



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/00473/2015**

**Appeal Numbers:**

**U/00476/2015**

**H**

**U/00477/2015**

**H**

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 3 October 2018**

**Decision & Reasons  
Promulgated  
On 1 November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE O'RYAN**

**Between**

**SAMINA KHALID (FIRST APPELLANT)  
MIAN KHALID MAHMOOD (SECOND APPELLANT)  
MUHAMMAD WAQAR KHALID (THIRD APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr P Thornhill of Thornhills Solicitors  
For the Respondent: Mr C Bates, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Siddiqi dated 22 September 2015, dismissing the Appellants' appeals against the Respondent's decision of 23 May 2015 refusing them leave to remain and refusing their human rights claims. The Appellants are related as wife, husband, and son respectively. Within these proceedings, there was previously also a fourth appellant, Arooj Khalid, appeal reference

HU/00478/2015, who for reasons set out below is no longer a party to these appeals. However, I shall refer to her for convenience as 'the Fourth Appellant'. She is the daughter of the First and Second Appellants and sister to the Third.

2. The Appellants arrived in the United Kingdom on 30 October 2006. There was an issue before the judge as to whether or not the husband might have arrived slightly earlier than that, but that is not material. They arrived as visitors to the United Kingdom and overstayed their leave to remain.
3. An application for leave to remain was made on 31 January 2014, resulting in an initial set of decisions made in March 2014 refusing the applications and granting the Appellants no right of appeal. There was a judicial review brought by the Appellants against those decisions resulting in the Respondent accepting that the decision should be withdrawn and remade granting them a right of appeal. This resulted in the decisions dated 23 May 2015.
4. The time spent by the family members in the UK is a relevant consideration and so I set out certain details here. At the time of arrival the Third Appellant was 12 and the Fourth Appellant was 10. By the time of the application for leave to remain on 31 January 2014 the Third Appellant was 19 years old and the Fourth Appellant 17. At the date of decision on 20 May 2015 the Third Appellant was 20 and the Fourth Appellant 18.
5. In the Respondent's decision of 23 May 2015 the Respondent considered the potential entitlement of the Appellants to leave to remain under the Immigration Rules finding that the First and Second Appellants were not entitled to leave to remain either as spouses or parents of minor children. The Third Appellant would not have very significant obstacles in integrating into Pakistan upon return and the Fourth Appellant, although the Respondent accepted that she had been present in the United Kingdom for seven years at the date of application, found that it would not be unreasonable for her to leave the United Kingdom, considering her position under paragraph 276ADE(1)(iv).
6. On appeal to the judge, the judge held that in relation to the Fourth Appellant in particular it would be reasonable to expect her to leave the United Kingdom. I do not need for the purposes of this decision to set out the judge's reasoning in very much further detail, but the appeals were dismissed.
7. An application for permission to appeal was made on 5 October 2015 arguing that the judge had erred in law in failing to have proper regard to Appendix FM of the Immigration Rules, approaching the question of proportionality under Article 8 in a legally flawed manner, and failing to have regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. Permission to appeal was initially refused by Judge of the First-tier

Tribunal Robertson in a decision dated 15 February 2016 stating that the judge's decision had been detailed and disclosed no arguable errors.

8. A renewed application for permission to appeal was made by the Appellants in an application dated 9 March 2016 relying on principally the same grounds. That resulted in a decision of 18 March 2016 by Upper Tribunal Judge Craig refusing permission to appeal.
9. What then happened I have had to deduce to an extent. It seems that there was an application for a 'Cart' judicial review to the Administrative Court against the decision of Upper Tribunal Judge Craig refusing permission to appeal, which resulted in a decision by Mr Justice Silber dated 25 May 2016 refusing permission to apply for judicial review on Cart grounds.
10. The Appellants appealed against that decision to the Court of Appeal. Lord Justice McCombe had granted permission to appeal to the Appellants in a decision dated 28 March 2017 in the following terms:-

“With some hesitation I grant permission to appeal. But for the decision in MA [2016] EWCA Civ 705 I would unhesitatingly have said that the decision of the FTT was correct, largely for the reasons given (even allowing for the error as to the relevant date ... ). The FTT Judge fully and persuasively applied the factors identified in EV [2014] EWCA Civ 87. Equally therefore I would have found the UT's decision was correct and the High Court decision was correct because the case did not raise any point of importance or principle, nor did it give rise to any compelling reason to permit a second appeal. However, in view of the MA case I do consider that there is a compelling reason to permit an appeal: namely because it may be that MA requires the case of the applicant's daughter to be assessed somewhat differently from the manner adopted by the FTT.”

11. The proceedings before the Court of Appeal were ultimately determined by way of a consent order dated 4 September 2017, which recorded that in fact the Fourth Appellant had in fact been granted leave to remain by the Respondent on 15 March 2017. The consent order orders that the Appellants' appeal be allowed, that the order of the Administrative Court dated 25 May 2016 be set aside and the determination of the Upper Tribunal refusing permission to appeal dated 24 March 2016 be set aside. (That date is probably the date that the decision of Upper Tribunal Judge Craig which bears the date 18 March 2016 on its face was sent out to the parties.)
12. The court further ordered that the First, Second and Third Appellants applications for permission to appeal against the First-tier Tribunal decision be remitted to the Upper Tribunal for a fresh determination, in the light of the decision of Lord Justice McCombe granting permission to appeal and the reasons set out in an attached Statement of Reasons. It

was also recorded that the appeal of the Fourth Appellant be treated as abandoned under Section 104(4A) of the Nationality, Immigration and Asylum Act 2002.

13. The accompanying Statement of Reasons, in addition to setting out in full the grant of permission to appeal by Lord Justice McCombe which I have set out above, also records at paragraph 6 that the Appellants now rely on one ground of appeal – that the FTT’s approach to paragraph 276ADE(1) (iv) of the Immigration Rules and to Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 was flawed. They rely on the judgment in MA (Pakistan) & Ors v The Upper Tribunal and SSHD [2016] EWCA Civ 705 (MA (Pakistan)), which postdated the decision of Mr Justice Silber. It was recorded that the Appellants no longer pursued the grounds pleaded before Mr Justice Silber or before the Upper Tribunal. The statement of reasons states:

“7. The parties agree that the approach of the FTT was arguably not consistent with the approach now laid down in MA (Pakistan)”.

14. The next judicial decision to be taken in these proceedings therefore was a decision by Vice-President Mr Ockelton dated 9 August 2018 granting permission to appeal to the three remaining Appellants in the following terms:-

“Permission is granted in the light of the Order of the Court of Appeal in these cases. The parties are reminded that the Upper Tribunal’s task is that set out in s. 12 of the 2007 Act”.

15. I heard from Mr Thornhill today who was not acting at the time the Appellants made their application for judicial review to the Administrative Court and brought their subsequent appeal to the Court of Appeal. Those acting at that time, Malik Law Associates, have ceased trading and Mr Thornhill has had some difficulty obtaining the files from that firm. Regrettably, but understandably, Mr Bates was also not in a position to assist with some of the missing documentation about the judicial review application and subsequent appeal to the Court of Appeal.
16. It is therefore not entirely clear to either of the parties or to this Tribunal exactly what the point of law was which the Appellants advanced before the Court of Appeal resulting in the decision of Lord Justice McCombe granting permission to appeal and which ultimately resulted in the consent order which I have referred to above.
17. However, I anticipate that the argument that had been advanced was that the judge in her decision of 22 September 2015 did not direct herself in law in the way which the Court of Appeal’s judgment in MA (Pakistan) would now require, that being by reference to paragraph 49, that for a qualifying child who has spent 7 years in the UK, the starting point is that

leave to remain should be granted unless there are powerful reasons to the contrary.

18. As I say, we have anticipated that that was the argument that was being advanced before the Court of Appeal and Mr Thornhill advanced his case before me that that was the relevant error of law in Judge Siddiqi's approach when she decided the appeal in September 2015. For his part, Mr Bates puts up no strong objection to that argument. Although MA (Pakistan) was not an authority at the relevant time, it represents a statement of law and insofar as Judge Siddiqi failed to identify powerful reasons as to why the Fourth Appellant would not have been granted leave to remain, and I find that she did not, she erred in law.
19. The consequence of those matters needs to be considered by this Tribunal. The Fourth Appellant is no longer an Appellant before this Tribunal. However the appeals of the three remaining family members are extant. Mr Thornhill argues that however detailed Judge Siddiqi's decision may have been, if she was wrong in law in having dismissed the appeal of the Fourth Appellant, and if indeed the Fourth Appellant was entitled as a matter of law to be granted leave to remain in the United Kingdom, then Judge Siddiqi approached the proportionality balancing exercise of the proposed removal of the three remaining Appellants in an erroneous fashion, having left out of account the fact that the Fourth Appellant was to remain in the United Kingdom.
20. For his part Mr Bates accepts that that was an error of law in the light of how this appeal subsequently proceeded to the Court of Appeal. He does not argue that Judge Siddiqi would inevitably have reached the same decision on the outcome of the appeals of the First to Third Appellants, even if she erred in the determination of the Fourth Appellant's appeal. I therefore find that Judge Siddiqi erred in law in the manner described above and I set aside her decision. The remaining three Appellants' appeals may be reheard and decided before this Tribunal or the First-tier Tribunal.
21. I find that given the extent of the findings of fact which would need to be made in this appeal, it is appropriate to remit the matter to the First-tier Tribunal.
22. Mr Thornhill also informs me that within a short space of time the Third Appellant by reason of his age and the period of time that he has spent in the United Kingdom is likely to satisfy the requirements set out in paragraph 276ADE(1)(v) that he is a person aged between 18 and 25 years of age and has spent at least half his life in the United Kingdom. It is a matter for the Third Appellant as to whether he makes such an application. The First-tier Tribunal will be seized of the appeals, will make whatever case management decisions it thinks fit, and will determine the appeals based on whatever evidence is placed before it at that time.

## **Decision**

I find that the judge's decision involved the making of a material error of law.

I set aside the decision.

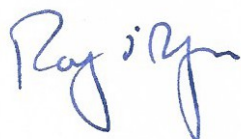
I remit the appeals of the First to Third Appellants to the First-tier Tribunal.

The appeal of the Fourth Appellant has already, in the order of the Court of Appeal dated 4 September 2017, been treated as abandoned under Section 104(4A) of the Nationality, Immigration and Asylum Act 2002

No anonymity direction is made.

Signed

Date 24.10.18

A handwritten signature in blue ink, appearing to read 'P. Ryan', is written below the 'Signed' text.

Deputy Upper Tribunal Judge O'Ryan