does not appear that there was a dispute from the grounds against the Respondent's decisions under the Immigration Rules (the Rules), particularly paragraph 276ADE.
4. Their appeals came before First-tier Tribunal Judge Chana (the judge), who on 4 December 2014 dismissed them. Before the First-tier Tribunal the Appellants were represented by Mr O'Callaghan although the judge's decision misstates the appearances.
5. Mr Nasim settled the grounds upon which permission was given by First-tier Tribunal Judge Andrew on 29 January 2015. It is sufficient to say that the permission given was certainly less than clear given the wide-ranging six grounds of appeal. Be that as it may, at the hearing before me on 26 March 2015 all the points raised in Mr Nasim's grounds were argued. I considered that it was appropriate that those matters should be raised and addressed so that there was in this sense finality within the appeal process.
6. Ground 1 raised the consideration of whether or not the first and second Appellants fell to be considered on private life issues under paragraph 276ADE of the Rules. It is said by the judge that there was no issue as to whether or not either of them met those requirements. However, the judge giving permission concluded that there was no sustainable error of law dealing with the first Appellant under 276ADE but it appeared that the judge had erroneously excluded the second Appellant from consideration with particular reference to paragraph 276ADE(vi) of the Rules.
7. I do not need to recite those provisions because it seemed to me reading the determination as a whole that the first Appellant could not succeed under 276ADE and even if the second Appellant had been considered, with reference to her private life in the United Kingdom, she too did not meet the requirements in relation to her age, the reasonableness of return, the period of time she had been in the United Kingdom, and the loss of social and cultural ties with the home country.
8. In those circumstances, whilst it was an error to have failed to address the matter, from the evidence helpfully recited to me by Mr Nasim, who was the sole person in possession of the Appellants' bundle at the hearing, it was not apparent to me that there was evidence to support the claim that

either that the first or second Appellant had lost those ties to the home country even though they had been in the United Kingdom since 2004.

9. The second ground of attack concerned the third and fourth Appellants and whether or not the judge had elided the issue of their family life with their other siblings, and the issue of their private lives under the Rules and by doing so had failed to consider relevant material to their private lives which might have given rise to a different decision.
10. In this respect again Mr Nasim helpfully took me to relevant evidence, before the judge, contained within the Appellants' bundle. It seemed to me that none of that material was of sufficient weight to give rise to the possibility that a different decision might have been reached for the third and fourth Appellants in respect of their private life. I agree with Mr Nasim that the way the judge presented those matters did appear to confuse, in the sense of combine considerations, that could discretely fall within their private life issues and those within the family life between the four Appellants as siblings.
11. Nevertheless, despite what I regard as infelicitous use of language by the judge, I do not conclude, on the evidence that I have been taken to, that there was any real likelihood of a different decision arising under 276ADE(iv) in respect of their private lives. It seemed to me, as a fact, the judge did make at least some references to private life in the context of the second Appellant in her consideration of those issues.
12. The third ground of the attack upon the judge's decision was that it was fundamentally flawed because it was unclear whether the judge was considering the appeals under the Razgar [2004] UKHL 27 questions or whether or not the judge was creating some thresholds for succeeding under Article 8 by reference to there needing to be exceptional circumstances. It is clear as the law has evolved since Gulshan [2013] UKUT 640, Nagre [2013] EWHC Civ 720, MF (Nigeria) [2013] EWCA Civ 1192 through to MM (Lebanon) [2014] EWCA Civ 985, Singh and Khalid [2015] EWCA Civ 74 and SS (Congo) & Ors [2015] EWCA Civ 387 as to what extent expressions of 'exceptional circumstances' or 'exceptional cases' were adding a threshold rather than simply being different manifestations of the likelihood of cases arising where, if the Rules do not provide, it would be likely that the decision was not ECHR compliant.
13. I am satisfied again that the decision of the judge, whilst not entirely clear, did at paragraphs 32 to 55 properly consider Article 8 as a second stage: The Appellants having failed under the Rules. It could be difficult drafting grounds of appeal faced with a somewhat confused decision in terms of the way legal thresholds or tests being applied to be sure as to what the judge meant: To that extent I would agree with Mr Nasim. It is unfortunate that the judge expressed herself in quite the way she did but ultimately address the issue of proportionality.

