



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

Appeal Number: IA/08496/2014
IA/08497/2014
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IA/08499/2014

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice
Centre
On 26 April 2019**

Decision & Reasons Promulgated

On 12 June 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

**FI
SM
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EF**

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown, instructed by Ashed & Co.

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

DECISION AND REASONS

1. The appellants are citizens of Pakistan. The first and second appellant are husband and wife; the third and fourth appellants their children who are both under the age of 18 years. They appealed against a decision of the Secretary of State dated 30 January 2014 refusing to vary their leave to remain United Kingdom. Their appeals, brought on Article 8 grounds only, were dismissed by the First-tier Tribunal in a decision promulgated on 18 January 2019. The appellants now appeal, with permission, to the Upper Tribunal. In the light of the fact that two of the appellants are children, I have anonymized the proceedings.
2. None of the appellants satisfy the requirements of HC 395 (as amended). As a consequence, none of the appellants have any right to remain in the United Kingdom; their appeals turned on the application, outside the Immigration Rules, of Article 8 ECHR. However, the parties agree that the judge misdescribed their immigration status in his decision at [58]. The judge took into 'account that the two adult appellants in this appeal had no status since 2014.' That was incorrect. The appellants had appealed in time against the decision to refuse them further leave and, as a consequence, they enjoyed 'statutory leave' pursuant to section 3C of the Immigration Act 1971. The grounds go on to assert that the judge's misapprehension regarding the immigration status of the appellants amounted to the only 'powerful reason' rebutting the presumption that they ought to be granted leave to remain (see *MA (Pakistan)* [2016] EWCA Civ 705). I disagree. The judge makes his error regarding the immigration status in a part of his analysis concerning the public interest concerned with the removal of the appellants. Immediately after his 'misstatement', the judge indicated that he would take into account the reasons for the delay in the appeal coming before him. The decision dates from 2014; a previous Tribunal decision had been set aside and the appeal remitted to the First-tier Tribunal. I take it that the judge has not found the appellants responsible for the delay given that the First-tier Tribunal had erred in law, thereby delaying the final determination of the appeals. Further, at [37], the judge records a submission made by the appellant's representative that 'the lack of the parents' status does not justify removing the mine or appellants from the United Kingdom...' In his subsequent analysis, the judge does not expressly reject that submission; there is nothing in the decision which suggests that the judge's misunderstanding regarding the adult appellants' immigration status has counted against the children in his analysis of their best interests. Whilst the judge made an error of fact I do not find that has led him to perpetrate and error of law, still less a material error.
3. Secondly, the grounds of appeal criticise the failure of the judge specifically to identify any 'powerful reasons' removing the appellants, in particular the children both of whom have lived in the United Kingdom for more than seven years. At [40], the judge states that he 'must consider whether there are 'powerful reasons' for the appellants to be removed from the United Kingdom' but nowhere in the subsequent analysis does he

say what those reasons are. I find the judge's analysis to be bordering on the unclear at times but I find that, given the underlying factual matrix in this appeal, he has reached a decision available to him. I agree that, having stated that he needed to identify 'powerful reasons' it would have been helpful if the judge had said what he considered those reasons to be. However, it is important to read the decision as a whole. The children are doing well in school but, equally, it was open to the judge at [55] to conclude that their education would not be significantly damaged by being transferred to Pakistan. Ultimately, the judge found that it would be reasonable for children, notwithstanding the fact that they had been in the United Kingdom for more than seven years, to accompany their parents to the country of which they are all citizens in circumstances where neither parent (nor indeed the children) have any right to remain in the United Kingdom. To that extent, the judge has followed *MA (Pakistan)* the ratio of that judgement having been clarified in *KO (Nigeria)* 2018 UKSC 53 at [19]:

"[Lord Boyd] noted (para 21) that Lewison LJ had made a similar point in considering the "best interests" of children in the context of section 55 of the Borders, Citizenship and Immigration Act 2009 in *EV (Philippines) v Secretary of State for the Home Department* [2014] EWCA Civ 874, para 58:

"58. In my judgment, therefore, the assessment of the best interests of the children must be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus the ultimate question will be: is it reasonable to expect the child to follow the parent with no right to remain to the country of origin?"

To the extent that Elias LJ may have suggested otherwise in *MA (Pakistan)* para 40, I would respectfully disagree. There is nothing in the section to suggest that "reasonableness" is to be considered otherwise than in the real world in which the children find themselves."

4. Notwithstanding certain blemishes in the analysis, the judge concluded that a 'real world' assessment should lead him to find that it was reasonable for the entire family to return to Pakistan. Nothing in the grounds of appeal undermines the essential soundness of that conclusion. As I have said, the judge's error of fact did not play any or any major role in leading him to dismiss the appeals.
5. The remaining grounds make minor criticisms of the analysis and are without merit. The grounds assert that there was some inherent contradiction between the judge's acknowledgement that the first and second appellants had 'done everything within their power to ensure that the mine or appellants were able, upon arrival in the United Kingdom in 2011, to integrate into life [here]' and his view expressed that [53] that it was a responsibility of the parents to make it clear that there could be no

reasonable expectation that the family would remain in the United Kingdom on a permanent basis. It is not clear why the judge's comments are necessarily contradictory and, more particularly, how any such contradiction might vitiate his decision.

6. Finally, the judge is criticised for noting that the child appellants have attended a state school. The grounds point out that the first and second appellants were obliged to put their children into education whilst they were living here. The judge has recorded a fact with which the parties do not disagree, namely that the children had been in state education. To that extent, their presence here has unarguably had an impact on public funds. There is nothing in the analysis which might indicate that this observation has tipped any balance against the appellants or show how it materially undermines the judge's conclusion. As I have said, the underlying facts in these appeals permitted the decision reached by the judge whilst none of the matters identified in the grounds have a material impact on his Article 8 ECHR assessment.
7. In the circumstances, the appeals dismissed.

Notice of Decision

The appeals are dismissed.

Signed

Date 2 June 2019

Upper Tribunal Judge Lane

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.