Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/00972/2020
HU/50404/2020
UI-2022-000149

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On: 20 May 2022	**On: 13 July 2022**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

MUHAMMAD WAQAS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Hingora, counsel instructed by Adam Bernard Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Juss, heard on 1 September 2021. Permission to appeal was granted by First-tier Tribunal Judge Lodato on 9 February 2022.

Anonymity

2. No direction has been made previously, and there is no obvious reason for one now.

Background

3. The appellant, who is a national of Pakistan, entered the United Kingdom on 18 January 2010 with leave to enter as a student. Thereafter he made a series of in-time applications for further leave to remain and was last granted leave until 12 June 2018. On 28 January 2017, the appellant returned to the UK. His leave was subsequently cancelled, on 29 July 2017 and that decision was maintained following an Administrative Review in a decision dated 22 August 2017.

4. On 5 January 2018, the appellant made a human rights application which was refused with an out of country appeal on 20 November 2018. He made an invalid application on 15 April 2019 which was promptly rejected during May 2019. Finally, on 20 February 2020, the appellant applied for indefinite leave to remain on the basis of ten years' lawful continuous residence.

5. In a decision letter dated 18 June 2020, the Secretary of State refused the appellant's settlement application, primarily on the basis that he had not attained sufficient continuous lawful leave in the United Kingdom to meet the requirements of paragraphs 276B(i)(a) of the Immigration Rules. In addition, the respondent concluded that the appellant did not qualify for leave as he could not satisfy 276B(v) because he had overstayed in the United Kingdom. The Secretary of State declined to exercise her discretion in the appellant's favour. Consideration was given to the appellant's family life with his partner and children, then aged 1 and 5, with the respondent explaining that the partner and parent Rules were not met and that there were no very significant obstacles to his integration in his home country and an absence of exceptional circumstances that would warrant a grant of leave to remain outside the Rules.

The decision of the First-tier Tribunal

6. Before the First-tier Tribunal, additional matters were raised, including that the appellant's youngest child, born in 2019, was stateless, that the eldest child had been having speech therapy and that his partner had sight problems. The judge did not accept those claims and nor did he accept that any aspect of the Rules was met. In dismissing the Article 8 claim, the judge concluded that the decision in question was proportionate.

The grounds of appeal

7. There are two grounds of appeal. Firstly, that the judge's reasons are inadequate and/or the material conclusions are unreasoned. Secondly, that the judge misdirected himself. Specifically, the grounds argue that

the judge failed to take into account the best interests of the appellant's children as a primary consideration.

8. Permission to appeal was granted on the basis sought.

9. The respondent's Rule 24 response was received on 1 March 2022. It suffices to say that the appeal was opposed.

The hearing

10. Mr Hingora's succinct submissions, which were supported by a skeleton argument, focussed on the best interests point. He argued that the judge ought to have noticed that the eldest child, N, had serious speech and language issues. The judge made no reference to section 55 of the Borders, Citizenship and Immigration Act 2009 and did not use the relevant terminology anywhere in the decision and reasons. Mr Hingora asserted that N had consistently required treatment in the United Kingdom as shown by the multidisciplinary evidence and that this was relevant to the judge's assessment of whether there were unjustifiably harsh consequences at play. He accepted that the most recent evidence relating to the N's speech and language issues dated from 2019 but argued that the judge was required to grapple with that evidence.

11. Mr Melvin relied upon the respondent's Rule 24 response, and he maintained that the judge was right to note that there was no recent evidence in relation to the relevant child. He argued that there was no mention of section 55 being raised on the appellant's behalf and that there was little to no evidence before judge that the best interests' issue was argued. Furthermore, he submitted that there was no up to date evidence apart from the child attending the first year of primary school. There was no evidence of school friends, a report from a social worker or anything that the Tribunal could make a finding on. The medical evidence did not show that treatment was ongoing. In reply, Mr Hingora stated that N was only able to continue his education owing to the support he received in the United Kingdom. The child's main difficulty had been with language, and this was a material factor which should have been taken into account. While no positive submission was made as to the child's best interests, the judge still had to take it into account.

12. At the end of the hearing, I indicated to the parties that while the judge erred in not explicitly mentioning either section 55 or the best interests of the children, this was not material as it would have made no difference given that there is no error in his approach to the evidence before him.

Decision on error of law.

13. It is uncontroversial that the best interests of a child are a primary consideration when considering whether a decision to remove a child's

parent to another country is proportionate under article 8, applying *ZH (Tanzania)* [2011] UKSC 4.

14. Evidently, it was an error for the judge to fail to make some reference to the best interests of the children in this case. As indicated above, I do not find this to be a material error for the following reasons.

15. During the hearing before the First-tier Tribunal, the focus of the appellant's case, as far as the oral evidence and submissions were concerned was on the claimed statelessness of the appellant's youngest child. The judge cannot therefore be criticised for placing the focus on the statelessness issue in his decision and reasons. His findings on this issue are not subject to any challenge.

16. While the judge may not have explicitly mentioned the children's best interests, it is apparent that he applied this concept to the appeal before him. Despite not hearing any submissions in relation to N's speech and language issues, the judge notes at [8] that N understands Urdu, at [15] that he speaks English and that it was the appellant's claim that he would not be able to continue with his speech therapy in Pakistan. As accepted by Mr Hingora, the evidence relating to N's speech therapy was nearly two years old by the time of the hearing.

17. The judge was required to consider the position of the appellant and his family as at the date of the hearing, rather than the position close to two years prior to the hearing. The multidisciplinary report referred to by Mr Hingora in his submissions, was dated 15 November 2019. According to the future management plan, N was to have speech therapy, the school were to support his social skills and he should have a blood test. The judge was right to state that there was no evidence as to whether the speech therapy was continuing as at the time of the hearing in 2021. Indeed, there was no evidence before the judge that it had commenced. Furthermore, there was no evidence nor argument posed that speech therapy, school support and blood tests could not be obtained in Pakistan.

18. The remaining evidence before the judge concerned the many sources of family support available to the appellant and his family in Pakistan. Given the absence of evidence before the judge as to why the best interests of the children were to remain in the United Kingdom, he did not materially err by not making explicit reference to Section 55.

19. Mr Hingora's skeleton argument alluded to the fact that N is now seven years old and is therefore a relevant child under the Rules. This is not a matter for these proceedings. It is for the appellant to make a fresh human rights application on this basis should he wish to do so.

20. The appeal is dismissed.

Decision

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

The decision of the First-tier Tribunal is upheld.

Signed: T Kamara Date: 23 May 2022
Upper Tribunal Judge Kamara

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email