



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

Appeal Number: HU/18305/2016  
HU/18307/2016  
HU/18310/2016  
HU/18316/2016  
HU/18318/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30<sup>th</sup> August 2018**

**Decision and Reasons Promulgated  
On 06<sup>th</sup> September 2018**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**Wasim [T]  
Tayyaba [W]  
[H W]  
[A W]  
[S W]**

**(Anonymity Direction Not Made)**

**Appellant**

**and**

**The Secretary of State for the Home Department**

**Respondent**

**Representation:**

For the Appellant: Mr Youssefian, instructed by Richmond Chambers  
LLP  
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Davidson promulgated on 5<sup>th</sup> January 2018 in which she dismissed the appellants' appeals for leave to remain on human rights grounds.
2. The appellants are all Pakistan nationals. The lead appellant last had leave on 22<sup>nd</sup> September 2012. Although he entered on 31<sup>st</sup> January 2007 as a student and his leave was extended to 31<sup>st</sup> December 2009, his further applications for leave were rejected. He was then subsequently granted leave following an application on 6<sup>th</sup> August 2010 to 22<sup>nd</sup> September 2012. His further application on 22<sup>nd</sup> September 2012 was refused.
3. His children were born on 4<sup>th</sup> March 2007 (third appellant), 20<sup>th</sup> September 2008 (fourth appellant) and 12<sup>th</sup> April 2013 (fifth appellant). The fourth and fifth appellants were born in the United Kingdom.
4. The Secretary of State accepted in the refusal letter of 15<sup>th</sup> July 2016 that the third appellant had lived in the United Kingdom continuously for 7 years by the date of the application on 28<sup>th</sup> September 2015. In that decision it was contended that the first appellant had submitted in his application dated 22<sup>nd</sup> September 2012 a TOEIC certificate from Educational Testing Service which was cancelled as being invalid and that he used deception in that application.
5. The application for permission to appeal was based on three grounds: the decision disclosed a
  - (i) failure properly to apply Paragraph 276ADE – the judge stated that the third and fourth appellants 'potentially fall within this section' but did not make a finding
  - (ii) failure to consider the best interests of the children properly and to apply **MA (Pakistan) v SSHD** [2016] EWCA Civ 705
  - (iii) failure to resolve a conflict on material facts. The judge failed to make any finding on the allegation of deception
6. Despite Ms Isherwood's valiant efforts to save the determination, the judge clearly failed to apply the approach set out in **MA (Pakistan)** notably at paragraphs 46 and 49. The fact that a child has been in the United Kingdom for 7 years must be given significant weight. At paragraph 39, when legally directing herself, the judge merely stated that best interests of the child should be a primary consideration but made no reference to 'significant weight' in these circumstances or make anything more than a passing reference to the length of time the third and fourth appellants had been in the United Kingdom. By the date of hearing both had been in the UK for 7 years. As Elias LJ pointed out at [49]

*'However, the fact that the child has been in the UK for seven years would need to be given significant weight in the proportionality exercise for two related reasons: first because of its relevance to determining the nature and strength of the child's best interests; and second, because it establishes as a starting point that leave should be granted unless there are powerful reasons to the contrary'.*

7. The judge did not adopt that approach in considering the relevant facts – there was no identification of any powerful reasons - which was a material error of law.
8. Further the judge failed to make relevant findings regarding the deception. That clearly would have relevance when deciding whether there are powerful reasons to remove the appellants. All relevant factors should be considered when deciding under the Rules and on Article 8 grounds. Mr Youssefian also referred to the reported decision of PD and Others (Article 8 – conjoined family claims) Sri Lanka [2016] UKUT 00108 (IAC). He maintained ground (i) but owing to my findings above and that the decision is to be set aside in its entirety, I shall not dwell on that ground.
9. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

### **Direction**

The appellants' representative is to re-serve the bundle of evidence before the First-tier Tribunal Judge and both parties are to file and serve any further evidence at least 14 days prior to the fresh hearing in the First-tier Tribunal.

Signed

*Helen Rimington*

Date 30<sup>th</sup> August 2018

Upper Tribunal Judge Rimington