

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Numbers: AA/06297/2014**

**AA/06298/2014**

**AA/06299/2014**

**AA/06300/2014**

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** | |
| **On 25 April 2018** | **On 12 June 2018** | |
|  | |  |

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**MA (first appellant)**

**IAK (second appellant)**

**SDK (third appellant)**

**JA (fourth appellant)**

(ANONYMITY DIRECTION made)

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr Chakmajian, instructed by Caveat Solicitors

For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants’ case is that removing them to Pakistan would be in breach of Article 8 of the Human Rights Convention. Their appeal is against the decision of the respondent made on 15 August 2014, refusing them leave to remain and refusing their asylum and human rights claims. The First-tier Tribunal dismissed the appeal on asylum grounds but allowed it on human rights grounds.
2. The respondent was granted permission to appeal against the decision allowing the appeal on human rights grounds; the appellants were refused permission in their cross-appeal against a decision to dismiss the appeal on asylum grounds.
3. For the reasons set out in a decision promulgated on 11 January 2018 I found that the decision of the First-tier Tribunal involved the making of an error of law and set it aside to be remade. A copy of that decision is annexed to this decision.
4. I heard evidence from the principal appellant who adopted her earlier witness statement and a newer witness statement dated 23 April 2018.
5. Mr Deller did not cross-examine the appellant. In response to my questions the appellant confirmed that there had been no contact between her or her children and family in Pakistan. She said that her sons had no liking for their father and did not wish to have anything to do with him.
6. The appellant added that she would always be living in fear in Pakistan, fearing that she might be recognised which would then result in violence being carried out against her.

**The Law**

1. This is an appeal limited to Article 8 grounds. Although the appeal is under the former provisions of the 2002 Act such that the ground of appeal that a decision which was in breach of the Immigration Rules is open, that is not one which can be pursued before me. Nonetheless, in assessing whether removal would amount to a breach of Article 8 rights, consideration must be given to the provisions of the Immigration Rules as they set out the Secretary of State’s position as to what would or would not be proportionate.
2. In assessing the article 8 claims, I have regard to section s117A and 117B of the 2002 Act which provides as follows:

Section 117A

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—

(a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), *"the public interest question"* means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

Section 117B:

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

"qualifying child" is defined in section 117D:

"qualifying child" means a person who is under the age of 18 and who-

(a) is a British citizen, or

(b) has lived in the United Kingdom for a continuous period of seven years or more;

1. The position of the family must be considered as a whole and it is relevant, I consider, to bear in mind the following provisions of the Immigration Rules:-

276ADE (1) The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

…

(iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or

…

(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant’s integration into the country to which he would have to go if required to leave the UK.

1. In respect of integration I bear in mind **Kamara v SSHD [2016] EWCA Civ 813** at [14

14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.

1. I consider that this applies equally to non-criminals.
2. It is necessary to consider what was held in MA(Pakistan) at [40] to [47]:

40. It may be said that the wider approach can be justified along the following lines. It will generally be in the child's best interests to live with his or her parents and siblings as part of a family. That is usually a given especially for younger children, absent domestic abuse or some other reasons for believing the parents to be unsuitable. The approach of the Secretary of State means that the stronger the public interest in removing the parents, the more reasonable it will be to expect the child to leave. But it seems to me that this involves focusing on the position of the family as a whole. In cases where the seven year rule has not been satisfied, that is plainly what has to be done. As McCloskey J observed in *PD and others v Secretary of State for the Home Department* [[2016] UKUT 108 (IAC)](http://www.bailii.org/uk/cases/UKUT/IAC/2016/108.html" \o "Link to BAILII version) it would be absurd to consider the child's position entirely independently of, and in isolation from, the position of the parents given that the child's best interests will usually require that he or she lives as part of the family unit. But the focus on the family does not sit happily with the language of section 117B(6). Had Parliament intended to require considerations bearing upon the conduct and immigration history of the applicant parent to be taken into consideration, I would have expected it to say so expressly, not for the matter to have to be inferred from a test which in terms focuses on an assessment of what is reasonable for the child. This does not in my view mean that the wider public interests have been ignored; it is simply that Parliament has determined that where the seven year rule is satisfied and the other conditions in the section have been met, those potentially conflicting public interests will not suffice to justify refusal of leave if, focusing on the position of the child, it is not reasonable to expect the child to leave the UK. When section 117A(2)(a) refers to the need for courts and tribunals to take into account the considerations identified in section 117B in all cases, that would not in my view have been intended to include specific circumstances where Parliament must be taken to have had regard to those matters.

