Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/22586/2014
IA/22588/2014

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court	**Decision Promulgated**
On 3 February 2015	**On 6 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

FARYAL SHAHEEN
NAEELA SHAHEEN

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr F Ansari, Duncan Lewis (Birmingham)
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, who are mother and daughter, appeal to the Upper Tribunal against the determination of First-tier Tribunal Judge O R Williams that was promulgated on 11 September 2014. Judge Williams dismissed their appeals against the immigration decisions of 13 May 2014 to remove

them to Pakistan because they had overstayed in the UK and their human rights claims had been refused.

2. At the end of the hearing I dismissed the appeals but reserved my reasons. The reasons for my decision are set out below.

3. I begin by mentioning some general issues to put my other reasons into context. First, neither representative referred me to the Supreme Court's judgment in Zoumbas v SSHD [2013] UKSC 74 even though it clearly has implications in this appeal. I was surprised that the case was not mentioned in Mr Ansari's skeleton argument since he discussed other jurisprudence on the issue of best interests of children and the reasonableness of expecting a child who has resided in the UK to leave. Secondly, Mr Ansari, who had appeared before Judge Williams, explained that the lead appellant had instructed him not to make an asylum claim but to pursue her protection issue as a ground of appeal. This resulted in Judge Williams having limited evidence regarding her reasons for seeking asylum.

4. The appellant relied on six grounds of appeal. I take the last first as it is easiest to resolve. The appellant argued that Judge Williams failed to take account of relevant case law and failed to give anxious scrutiny to the case. As I have indicated, the case law relied on by the appellant did not completely reflect relevant jurisprudence. There is nothing in the judge's conclusions that violates the principles set out in Zoumbas. The Supreme Court recognised that although there should always be an assessment of the best interests of a child in an appeal relying in full or in part on a decision that would lead to the expulsion of a child, those best interests had to be balanced against relevant public interest considerations. Only then would it be possible to identify if an immigration decision was reasonable in expecting a child to leave the UK.

5. As to the other argument in respect of the sixth ground, Mr Ansari agreed the fact that the judge inverted the representatives' names on the front page of the determination was not evidence of any lack of anxious scrutiny. I mentioned that in any event it was debatable whether the principle of anxious scrutiny extended to article 8 issues given that it stemmed from the approach to be taken in respect of asylum cases. Because of Mr Ansari's concession I need not consider the issue any further.

6. The first ground of appeal argues that Judge Williams erred by finding that the appellants would be able to live with the sister of the first appellant. Mr Ansari, who settled the grounds, argued that this finding ignored the cultural context in which the appellants would be returned. The sister of the lead appellant lived with her in-laws. The Home Office's own country of origin information indicated that women could not live on their own in Pakistan. Taken together, the evidence had to indicate that it would be unduly harsh to expect the appellants to relocate within Pakistan.

7. Mr McVeety responded by saying that the first ground of appeal seeks to invert the burden of proof. I agree. The information at paragraph 2.4 of the COIS Pakistan: Women (published on 14 July 2014) does not provide evidence that the appellants could not stay with the sister of the lead appellant. Although there may be cultural norms, there is no indication that the appellants would be abandoned by their relative or her in-laws. This conclusion also resolves the linked argument relating to article 8. As I reminded Mr Ansari, the standard of proof is higher in relation to article 8 and if the issue is not proven to the lower standard of proof, then it cannot succeed in relation to the submissions relating to private and family life rights.

8. In addition, in relation to the protection issues, I reminded Mr Ansari that there had been no challenge to Judge William's conclusions that the appellants did not have a well-founded fear of persecution in Pakistan. Therefore the issue of internal relocation was not relevant, it being a finding in the alternative.

9. The second ground identified that Judge Williams made a factual mistake when considering the appellants' immigration history. Mr McVeety conceded that a mistake had been made but argued it could not be material. Mr Ansari agreed. I need say no more about this ground.

10. The third, fourth and fifth grounds are interrelated and allege that Judge Williams failed to have proper regard to the law regarding when it might be reasonable to expect a child to leave the UK. The grounds make reference to various decisions of the senior courts (but omit Zoumbas) and to s.55 of the Borders, Citizenship and Immigration Act 2009 regarding the duty to have regard to the welfare of children. All these points fail when Zoumbas is considered. The second appellant is not a British citizen and has no right to education or any other provision such as health care in the UK. Judge Williams identified all the relevant evidence relating to the second appellant's best interests and weighed them against the statutory public interest considerations. He made clear reference to s.55 in paragraph 46 of his determination.

11. Because I am satisfied that the appellants have failed to show that the determination contains an error on a point of law, I find the appeal must fail.

Decision

The appeal to the Upper Tribunal is dismissed because there is no legal error in the determination of Judge Williams.

The decision of the First-tier Tribunal is upheld.

Signed Date 06/02/2015

Deputy Judge of the Upper Tribunal