14. The fourth ground of attack related to the third Appellant's date of birth. Mr Nasim said that the Respondent had raised the issue of birth being in 1993 as opposed to that claimed in 1995 but the Respondent had failed to disclose documentation or indeed evidence to support that conclusion.
15. It seemed to me that this is in one sense a perfectly fair point to take but it is qualified by the extent to which reasoning given either on a freestanding basis or by reference to other known points was pertinent to the assessment of age or at least to the likelihood of one date of birth being closer than another. I concluded that looking at the evidence in the round the judge's findings in this matter were partly driven by the fact that the Appellants relied upon sources of confirmation of which they were, or the particular Appellant was, the origin. Apparently documents in their possession did not establish the date of birth. It seemed to me on the other hand it should have been for the Respondent, if it was going to be a material issue, to have produced the evidence.
16. I find that the judge erred in moving forward with an assessment, without reasoning, into consideration of the matter what view she took of the absence of evidence from the Respondent. Ultimately the question posed was what difference does the error make to the case. It seemingly does not make a material significant difference under the Immigration Rules and it was part and parcel of the whole of the evidence for the judge to look at in the round when assessing proportionality. In this respect in looking at them as a group the judge plainly took the view that none of them had, on a freestanding basis, a right to remain in the United Kingdom. Accordingly they could return "as a family" and be able to make a life together insofar as they wished to remain together on return but more importantly that the age of the third Appellant was not ultimately material to the outcome under the Immigration Rules nor was it determinative of the outcome of the Article 8 claim.
17. In these circumstances I concluded that the third Appellant's date of birth, even if the judge got that matter wrong, does not make ultimately any difference to the outcome of her appeal either under the Rules or outside of the Rules under Article 8.
18. The fifth ground of attack related to the 'suitability provisions' under the Immigration Rules in relation to the fourth Appellant. The fourth Appellant, it should not be forgotten, had been involved in crime, but I make no findings whatsoever about it, save to say that the judge recorded at paragraphs 30 and 31 of the decision that the fourth Appellant had not shown that his continued presence in the United Kingdom was a matter which should be given weight when considering the Article 8 issue.
19. I considered Mr Nasim's fifth ground is essentially seeking to reargue the merits and that a discretion should have been exercised differently. Ultimately the judge did have regard to the relevant considerations arising

in respect of the public interest and also those under Sections 117A and 117B of the Immigration Act 2014 amending the 2002 NIAA.

20. The final ground of attack related to adverse credibility findings. On the one hand Mr Nasim argued that those findings are really irrelevant to the issue because it was self-evident, that is the Appellants were overstayers after 2006 and it must follow that their circumstances thereafter were precarious and unresolved. Plainly there was a significant measure of delay by the Respondent. Be that as it may the fact was that the judge's decision from paragraph 37 in particular through to paragraph 45 of the decision made a number of trenchant criticisms of the Appellants' truthfulness and reliability. It is unnecessary for me to repeat them but whilst they have no direct bearing whatsoever on paragraph 276ADE issues the fact is that they were pertinent to the assessment of proportionality, particularly in the context of the public interest, and bearing in mind in relation to the fourth Appellant what I understand to have been a conviction, as a youth, for carrying a knife.
21. Therefore, whilst I have some sympathy with Mr Nasim's grounds, the fact of the matter is that this was one of those cases where the judge has done enough to substantiate the reasoning provided so that as a matter of law there are sufficient reasons to justify the judge's decision. The appeals of each Appellant failed under the Rules and under the Human Rights Act.
22. The original Tribunal's decision stands and the Appellants' appeals are dismissed.

### **NOTICE OF DECISION**

The appeals are dismissed.

No anonymity direction is made.

Signed

Date 6 May 2015

Deputy Upper Tribunal Judge Davey