



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/31448/2014  
IA/31449/2014  
IA/31450/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9 May 2018

Decision & Reasons Promulgated  
On 18 May 2018

Before

UPPER TRIBUNAL JUDGE WARR

Between

SN  
SS  
AS

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Ms J Hughes of Counsel, instructed by Nasim & Co Solicitors  
For the Respondent: Mr S Kotas, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of Pakistan born on 1 September 1960, 18 August 1970 and 28 March 2000. The first two appellants are the parents of the third appellant, their daughter. They arrived in this country on 25 January 2002 as visitors. Accompanying

them were twin sons (AS.1 and AS.2) one of whom (AS.2) has severe medical problems (epilepsy, cerebral palsy and learning difficulties).

2. In December 2003 the appellants unsuccessfully applied for further leave to remain for medical reasons and an appeal against the decision was dismissed in 2006. Applications for indefinite leave to remain were refused in 2010 and 2012. In October 2012 an application on behalf of the appellants for indefinite leave to remain was again refused but the twins were successful on the basis that they had been in the UK for over seven years. There was an application for judicial review as a result of which the Secretary of State agreed to review the applications. However, their applications were again refused on 31 July 2014 and it was against that decision that the appellants appealed.
3. Their appeals came before a First-tier Judge on 16 September 2015. While there have been developments, given the substantial passage of time since that decision, it is convenient to start with the position as it was before the First-tier Judge. The judge heard oral evidence from the first appellant. He claimed to have only limited contact with his siblings in Pakistan and that the third appellant would not be safe there. He would no longer receive financial support from family and friends in Pakistan as he did in the United Kingdom. He would find it difficult to get employment in Pakistan. He lived with his family in his wife's sister's house and paid no rent but borrowed money from friends and relatives. His son AS.2 had been living in a care home for the previous four years. The third appellant was very intelligent and doing well in her studies and would be in danger in Pakistan of being attacked by members of his family. There would be no treatment for in Pakistan.
4. The judge also heard from the second appellant, who was in contact with her father, stepmother, brother and stepbrother in Pakistan. She said that her husband had six brothers and three sisters in Pakistan (which did not accord with the first appellant's evidence) but she said that his relationship with his family was "very bad and there is no contact with him". She said her parents owned their own home in Pakistan and she had last seen her father when he had visited the UK in 2014. She would have no help on return from her own family. While her sisters had supported the family over thirteen years they would not do so "if they see we are independent". The judge noted the statements made by the third appellant and others. The third appellant believed that removal to Pakistan would affect her chances of becoming a doctor and she knew no-one in Pakistan and was totally unfamiliar with the country. She was totally westernised.
5. The judge found the sponsor's evidence to be credible with one exception. It was not accepted that the third appellant would be in danger of attacks by a member of the appellants' family. Had this been the case such a serious allegation would have been raised at a much earlier stage in the proceedings. However, the fact that part of a witness' evidence might not be credible did not mean that the entirety of that evidence was to be rejected. Apart from this one claim by the first appellant the judge found that in general his evidence was credible.

6. The judge concluded her determination as follows:

- “37. It is clear that the appellants’ applications do not meet the requirements of the Rules. The refusal letter sets out in detail the grounds for refusal. The parents do not meet the requirements under the partner route and although under the parent route, their daughter [the third appellant] meets the requisite age/residency requirements, I do not find that it would be unreasonable to expect the child to return to Pakistan with her parents who were born, raised and lived most of their adult lives there. The appellant has business skills and has shown initiative in coming to this country and establishing a life for himself and his family in what was initially a foreign country. He will be able to re-establish himself and his family in Pakistan with some help from his wife’s family both in Pakistan and here. I do not find it reasonably likely that having supported the appellant and his family for so many years, the appellant’s family and friends in the UK would immediately cease all support to the family when they return to Pakistan. I do not accept that the third appellant will be in any danger from the appellant’s family for the reasons as set out above. In respect of her education, the third appellant has had the benefit of an education in this country at the State’s expense. She will be able to pursue higher level studies in Pakistan should she wish. She will enjoy the benefits of Pakistani citizenship and will have the support of her family.
38. Although the respondent considered the appellants’ Article 8 rights, it focused only on the three appellants without obviously considering the rights of the wider family as a whole. I therefore consider that there are compelling circumstances to make consideration of Article 8 outside the Rules necessary which I now do.

**Article 8**

39. I have taken into account various authorities including the case of **Beoku-Betts v SSHD [2008] UKHL 39**. This case considers whether the Appellate Authority should take into account the impact of the appellant’s proposed removal upon those sharing life with him or only its impact upon him personally. It found in favour of the wider view. It too is a case dealing with removal of an appellant who had established a family life in the UK over a substantial period of years. It helpfully reminds us of further comments made by the House of Lords in **Huang** at paragraph 40. That states:

‘The main importance of the Strasbourg case law is in illuminating the core value which Article 8 exists to protect. This is not, perhaps, hard to recognise. Human beings are social animals. They depend on others. Their family, or extended family, is the group on which many people most heavily depend, socially, emotionally and often financially. There comes a point at which, for some, prolonged and unavoidable separation from this group seriously inhibits their ability to live full and fulfilling lives. Matters such as the age, health and vulnerability of the applicant, the closeness and previous history of the family, the applicant’s dependence on the financial and emotional support of the family, the prevailing cultural tradition and conditions in the country of origin and many other factors may all be relevant.’

40. From **Beoku-Betts** I conclude that the direct impact on other family members can be considered in an appeal under Article 8 against an immigration decision. The right to respect for the family life of one necessarily encompasses the right to respect for the family life of others with whom that family life is enjoyed. Baroness Hale said:

‘To insist that an appeal to the Asylum and Immigration Tribunal consider only the effect upon other family members as it affects the appellant, and that a judicial review brought by other family members considers only the effect upon the appellant as it affects them, is not only artificial and impracticable. It also risks missing the central point about family life, which is that the whole is greater than the sum of its individual parts. The right to respect for the family life of one necessarily encompasses the right to respect for the family life of others, normally a spouse or minor children, with whom that family life is enjoyed.’

41. The appellants’ circumstances are well-documented in the appellants’ bundle and in particular in the various letters from friends all of whom testify to the appellants’ good character. However, it is the relationship of the twin sons (AS.1 and AS.2) and more particularly of AS.2 which I must consider. As more particularly detailed above, AS.2, who is now 21 years old, has, along with his brother, been granted leave to remain in the UK. AS.1 lives with his family and there is no evidence before me to suggest that he would not have a choice to either return to Pakistan with his family or remain in the UK where he doubtless has friends and wider family. In the case of AS.2, there is no evidence before me to suggest that appropriate care could not be provided for AS.2 in Pakistan. His conditions, unfortunately, do not appear likely to improve. At the moment, he lives in residential care for most of the time with regular home visits to which he very much looks forward. His family visit him and maintain further contact by telephone and Skype. There is no evidence to suggest that AS.2 could not remain in care here although contact with his immediate family would necessarily be limited to telephone and Skype plus visits from the appellants whenever they could manage to travel here as well as visits from the wider family in this country. Although it is not without difficulty, there is a choice for AS.2 to either remain here or return with his family to Pakistan.
42. Applying the five-step approach in **Razgar**, I find that the appellants’ removal will be an interference with their family life in the broader **Beoku-Betts** sense which engages the operation of Article 8. However, that interference is in accordance with the law as per my findings under the Rules. That interference is necessary for the legitimate aim of the economic wellbeing of the country and effective immigration control. To determine the question of proportionality, I balance the needs not only of the minor appellant, [the third appellant], whose welfare must be a primary consideration but also that of AS.2 whose special needs must be considered as well as the family as a unit. They have lived in this country for many years and are of good character. Against that is the fact that the life which they have established here was during a period when for the most part their immigration status was precarious and hence of little weight (section 117B).

They have enjoyed the State benefits of education and medical care which, in the case of AS.2, is continuing and could continue indefinitely. I find that, in these circumstances, the interference is proportionate.”