…

42. I do not believe that this principle does undermine the Secretary of State's argument. As Lord Justice Laws pointed out in *In the matter of LC, CB (a child) and JB (a child)* [[2014] EWCA Civ 1693](http://www.bailii.org/ew/cases/EWCA/Civ/2014/1693.html" \o "Link to BAILII version) para.15, it is not blaming the child to say that the conduct of the parents should weigh in the scales when the general public interest in effective immigration control is under consideration. The principle that the sins of the fathers should not be visited upon the children is not intended to lessen the importance of immigration control or to restrict what the court can consider when having regard to that matter. So if the wider construction relied upon by the Secretary of State is otherwise justified, this principle does not in my view undermine it.

43. But for the decision of the court of Appeal in *MM (Uganda),* I would have been inclined to the view that section 117C(5) also supported the appellants' analysis. The language of "unduly harsh" used in that subsection is not the test applied in article 8 cases, and so the argument that the term is used as a shorthand for the usual proportionality exercise cannot run. I would have focused on the position of the child alone, as the Upper Tribunal did in *MAB*.

44. I do not find this a surprising conclusion. It seems to me that there are powerful reasons why, having regard in particular to the need to treat the best interests of the child as a primary consideration, it may be thought that once they have been in the UK for seven years, or are otherwise citizens of the UK, they should be allowed to stay and have their position legitimised if it would not be reasonable to expect them to leave, even though the effect is that their possibly undeserving families can remain with them. I do not accept that this amounts to a reintroduction of the old DP5/96 policy. As the Court of Appeal observed in *NF (Ghana) v Secretary of State for the Home Department* [[2008] EWCA Civ 906](http://www.bailii.org/ew/cases/EWCA/Civ/2008/906.html" \o "Link to BAILII version), the starting point under that policy was that a child with seven years' residence could be refused leave to remain only in exceptional circumstances. The current provision falls short of such a presumption, and of course the position with respect to the children of foreign criminals is even tougher.

45. However, the approach I favour is inconsistent with the very recent decision of the Court of Appeal in *MM (Uganda)* where the court came down firmly in favour of the approach urged upon us by Ms Giovannetti, and I do not think that we ought to depart from it. In my judgment, if the court should have regard to the conduct of the applicant and any other matters relevant to the public interest when applying the "unduly harsh" concept under section 117C(5), so should it when considering the question of reasonableness under section 117B(6). I recognise that the provisions in section 117C are directed towards the particular considerations which have to be borne in mind in the case of foreign criminals, and it is true that the court placed some weight on section 117C(2) which states that the more serious the offence, the greater is the interest in deportation of the prisoner. But the critical point is that section 117C(5) is in substance a free-standing provision in the same way as section 117B(6), and even so the court in *MM (Uganda)* held that wider public interest considerations must be taken into account when applying the "unduly harsh" criterion. It seems to me that it must be equally so with respect to the reasonableness criterion in section 117B(6). It would not be appropriate to distinguish that decision simply because I have reservations whether it is correct. Accordingly, in line with the approach in that case, I will analyse the appeals on the basis that the Secretary of State's submission on this point is correct and that the only significance of section 117B(6) is that where the seven year rule is satisfied, it is a factor of some weight leaning in favour of leave to remain being granted.

1. It is, I consider, relevant to consider **EV (Philippines)** [2014] EWCA Civ 874 at [34]–[36]:

34. In determining whether or not, in a case such as the present, the need for immigration control outweighs the best interests of the children, it is necessary to determine the relative strength of the factors which make it in their best interests to remain here; and also to take account of any factors that point the other way.

35. A decision as to what is in the best interests of children will depend on a number of factors such as (a) their age; (b) the length of time that they have been here; (c) how long they have been in education; (c) what stage their education has reached; (d) to what extent they have become distanced from the country to which it is proposed that they return; (e) how renewable their connection with it may be; (f) to what extent they will have linguistic, medical or other difficulties in adapting to life in that country; and (g) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens.

