Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: PA/01974/2018**

PA/0

1963/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6th June 2019	**On 25th June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

M W I (FIRST APPELLANT)
W I (SECOND APPELLANT)
(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr I Khan, Counsel instructed by Westgate, Solicitors
For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are father and daughter and citizens of Afghanistan. The first Appellant's spouse and two children (L, DOB 8th February 2001 and T, DOB 6th August 2004) are dependants on the claim. There is also a daughter who made a separate application which is not linked to this appeal.

2. Their appeals were dismissed by First-tier Tribunal Judge Black in a decision promulgated on 27th February 2019. Grounds of application were made and permission to appeal was refused by First-tier Tribunal Judge Murray in a decision dated 1st April 2019. Those grounds were then renewed to the Upper Tribunal and in the decision of Upper Tribunal Judge McWilliam dated 7th May 2019 said the following: -

> *It is arguable that the judge did not consider the best interests of the youngest children. However, this is the only basis on which permission is granted. The rest of the grounds are an attempt to reargue the case and a disagreement with the findings. I endorse the decision of FTT Judge Murray in this respect*.

3. Thus, the appeal came before me on the above date.

4. Mr Khan appeared for the Appellants and submitted that there had been no assessment by the judge of the obligations arising under Section 55 of the 2009 Act. I was referred to the Appellants' bundle and in particular to page 8 in paragraph 36, where it was said by the Appellant that he had been living in the UK with his family for over five years and they had established a new life. His daughters were reluctant to return to Afghanistan. They considered the United Kingdom as their home country. The interference would infringe their rights under Article 8 ECHR. There was also further material for the judge's consideration at pages 55, 56, 58 and 59. In particular page 58 referred to a letter in connection with the youngest child Tasal who had an exceptional November report.

5. Because the judge had failed to deal with the Section 55 point the decision was not safe and it should be set aside and remitted to the First-tier Tribunal for a fresh hearing.

6. For the Home Office Ms Jones said that the skeleton argument for the Appellants produced at the hearing did not mention anything to do with the best interests of the children. There were no witness statements to support it. Page 8 at paragraph 36 was not said to have any element in it considering the best interests of the children, which was the basis on which limited grounds had been given permission. There was no error in law by the judge and the decision should stand.

7. In response Mr Khan said that the Home Office's own guidance said that Section 55 was an element that must be considered.

8. I reserved my decision.

Conclusions

9. The judge's findings were clear enough (paragraph 20). She found there was no agreement for the forced marriages of the two daughters. She found there had been no Jirga. She found that the Appellants' daughters faced no risk of arranged forced marriage in Afghanistan. She found that there was no risk that either the Appellant or his family would face

retribution from the family of A or that they had the resources or interest to pursue them. She did not accept that there was any feud established or that the Appellant would face any dishonour from the tribe. She found that the Appellant would not be returning alone or as a single female. She spoke Pashtu, was well-educated, had a close and supportive family and an extended family in Afghanistan. She could continue with her education there. There were no very significant obstacles to her reintegration and she was able to move to the UK from Pakistan with the support of her family. She was now an adult. There was no evidence of any compelling circumstances which would justify her consideration of Article 8 outside the Rules.

10. She went on to dismiss the appeal.

11. There is a full refusal letter in this case extending to some 100 paragraphs. In particular there is a section headed "Section 55 Consideration". The Home Office say they have considered the need to safeguard and promote the welfare of children in accordance with Section 55 of the 2009 Act. They took a number of factors into account and consideration was given (paragraph 94) to the children's best interests. In paragraph 95 the Home Office noted that it is a general principle that children should be kept with and grow up with their family in their own cultural identity where possible. The appropriate course of action was considered to be that the children should return to Afghanistan together with the Appellant.

12. The Grounds of Appeal lodged in response to the refusal letter made no reference to the best interests of the children or Section 55. They refer in the final line that to return the Appellant to Afghanistan would breach Article 3 and Article 8 ECHR.

13. Before the First-tier Tribunal Counsel represented the Appellants and lodged a skeleton argument. There is no reference to the best interests of the child under Section 55. The judge did not record the submissions made to her but it seems safe to conclude that there was nothing further said about the best interests of the children by Counsel who appeared for the Appellant. It might have been thought that if this was a real issue that statements would have been lodged and signed by the children but no statements have appeared.

14. In these circumstances it is difficult to see how the judge has erred in law in any way. Were the issue to be a live one before her then Counsel for the Appellant would have presented an argument based on the school reports saying that they required to be carefully considered and that the best interests of the children lay in remaining in the UK. However, that argument was not made and it is difficult to see how it could have been made in the sense that it is clearly in the best interests of the children that they stay with the Appellants and their supporting family and also in the light of recent case law such as **KO (Nigeria**) **v SSHD** [2018] UKSC 53. It was not said the judge was wrong to conclude that there was no evidence

of any compelling circumstances which would justify her consideration of Article 8 outside the Rules.

15. The judge considered the issues that were put to her and was plainly entitled to proceed as she did. There is no error of law. This decision is therefore safe and must stand.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Order 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 order applies both to the Appellant and to the Respondent. Failure to comply with this order could lead to contempt of court proceedings.

Signed *JG Macdonald* Date 14th June 2019

Deputy Upper Tribunal Judge J G Macdonald