7. There was an application for permission to appeal and permission was granted by the Upper Tribunal on 7 November 2017 on the basis that it was arguable that (1) the judge had not considered Article 8 adequately in relation to the third appellant and this had impacted adversely on the decision overall and (2) in stating that there was no evidence that care was not available for AS.2 in Pakistan, having already accepted the evidence as credible and the evidence included evidence about facilities in Pakistan.
8. In the response from the Secretary of State it was argued that the determination was well-reasoned and that a finding that an appellant was credible did not mean that the judge had to accept everything that had been said without question. In the absence of background information it was open to the judge to find that the appellant had failed to adduce adequate evidence to substantiate his subjective view. In any event it had been found that the appellant’s son could remain in the UK and it was a matter of choice for the family as to whether or not he went with them to Pakistan. The judge had considered the best interests of the children and the effect of removal on the whole family and had weighed this up in the proportionality assessment.
9. The appeal had come before the Upper Tribunal on 2 January 2018. At that hearing it appeared that the Home Office had been invited to review the decision in the light of the fact that the third appellant had been granted residency. Since that hearing the appellants were unclear what had happened. Mr Kotas said that it was his understanding that an email had been sent by the respondent which had said that the Secretary of State was not prepared to reverse the decision. He had not seen anything in writing. The third appellant had been granted residency on 26 July 2017. I was shown the residency card, which permitted work and gave her leave to remain until 24 January 2020. Accordingly the parents’ three children had been granted leave to remain on long residence or special needs grounds.
10. It was submitted that the correct approach would be to identify whether there was a material error of law on the part of the First-tier Judge on the basis of the facts as they had then been before proceeding to give further consideration to the case.
11. I agreed to approach matters on that basis. I note that the Upper Tribunal Judge granted permission to appeal on 7<sup>th</sup> November in relation to all the appellants, including the third appellant, and it was not until the day after her decision that the representatives informed the Tribunal of the 3<sup>rd</sup> appellant’s residency status. In those circumstances and in the light of the need to focus on events as they were at the First-tier hearing that I have treated her as an appellant in these proceedings.
12. In relation to the first point counsel submitted that the First-tier Judge had not considered the best interests of the third appellant. She had important school ties to the United Kingdom and no ties to Pakistan. She had spent her entire life in this country and had friends here and academic achievements. She had her family and her

older brothers including AS.2 in this country. Since the judge's decision AS.2's care home had changed and he was now closer to the appellants' home. There was more regular contact now. She saw her brothers as often as she could. She spent more time visiting the family after the judge's decision.

13. The judge had plainly erred in law in giving no consideration to AS.2's special needs and telephone and Skype were not satisfactory means of keeping contact. Removal of the family would greatly impact on his regime. AS.2 looked forward to seeing his mother regularly. There was no traditional cooking which he enjoyed. The judge had accepted the credibility of the family's evidence. There would be limited facilities in Pakistan. AS.2 was settled in this country. He needed to be looked after 24 hours a day and required a team to do this. AS.2 communicated with his family through telephone and Skype. Insufficient weight had been given to the difficulties the family would face in returning to Pakistan after a lengthy period of residence in the United Kingdom. Members of the family had passed away. They would not get support from family in the United Kingdom. The first-named appellant would not be able to re-establish his business.
14. Mr Kotas pointed out that the grounds of appeal had been limited to two points. He submitted that the judge had dealt with the issues before her adequately. She had considered the position of AS.2 in paragraph 15 of her determination. She had considered the position of the third appellant and her forthcoming exams. In paragraph 29 the judge had referred to the decision in **MK (section 55 - Tribunal options) Sierra Leone [2015] UKUT 00223 (IAC)**. Further consideration had been given to the submissions on behalf of AS.2 in paragraph 34. It had been accepted that he could continue communicating with her family by telephone and Skype although face to face visits would no longer be possible. Proper findings of fact had been made in paragraph 37 and it had been found that it was not unreasonable to expect the third appellant to return to Pakistan. Much of her case had been put on the basis of the danger to which she would be exposed there but this had not been accepted by the judge. It had also been found that the first appellant had business skills and would be able to re-establish himself and his family in Pakistan and he had not accepted that support would no longer be provided when the family return there. The judge had properly taken into account the authorities such as **Beoku-Betts v SSHD [2008] UKHL 39**. In paragraph 41 the judge had noted that the twins had an option as to whether to return to Pakistan or not. It was uncontroversial that the first and second appellants' status had been precarious. Reference was made to their immigration history as summarised in paragraph 3 of the determination. The issues in this case really turned on the question of weight and there was no material error of law. The findings of fact were open to the judge.
15. At the conclusion of the submissions I reserved my decision. I can of course only interfere with the judge's decision if it was flawed in law. As I have mentioned above, there have been developments since that decision but I will consider the question of whether there has been a material error of law by reference to the facts as they then stood. Counsel in her submissions referred to various changes since the hearing - for

example the care home had moved closer to the family home – but these have to be put on one side.

16. In relation to the first point I have carefully and sympathetically considered the arguments advanced by counsel but persuasively as they were put I am not satisfied that the judge erred in law in her consideration of the interests of the third appellant. I accept the respondent's points made in the response and as developed by Mr Kotas at the hearing. The judge had all material considerations in mind, and the weight place on matters was a question for her. It might be that another judge would have struck the balance differently but I am not satisfied she erred in law in concluding as she did. Her decision was properly open to her.
17. In relation to the second point I am not satisfied that it is wrong in law for the judge to have made reference to the general credibility of the evidence of the first appellant and then find in paragraph 41 that there was no evidence before her to suggest that appropriate care could not be provided for AS.2 in Pakistan. As the respondent makes clear, anything the first appellant might say would be subjective and what he claimed would need to be backed up by some material. I was not referred to any such material. The first-named appellant has of course been in this country since 2002 and his views might not reflect the current position in Pakistan.
18. In conclusion I should point out that in ground three of the grounds reference was made to cases pending before the Court of Appeal including NS (Sri Lanka) & Ors with a reference of C5/2015/2305. It was argued that the outcome of the as yet undecided appeals might dictate that the approach applied by the judge was incorrect and that seven years' residency by a child should be accorded greater force in the assessment of proportionality. No submissions were made to me at the hearing on these cases but it would appear that the appeals were considered in MA (Pakistan) & Ors [2016] EWCA Civ 705. I was not taken to this case and no submissions were made in relation to the point. I note that the appellant's representative at the hearing before the First-tier Judge referred to the case of Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 00197 (IAC). Reference was made to this authority in paragraph 71 of the judgment in MA (Pakistan). In that case it was found (at paragraph 73) that the appropriate test could no longer be "compelling reasons" – that was not the language of Section 117B(6) or paragraph 276ADE and it set the bar too high. It might be reasonable to require the child to leave where there are good cogent reasons, even if they are not compelling. The First-tier Judge plainly had in mind the lengthy period of residence of the third appellant. On the issue of precariousness the Court of Appeal considered the matter, for example at paragraph 88 – the precarious status of the parents was relevant to the overall proportionality analysis and did not amount to blaming the children even if they might be prejudiced as a result. Elias LJ observed in paragraph 42 that: "The principle that the sins of the fathers should not be visited upon the children is not intended to lessen the importance of immigration control or to restrict what the court can consider when having regard to that matter."

19. I must emphasise that no submissions were made on ground 3. I do not find that the case of MA assists the appellants in this case. It may be indeed that the decision somewhat raises the bar from that set in Azimi-Moayed, to which the judge was referred.
20. In relation to points identified when permission to appeal was granted Having carefully considered the matter, I am not satisfied that the judge materially erred in law in deciding as she did.
21. In the light of this conclusion it is not open to me to take into account subsequent developments. No doubt the Secretary of State will be invited to consider the position of the parents given that all their children have achieved residency in this country. Now that this appeal is concluded it is to be hoped that matters can be progressed to enable the first and second appellant to be appraised of their position without undue delay.

### **Notice of Decision**

Appeals dismissed.

The decision of the First-tier Judge shall stand.

Although the third appellant is no longer a minor it is appropriate to continue the anonymity order made by the First-tier Judge in this case in all the circumstances:

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

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

### **TO THE RESPONDENT - FEE AWARD**

The First-tier Judge made no fee award and I make none.

Signed

Date 14 May 2018

G Warr, Judge of the Upper Tribunal