



IAC-FH-AR-V1

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

Appeal Numbers: DA/01544/2014  
DA/01523/2  
014  
DA/01524/20  
14  
DA/01525/2  
014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 19 February 2016 & 8 April 2016**

**Decision &  
Promulgated**

**On 27 April 2016**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**SRB (FIRST APPELLANT)  
NG (SECOND APPELLANT)  
SAHB (THIRD APPELLANT)  
SHB (FOURTH APPELLANT)  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr Z Malik, Counsel, instructed by Mayfair Solicitors  
For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

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## **DECISION AND REASONS**

1. The appellants are citizens of Pakistan. On 11 May 2012 the first appellant was convicted at the Manchester Crown Court for money laundering and a fraud offence and sentenced to four years and six months' imprisonment. The second appellant is the first appellant's wife and the third and fourth appellants are their children.
2. The first appellant entered the United Kingdom on 20 September 2001 with leave to remain as a student. The remaining appellants (and their two elder children) joined the appellant in the United Kingdom in November 2001. As at the date of the hearing in the Upper Tribunal, the third appellant has been granted indefinite leave to remain by the Secretary of State whilst leave to remain for a period of two years has been granted to the third appellant (it appears that indefinite leave was not granted because the third appellant had not undertaken a Life in the United Kingdom test).
3. The second appellant claims that she has resided lawfully in the United Kingdom for a period in excess of ten years (see paragraph 276B of HC 395). The appellants argue that, if the second appellant should not be deported because she has acquired a right to indefinite leave to remain under paragraph 276B, then her status would, in turn, affect any consideration of the circumstances of the first appellant, in particular as to whether it would be unduly harsh for the first and second appellants to be separated and for the first appellant to be separated by deportation from the third and fourth appellants.
4. Paragraph 365 of HC 395 provides that the Secretary of State "will not normally decide to deport the spouse or civil partner of a deportee under Section 5 of the Immigration Act 1971 where ... she has qualified for settlement in her own right."
5. At the first hearing on 19 February 2016, I found that the panel of the First-tier Tribunal had erred in law by failing to take these matters into account in its analysis. The Secretary of State argues that these matters had not been raised before the First-tier Tribunal but it is clear that they were apparent on the face of the papers.
6. At the resumed hearing before the Upper Tribunal on 8 April 2016, Mr Malik, for the appellants, submitted that it was not necessary for the Upper Tribunal to make findings as to the entitlement of the second appellant to remain living in the United Kingdom under the Immigration Rules or, indeed, to make findings as to the merits of the first appellant's appeal. Rather, in remaking the decision against the original decisions of the

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Secretary of State, Mr Malik submitted that I should find that the deportation orders were not in accordance with the law because the Secretary of State had failed to address the issues arising out of the immigration status of the second, third and fourth appellants and how their status might, in turn, impact upon the first appellant's attempts to resist his deportation.

7. Mr Whitwell, for the Secretary of State, argued that the appeal of the first appellant could be separated from that of the remaining appellants and should be dealt with now at the resumed hearing in the Upper Tribunal.
8. Whilst there is some force in Mr Whitwell's argument, I find that the most appropriate and pragmatic way to proceed, having found an error of law in the First-tier Tribunal determination, is for the Upper Tribunal to allow the appeals of all four appellants against the Secretary of State's decisions to the limited extent that the matters are remitted to the Secretary of State for her to consider the deportations afresh in the light of the grants of leave made to the third and fourth appellants and to the second appellant's claim for leave to remain. Such a course of action will enable the Secretary of State to consider the matter and make fresh decisions on the basis of an accurate factual matrix.

### **Notice of Decision**

9. The decision of the First-tier Tribunal which was promulgated on 4 November 2014 is set aside. None of the findings of fact shall stand. I remake the decisions. The appeals of the appellants against the decisions of the Secretary of State are allowed to the limited extent that these matters are remitted to the Secretary of State for reconsideration and, if appropriate, for the making of fresh decisions in the light of the immigration status/claimed immigration status of the second, third and fourth appellants.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 26 April 2016

Upper Tribunal Judge Clive Lane

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