



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

Appeal Numbers: PA/05238/2018
PA/05239/2018

THE IMMIGRATION ACTS

Heard at Manchester

On 4th October 2018

**Decision & Reasons
Promulgated
On 23rd October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MRS FARAH SADIQ - FIRST APPELLANT
MR ABDUL BASSIT SADIQ - SECOND APPELLANT
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Moksud, Legal Representative

For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are Pakistani nationals. The first Appellant is the mother of the second Appellant. They came to the United Kingdom on 18th October 2011 as dependants of their husband/father who had been given leave to

enter as a Tier 2 Migrant. Their immigration history thereafter is extensively set out at paragraphs 2 to 4 of the First-tier Tribunal Judge's decision. The Appellants had claimed asylum contending they had a well-founded fear of persecution in Pakistan on the basis of a non-Convention reason namely that of fear of a family member, the second Appellant's uncle. Those applications were refused by Notice of Refusal dated 8th April 2018.

2. The Appellants appealed and the appeals came before Judge of the First-tier Tribunal Alis sitting at Manchester on 22nd May 2018. In a detailed decision and reasons extending to 93 paragraphs the Appellants' appeals for protection and under Article 3 were dismissed.
3. On 6th June 2018 Grounds of Appeal were lodged to the Upper Tribunal. On 25th June 2018 Judge I D Boyes granted permission to appeal. Judge Boyes noted that the grounds assert that the judge erred in failing to give sufficient reasons, by finding that the delay was significant, not referring to objective evidence, by speculating and failing in the Article 8 assessment. It is relevant to note that the only ground that permission to appeal was allowed upon was Ground 5, i.e. that pertaining to speculation. Judge Boyes noted this ground referred to paragraphs 68 and 69 of the decision and held in granting permission that they were arguably unfair and incorrect but did note that whether they were material to the overall decision would remain in the balance but that that alone would not make them unarguable.
4. It is on that basis that the appeal comes before me to determine whether or not there is any material error of law in the decision of the First-tier Tribunal Judge. The Appellants appear by their legal representative, Mr Maksud. Mr Maksud is familiar with this matter having appeared before the First-tier Tribunal and is, I believe, the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer, Mr Bates.

Permission/Discussion

5. Mr Maksud acknowledges this appeal turned entirely on whether the judge has erred in paragraphs 68 and 69 of his decision. He takes me through them and particularly seeks to rely on the finding set out in the final two sentences at paragraph 68 that:

"However, when he was recalled by his employers it seems a decision was taken for the three youngest children and their mother to remain in the United Kingdom so that the children could continue their education here and he continued to support his family."

He submits that that was not the intention and that the judge has speculated as to reasons. Further he contends that so far as the claim pursuant to Article 8 is concerned, the judge has not followed the step-by-step approach set out in *Razgar* and consequently has fallen into error.

6. Mr Bates in response submits that the reasoning of Mr Maksud is in itself in error because the contention that the Appellants' claim had been made because the family wanted to stay in the United Kingdom so the children could continue their education and continue to live here had been brought to the Tribunal's attention by Miss Newton, the Home Office Presenting Officer when making her submissions on behalf of the Secretary of State. Consequently, it had already been flagged up that it was "a live issue" in the appeal.
7. Mr Bates submits that the First-tier Tribunal Judge had given cogent reasons for rejecting the Appellant's protection claim at paragraphs 52 to 56 and that the judge's finding was not one of speculation. He states that there is consequently no error of law.
8. He then goes on to submit that Mr Maksud's only outstanding submission relates to the position under Article 8 and he reminds me Article 8 had to be considered outside the Rules and that the children were not qualifying children and therefore the only issue extant was the public interest and that the judge had dealt with this perfectly adequately. He submits there are no material errors of law and asked me to dismiss the appeal.

The Law

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

11. It is appropriate to start with the findings of Judge Boyes in granting permission. The grant of permission is on a very narrow basis indeed namely a suggestion that there might have been speculation by the First-tier Tribunal Judge in his findings at paragraphs 68 and 69. Mr Maksud acknowledged that everything therein is factually correct save for the contention that the decision to leave the Appellant in the UK by her husband with the three youngest children so that they could continue their education. It is not a matter of speculation by the judge in the way he has addressed it. Firstly, he has made reference to the fact that it was evidenced by the previous decision of the Tribunal, secondly as Mr Bates points out, and indeed the judge refers at paragraph 45, the basis upon which the Appellants remained in the UK was one that had been raised by the Home Office Presenting Officer and was a live issue before the judge upon which he made reasoned findings.
12. There is nothing whatsoever wrong with the analysis made by the judge. He has made clear findings of fact and given reasons. To a certain extent it would be possible for me to end the decision here because the arguments that are made pursuant to Article 8 do not appear ones that have been the subject of a grant of permission to appeal. However, Mr Maksud raised them and Mr Bates does not object to them. However, Mr Bates is perfectly correct in his analysis in that the manner in which the judge had to address Article 8 was outside the Rules and that the judge quite properly has addressed and had regard to Section 117B of the 2002 Act. The only issue extant was that of public interest and as has previously been stated in the Court of Appeal in *EV (Philippines)* it is not the responsibility of the UK to educate the world and that the best interests of the children would be to be with their parents. The test is not one of reasonableness. These issues are fully considered by the judge in paragraphs 84 to 91. This is a decision by an extremely experienced judge. His decision throughout is well explained and his findings of fact are all based on reasons which he was perfectly justified and entitled to make. The decision discloses no material error of law and for all the above reasons the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris