



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

Appeal Number: HU/17990/2018
HU/17993/2018
HU/17996/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 13 March 2019**

**Decision & Reasons
Promulgated
On 28 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPEYARD

Between

**MR A S S
(ANONYMITY DIRECTION MADE)**

First Appellant

and

**MISS R A
(ANONYMITY DIRECTION MADE)**

Second Appellant

and

**MRS E A
(ANONYMITY DIRECTION MADE)**

Third Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Dhanji, Counsel.

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The first and third Appellants are husband and wife and the second Appellant is their daughter who was born on 2 March 2008. They are all citizens of Pakistan. They made applications for leave to remain on the basis of their human rights. Following refusal of those applications they appealed and after a hearing, and in a decision promulgated on 14 January 2019, Judge of the First-tier Tribunal E M M Smith dismissed their appeals.
2. The Appellants sought permission to appeal which was granted on 12 February 2019 by Judge of the First-tier Tribunal Scott Baker. Her reasons for so granting were: -

“1. The Appellants seek permission to appeal against a decision of the First-tier Tribunal (Judge EMM Smith) who, by notice of decision and reasons promulgated on 14 January 2019, dismissed the Appellants’ appeals against the decisions of the respondent made on 15 August 2018 refusing the applications to remain on the basis of human rights.

*2. The grounds assert that the First Tier Tribunal Judge had erred in law in that he considered his assessment of the child with reference to **KO (Nigeria) [2018] UKSC 53** without first considering the respondent’s policy and the observations in **MA (Pakistan) [2016] EWCA Civ 70** and failed to give adequate reasons for finding that the child could read and write in Urdu.*

3. There was no issue that the second appellant was a qualifying child as set out at [20] and that the issue was whether it would be unreasonable to return to Pakistan with her parents, the first and third appellants. This was considered at [30] with reference to paragraph 276 ADE (1)(vi) but no findings have been made with regard to the first and third appellants nor was the appeals considered with reference to Article 8 outside the rules. Further there is arguably an inadequacy in the findings with reference to KO.

4. Leave is not granted in relation to the second ground as the finding that the child could speak Urdu at [27] was arguably open to the judge on the evidence.

5. Permission is granted.”

3. Thus, the appeal came before me today.
4. Mr Dhanji relied upon the first ground of appeal and urged me to accept that the Judge had materially erred by failing to consider case law with particular reference to **MA** (above) and in coming to his decision had erred in his consideration of best interests of the child Appellant. The Judge had failed to take into account the acknowledgement by the Respondent in his published document “Family Migration: Appendix FM Section 1.0b Family Life (as a Partner or Parent) and Private Life: 10 -Year Routes (18 December 2018)” that the starting point is that the Respondent would not normally expect a qualifying child to leave the United Kingdom. Mr Dhanji emphasised that in **KO** there is no suggestion that consideration of the Appellant’s age or length of time in the United Kingdom is incorrect. There is again in **KO** no suggestion

that the view taken in **MA** “as a starting point that leave should be granted unless there are powerful reasons to the contrary” is incorrect. Moreover, on two occasions in his decision the Judge has made reference to paragraph 276ADE (vi) where the focus should have been on paragraph 276ADE (iv).

5. Mr Whitwell opposed the appeal but acknowledged that “something had gone wrong”. However, whilst there were errors in relation to whether the Judge was focusing on paragraph 276ADE (vi) or (iv) on consideration of the decision as a whole the Judge had dealt with all issues that fell to be considered. Mr Whitwell suggested that there is doubt that following **KO** the “powerful reasons” referred to in **MA** are still relevant. **KO** suggests that normally a child will leave the United Kingdom subject to the issue of reasonableness.
6. I find there is an absence of findings, as referred to in the grant, in regard to the first and third Appellants positions. Finally, the Judge has inadequately reasoned his rejection of the first and third Appellants’ claim to succeed on Article 8 grounds. For these reasons, subject to the preservation of the finding in relation to the second Appellant’s ability to speak Urdu, this decision cannot stand and will need to be heard afresh.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge E M M Smith.

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 March 2019

Deputy Upper Tribunal Judge Appleyard