36 In a sense the tribunal is concerned with how emphatic an answer falls to be given to the question: is it in the best interests of the child to remain? The longer the child has been here, the more advanced (or critical) the stage of his education, the looser his ties with the country in question, and the more deleterious the consequences of his return, the greater the weight that falls into one side of the scales. If it is overwhelmingly in the child's best interests that he should not return, the need to maintain immigration control may well not tip the balance. By contrast if it is in the child's best interests to remain, but only on balance (with some factors pointing the other way), the result may be the opposite.

1. It is generally accepted in the case law that the years from 0 to 7 are for example less important than the years from 7 to 14 or 10 to 17 given that it is during those two later periods that the child begins to have an independent life and to make their own connections and private life through education and other connections.
2. The starting point must be the findings of fact reached by the First-tier Tribunal. In particular, it was accepted that threats had been made to the appellant and her then unborn child (the third appellant), that she had led a sheltered existence in the United Kingdom and a sheltered, controlled life in Pakistan; was a victim of domestic abuse; that she had been disowned by her own family for bringing shame on it, her brother-in-law threatening to kill her and her unborn child; that she has a long history of treatment for depression and anxiety documented in her GP records and that she had been subjected to real and genuine threats to her and her children’s lives.
3. In particular it is the finding at paragraph 62:-

“I find that the risk continues because the threat to their lives continues. The threat from the brother-in-law was of an honour killing. It is not time limited or something that will readily be forgotten with the passage of time. It is not some generic or impersonal threat. It is a threat that is highly personal to both the appellant and her in-laws. In those circumstances, it is hard to conclude that the threat level has subsided to such an extent since 2012 that, if the appellant returned to her home area …. she and her daughter would not be at real risk of harm. The appellant’s own family … have disowned her. Her in-laws, as far as can be known, remain in Rawalpindi, less than 90 miles away.”

1. The judge therefore found that there was a real risk of harm to the appellant from her in-laws were she to return to her home area.
2. In addition, I accept in the light of the unchallenged evidence that she gave that she had never lived outside her home area, except for a short period of time in Rawalpindi and Lahore but was not allowed to go outside the home and had never lived alone without family members. She said that if forced to live alone in an area where she would have no family or friends to support her, it would have harsh consequences on her and her children. Although she has a BSc degree she did not have a good grade and has no professional skills which would mean she would not be able to get a job. Not least as at the age of 43 without any previous job experience no employer would give her a job and in a government department the upper age limit to be employed in a new post is 40. In addition if she were away working it would be difficult for her to look after her children, the youngest being 6 and, given her mental health, it would be extremely difficult and there would be nowhere where she could live.
3. The appellant said it would be impossible for her to live alone as a single mother due to her economic dependency, a lack of effective protection from the state and threats from her family. A shelter would not be an option given that they would not allow her sons to join her and they would suffer significant problems in reintegrating into life in Pakistan. They have developed a social network and connections, been studying in school and have a social circle of friends, are well-settled into education and integrated into British society.
4. In addition, none of the children can write Urdu and all are fluent in English.
5. The difficulties that women face in Pakistan are addressed in some detail in the Home Office’s country information and guidance “Pakistan: women fearing gender-based harm/violence” and in SM (Lone women – ostracism) Pakistan CG[2016] UKUT 00067 (IAC)as well as in KA and Others (Domestic violence – risk on return) Pakistan CG [2010] UKUT 216.
6. With respect to the fears of women who are at risk of becoming a victim of an honour crime the guidance from February 2016 which postdates the decision of the First-tier Tribunal provides at 2.4.3 as follows:-
   * 1. The police are sometimes unwilling to provide protection for women fearing sexual or gender based violence. Women who tried to report abuse faced serious challenges. Police and judges are sometimes reluctant to take action in domestic violence cases, viewing them as family problems. Instead of filing charges, police typically responded by encouraging the parties to reconcile and returning the victims to their abusers. There are also reports that some police and security forces raped some women. The government rarely took action against those responsible.
7. Also, at 2.4.11, the same report provides:
   * 1. The authorities may be unable or unwilling to provide protection for women fearing honour crimes. The Criminal Law (Amendment) Act 2004 which recognises offences committed in the name of honour is reported to be flawed and inadequately enforced. The Qisas and Diyat Ordinances continue to be applied in cases relating to ‘honour’ allowing perpetrators to negotiate compensation with the victim’s family in exchange for dropping charges. An estimated 70 per cent of perpetrators go unpunished. Jirgas have invoked death sentences against women for honour related crimes. The police have been reported to be ‘complicit’ with perpetrators of honour crimes to avoid filing cases or destroy evidence. There is limited support for women fearing honour crimes and security breaches have been reported in shelters and courts, resulting in the deaths of women. (see Honour crimes, Police attitudes and responses to violence against women, and Assistance available to women).
8. Further, attitudes of the police may be seen in the section headed victims of domestic violence [at 2.4.6.
9. Had this information been before the First-tier Tribunal it may well have been that the conclusions reached with respect to the availability of protection would have been different. Certainly, the issue of sufficiency of protection in **KA and Others** is at paragraph 193 on the more general level rather than the protection which may be present for women. and also more generally in persecution.
10. The starting point for evaluating Article 8, the family’s position on return, is where they would live. On the basis of the accepted facts they could not be expected to live with the appellant’s family or her husband’s family, or, realistically in the immediate area.
11. The headnote in **SM** is relevant in this case:-

