Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/19808/2018

THE IMMIGRATION ACTS

Heard at Leeds Combined Court Centre	**Decision & Reasons Promulgated**
On 15 July 2019	**On 12 August 2019**
Decision given at hearing	

Before

THE HON. MR JUSTICE LANE, PRESIDENT

Between

NM
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Bazini, Counsel instructed by Riaz Khan & Co Solicitors
For the Respondent: Mrs Petterson, Senior Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge O R Williams who, following a hearing in Manchester in December 2018, dismissed the human rights appeal of the appellant, subsequent to the refusal by the respondent of the appellant's human rights claim.

2. The immigration history of the appellant is extensive. It involves two unsuccessful appeals before, respectively, First-tier Tribunal Judge Clayton and, the following year First-tier Tribunal Judge Hussain. The appellant

had been disbelieved by those judges in respect of aspects of her claim to fear her ex-husband and other members of her family in Pakistan.

3. The nature of the appeal before First-tier Tribunal Judge O R Williams, however, was somewhat different. By the time of the decision against which the appellant was appealing, her son, ZA, had been in the United Kingdom for over seven years. He had come to this country aged 8 and at the time of the hearing before Judge O R Williams, he was 16. He had recently completed his GCSE exams in a school in the United Kingdom and had just done the first term of his two-year A Level course.

4. The judge in essence decided that the appellant and ZA could reasonably return to Pakistan. The judge reached that conclusion in the teeth of two experts' reports, which pointed to the son facing significant difficulties if he were to be uprooted from his school in the United Kingdom and required to pick up his education in Pakistan. That was particularly problematic, given that ZA could speak some Urdu with his mother but had no facility in reading or writing that language.

5. The overall approach of the judge to the expert evidence was considerably coloured by the fact that the appellant had been unsuccessful before Judges Clayton and Hussain and had been disbelieved by those judges in respect of elements of her claim at that time. The judge's approach was also coloured by the judge's own view of what he took to be common knowledge in the public domain that "whilst the national language of Pakistan is Urdu, the English language may be/is used for official purposes with most government ministries using English and it is also spoken by the country's 'elite'" (paragraph 29).

6. The judge considered that the experts, Professor Akhter and Dr Khan, had not considered the option of the appellant being privately educated in an English- medium school, which would give him access to higher education and government jobs that require English language qualifications. According to the judge, it was common knowledge that Pakistan has a number of international schools teaching in English.

7. Mr Bazini's attack on the judge's overall findings has been mounted in some detail. It is no disrespect to Mr Bazini if I seek to synthesize his submissions as follows. So far as concerns the relevance of the earlier decisions of Judges Clayton and Hussain, Mr Bazini points to the fact that Judge O R Williams referred to the appellant as not having put forward a case that involved hostility from members of her family other than her husband. That is not the position, as one can see from those decisions, and in particular from paragraph 44 of the decision of Judge Hussain, who notwithstanding that he did not find credible the appellant's claim to be in fear of her ex-husband, the father of ZA, nevertheless found that she had experienced the physical hostility of at least one of her brothers. There was also evidence, not disbelieved in terms, that another brother had been forced by family pressure to distance himself from the appellant.

8. Mr Bazini asserts that the judge could not possibly extrapolate a finding from this, which is central to the judge's decision, that the family, far from being hostile to the appellant, would be willing and able to fund the education in English of ZA, if he were to return to Pakistan with his mother. I accept that submission. Even leaving aside the problems identified with the decision by Mr Bazini regarding the relevance of the earlier decisions, we cannot infer from an absence of hostility the positive likelihood that the family would assist the appellant and ZA to the very material extent necessary in order to support the judge's overall findings regarding education for ZA in Pakistan.

9. The other problem with the judge's decision concerns his treatment of the expert evidence. Whilst it may the case that there are facilities in Pakistan, albeit of a private kind, for teaching in English, the clear thrust of the reports of both of the experts was that removing ZA from his United Kingdom academic environment at this particular point would be damaging to him, since even if he were to be taught in English, he would have been removed in the middle of his A Level course and his lack of knowledge of Urdu would clearly present problems for him, even though his education might be carried out in English.

10. One cannot avoid the inference that the judge, having taken against the appellant as a result of her unsuccessful attempts to remain in the United Kingdom by reference to allegations regarding her ex-husband, then created a scenario in which, according to him it would be reasonable, for the appellant and ZA to return. Mr Bazini makes the point that under the Immigration Rules and, I would add, also under section 117B(6) of the Nationality, Immigration and Asylum Act 2002, the focus is on whether it would be reasonable to expect a qualifying child, which ZA is, to return with the appellant to Pakistan. There are various places in the judge's decision, beginning at paragraph 10, where he clearly conflates the assessment of the appellant, on the one hand, and the assessment of ZA, on the other, in a way which is impermissible under the relevant rules and legislation, as authoritatively interpreted by the Higher Courts, including KO (Nigeria) [2018] UKSC 53. As a result of these errors, the judge's decision cannot stand. I set it aside.

11. I explored with the representatives the question as to how one might proceed in the event of the judge's decision being set aside. Mrs Petterson, with admirable candour, helpfully indicated that she saw no reason for further oral evidence and she wished in that event not to make any submissions on re-making.

12. I therefore re-make the decision on the basis of and by reference to the written materials before me, including the statement of ZA, who gave evidence to the judge but whose evidence is not expressly recorded in the judge's decision. I also have regard to the expert reports to which I have made reference.

13. It seems to me that the position in Pakistan is of little relevance in a case of this kind. We have here a boy who came to the United Kingdom at the age of 8 and whose formative years have been spent in the United Kingdom. He is in the midst of his education at secondary school. Even if ZA were able to return to Pakistan and to find by whatever means access to the English-speaking academic environment that Judge O R Williams thought would be there for him, it is manifestly the evidence of the experts that there would, nevertheless, be damage to ZA's education. One does not really need to be an expert to appreciate that that is so. The judge made reference to the fact that parents can and will uproot children at various stages of their education in order to seek work elsewhere or for other reasons. That is undoubtedly the case; but we are here looking not at the free will of persons but the actions of the State, seen through the prism of human rights legislation.

14. Viewed in that light, it is in my view plain that ZA would suffer significantly if he were to be removed with his mother. In terms of section 117B(6) and the related Immigration Rules, it is in my view manifest that it would not be reasonable for that to happen. Given that, the public interest in removing the appellant from the United Kingdom evaporates for the reasons given by KO (Nigeria) and other cases decided in its wake.

15. I therefore set aside the decision of the judge for error of law and re-make the decision by allowing it on human rights grounds.

Decision

The appeal is allowed on human rights grounds.

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 2 August 2019

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber