IAC-AH-CJ-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/44099/2014
IA/44100/2014
IA/44112/2014
IA/44117/2014
IA/44135/2014
IA/44142/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12th November 2015	**On 16th December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

AMTUL SIRAJ GAZALA
MOHAMMED KALEEMULLAH
MH
MR
AU
AJ
(ANONYMITY ORDERS NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr Z Malik, Counsel instructed by Malik Law Chambers
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellants are all citizens of Pakistan. They comprise Amtul Siraj Gazala born on 19th June 1979, her husband Mohammed Kaleemullah born on 15th March 1968, and their four children born respectively on 6th September 2000, 28th June 2005, and 10th June 2013. The two elder children are twins. The first Appellant arrived in the UK in September 2006 when she was given leave to enter as a student until 31st January 2008. This was subsequently extended until 31st March 2009. Subsequent applications for further leave to remain were refused. The remaining Appellants with the exception of the youngest child joined the first Appellant in the UK on 16th January 2007. They were granted leave to enter and remain in line with the first Appellant. The youngest child was born in the UK. Eventually on 7th April 2014 all the Appellants made an application for leave to remain on the basis of their human rights. These applications were all refused for reasons given in Notices of Decision dated 17th October 2014. At the same time the Respondent decided to remove the Appellants under the provisions of Section 10 Immigration and Asylum Act 1999. All the Appellants appealed, and their appeals were heard by First-tier Tribunal Judge Eldridge (the Judge) sitting at Richmond on 21st April 2015. He decided to dismiss the appeals for the reasons given in his Decision dated 6th May 2015. The Appellants sought leave to appeal that Decision, and on 16th July 2015 such permission was granted.

Error of Law

2. I must first decide if the Decision of the Judge contained an error on a point of law so that it should be set aside.

3. The Judge dismissed the appeals for these reasons. He accepted that this was a family unit which would be allowed to remain in the UK or removed together. The case for the Appellants was that the three elder children have lived continuously in the UK since January 2007, a period in excess of eight years. They could therefore qualify for leave to remain under the provisions of paragraph 276ADE(1)(iv) of HC 395, particularly as it would not be reasonable to expect those Appellants to leave the UK. The Judge made appropriate findings of fact in respect of that issue. He found that Haseeb was “an above average pupil scholastically, doing well at school and is adaptable”. His twin brother Requeeb was “a gifted sportsman, achieving well at table tennis and cricket”. Their brother Uzair was in Year 5 at primary school and was “achieving above the national curriculum expectations”. They had effectively received all of their education in English, and if they returned to India, their education would be in Hindi. The family could not afford the cost of international schools. The family had lived in Saudi Arabia prior to coming to the UK, and the children of the family had only ever spent one month in India. The children were fully integrated into the British way of life. However, the Judge was not satisfied that the children had no understanding of Hindi owing to their background.

4. The Judge considered the best interests of all the children as a primary consideration, and concluded that it was in the best interests of the three older children that they remained and continued their education in the UK. The Judge then considered if it would be reasonable to expect those Appellants to leave the UK. He took into account the factors to be considered as given in **EV (Philippines) and Others v SSHD [2014] EWCA Civ 874** and **Azimi-Moayed and Others (Decisions affecting children; onward appeals) [2013] UKUT 197 (IAC)**. However, the Judge concluded that the public interest considerations outweighed all others and therefore it was reasonable to expect all the Appellants to leave the UK. In this connection, the Judge took into account the factors given in Section 117B Nationality, Immigration and Asylum Act 2002. In particular, he took into account the poor immigration history of the family and the cost to the economy of the UK of the family remaining.

5. The grounds of application argued that the Judge had erred in law in coming to his conclusion in that he had failed to take the initiative and cause enquiries to be made to ascertain the best interests of the minor Appellants. At the hearing before me, Mr Malik did not rely upon these grounds, but instead argued that the Judge had relied upon a perverse finding as to the ability of the relevant children to gain an understanding of Hindi on their return to India. Likewise, the Judge had made a finding not based in evidence about the ability of Haseeb and Requeeb to pursue their interest in cricket in India. Further, the Judge had erred in law by taking into account the provisions of Section 117B(4) and (5) of the 2002 Act because those provisions related only to a "person" which did not include children. Finally, the Judge had erred in law by considering the proportionality of the Respondent's Decision and not whether it was reasonable for the three elder children to leave the UK. The Judge had asked himself the wrong question.

6. In response, Mr Whitwell referred to the Rule 24 response and submitted that there had been no error of law in the Decision of the Judge. He pointed out that the grounds of application relied upon by Mr Malik today had not been mentioned in the written grounds submitted with the application for leave to appeal. In any event, the Judge had carefully analysed the relevant evidence and directed himself appropriately. He had found that it would be in the best interests of the relevant children to remain in the UK, but nevertheless his Decision that it would not be reasonable for the relevant minor Appellants to remain in the UK was not irrational nor perverse, and was a Decision open to him. The Judge had given adequate reasons for that Decision.

7. I find no error of law in the Decision of the Judge. The original written grounds of application have no merit. They complain that the Judge did not investigate sufficiently himself in order to decide upon the best interests of the minor Appellants. In the context of the Decision of the

Judge, this complaint is irrelevant. The Judge found that it would be in the best interests of the three elder children to remain in the UK, and decided the appeals on that basis.

8. As regards the grounds argued at the hearing, I agree with the submissions of Mr Whitwell. The Judge made findings of fact which were open to him, and he explained at paragraph 31 of the Decision why he was not satisfied that the elder children had no understanding at all of Hindi which would put them at a great disadvantage in continuing their education in India. The Judge found that it would be in the best interests of the three elder children to remain in the UK, but as he stated at paragraph 37 of the Decision, this factor was not to be treated as a trump card. The Judge correctly went on to weigh the best interests of the children against the public interest in order to consider the reasonableness or proportionality of them remaining in the UK. In this connection, there was no error of law in the Judge taking account of the relevant factors amongst those set out in Section 117B of the 2002 Act. The Judge came to a conclusion which was open to him and which he adequately explained. There was no error of law.

Notice of Decision

The making of the Decisions of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside those Decisions.

Anonymity

The First-tier Tribunal did make orders for anonymity but there was no application made to me for those orders to be continued and I find no reason to do so. I lift the orders for anonymity made by the First-tier Tribunal.

Signed Date

Upper Tribunal Judge Renton