Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/26409/2012
IA/26433/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 10th May 2013	**On 24th June 2013**
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Before

UPPER TRIBUNAL JUDGE RENTON

Between

MUHAMMAD SADDIQUE (FIRST APPELLANT)
SHAMSHAD BEGUM (SECOND APPELLANT)
(NO ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Chohan, Counsel instructed by Tramboo & Co
For the Respondent: Mr P Nath, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellants are citizens of Pakistan who arrived in the UK on 11th June 2011 when they were given leave to enter as visitors for six months. On

7th December 2011 they applied for indefinite leave to remain as the dependants of their son, the Sponsor Raja Imran Siddique. Those applications were refused on 6th November 2012 under the provisions of the relevant parts of paragraph 317 of the Statement of Changes in Immigration Rules HC 395. The Appellants appealed, and their appeals were heard by First-tier Tribunal Judge Courtney (the Judge) sitting at Hatton Cross on 27th February 2013. He decided to dismiss the appeals under the Immigration Rules and on human rights grounds for the reasons given in his Determination dated 12th March 2013. The Appellant sought leave to appeal that decision, and on 10th April 2013 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside. In that respect I heard submissions from both parties at the hearing. Mr Chohan referred to the grounds and his skeleton argument. He argued that the Judge had erred in law by not dealing with all the grounds raised in the Notice of Appeal as required by Section 86(2) of the Nationality, Immigration and Asylum Act 2002. In particular, the Judge had failed to deal with a particular ground which was that the Respondent's decision was not in accordance with the law because the Respondent had not followed her own policy given in chapter 53.7 of the Enforcement Guidance Instructions. He submitted that the policy applied to all elderly people, not just those who were illegal entrants or overstayers. Further, the Judge had erred by not applying the test given in **MB (paragraph 317: in country applications) Bangladesh [2006] UKAIT 00091**. The Judge had considered the circumstances of the Appellants as if they were still in their own country not at the date of decision, but if their circumstances since their arrival in the UK had not changed. Again, when considering the provisions of paragraph 276ADE(vi) of HC 395, the Judge had failed to make clear findings as to the Appellants' social, cultural, and family ties with Pakistan. Further, the Judge had given an inadequate explanation for his finding that the Respondent's decision did not amount to a disproportionate breach of the Appellants' Article 8 rights.

3. In response, Mr Nath referred to the Rule 24 response and said that paragraph 53.7 of the Enforcement Guidance Instructions did not apply to people like the Appellant who were not at risk of imminent removal. The Judge had correctly applied the provisions of paragraph 276ADE(vi), and had made a full assessment of all the factors when carrying out the balancing exercise necessary for any assessment of proportionality.

4. It is true to say that the Judge made no decision in respect of the argument presented to him at the hearing that the Respondent's decision as not in accordance with the law as she had failed to comply with her policy contained in the Enforcement Guidance Instructions. This amounts to an error of law. However, it is not a material error of law so that the decision of the Judge should be set aside. The policy relied upon is not

applicable to these Appellants, not because they are not elderly or in poor health, but because there is no imminent prospect of their removal. The Judge decided that the decision to remove the Appellants made under Section 47 of the Immigration, Asylum and Nationality Act 2006 was not in accordance with the law, and therefore there was no extant removal decision before the Judge.

5. Otherwise I find no errors of law in the Judge's decision. It is apparent from what the Judge wrote at paragraph 20 of the Determination, and also later at paragraph 24, that he correctly applied paragraph 317 of HC 395 in accordance with the decision in MB. I am satisfied that the Judge considered the circumstances of the Appellants at the date of decision as if they had remained in Pakistan.

6. As regards the application of paragraph 276ADE of HC 395, the Judge came to a decision which was open to him upon the evidence that he was not satisfied that the Appellants did not have any longer social, cultural or family ties with Pakistan. The Judge's explanation for that decision is adequate.

7. Finally, as regards the Appellants' Article 8 rights, the Judge followed the format given by the questions of the late Lord Bingham in **R (Razgar) v SSHD [2004] UKHL 27**. The Judge fully analysed the relevant evidence and came to the conclusion that the Appellant did not have a family or a private life in the UK. If he did err in this respect, it is of no consequence as he went on to consider in the alternative whether the Respondent's decision would amount to a disproportionate breach of any Article 8 rights of the Appellants. The Judge demonstrated that he had carried out the balancing exercise necessary for any assessment of proportionality and came to a conclusion which was open to him on the evidence.

8. As there was no material error of law in the Judge's decision, I do not set it aside.

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.

Anonymity

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I find no reason to do so.

Signed Date

Upper Tribunal Judge Renton