*(1) Save as herein set out, the existing country guidance in SN and HM* *(Divorced women - risk on return) Pakistan CG* [[2004] UKIAT 00283](http://www.bailii.org/uk/cases/UKIAT/2004/00283.html) *and in KA and Others* *(domestic violence - risk on return) Pakistan CG* [[2010] UKUT 216 (IAC)](http://www.bailii.org/uk/cases/UKUT/IAC/2010/00216_ukut_iac_2010_ka_others_pakistan_cg.html) *remains valid.*

*(2)    Where a risk of persecution or serious harm exists in her home area for a single woman* *or a female head of household, there may be an internal relocation option to one of Pakistan's larger cities, depending on the family, social and educational situation of the woman in question.*

*(3)    It will not* *be normally be unduly harsh to expect a single woman or female head of household to relocate internally within Pakistan if she can access support from family members or a male guardian in the place of relocation.*

*(4)    It will not normally be unduly harsh for educated, better off, or older women to seek internal relocation to a city. It helps if a woman has qualifications enabling her to get well-paid employment and pay for accommodation and childcare if required.*

*(5)    Where a single woman, with or without children, is ostracised by family members and other sources of possible social support because she is in an irregular situation, internal relocation will be more difficult and whether it is unduly harsh will be a question of fact in each case.*

*(6)    A single woman or female head of household who has no male protector or social network may be able to use the state domestic violence shelters for a short time, but the focus of such shelters is on reconciling people with their family networks, and places are in short supply and time limited. Privately run shelters may be more flexible, providing longer term support while the woman regularises her social situation, but again, places are limited.*

*(7)    Domestic violence shelters are available for women at risk but where they are used by women with children, such shelters do not always allow older children to enter and stay with their mothers. The risk of temporary separation, and the proportionality of such separation, is likely to differ depending on the age and sex of a woman's children: male children may be removed from their mothers at the age of 5 and placed in an orphanage or a madrasa until the family situation has been regularised (see* *KA and Others (domestic violence risk on return) Pakistan CG* [*[2010] UKUT 216 (IAC)*](http://www.bailii.org/uk/cases/UKUT/IAC/2010/00216_ukut_iac_2010_ka_others_pakistan_cg.html)*). Such temporary separation will not always be disproportionate or unduly harsh: that is a question of fact in each case.*

1. In this case on the facts as found the family could not access support from family members or a male guardian. Whilst it may in this case be thought that as she is educated that she could seek internal relocation to a city, it would be difficult for her given her age, her mental health and the lack of relevant job experience and relevant qualifications to get well-paid employment. It is in reality wholly unlikely that she would be able to become economically self-sufficient and be able to pay for accommodation and childcare even were someone to rent a property to her. The difficulties of that being done are again set out in SM it being particularly difficult in this case where the woman has three children and where questions would be asked about where her husband was so that is not to say that she would be at risk simply from a professional landlord.
2. I accept also that in this case that the principal appellant would not be able to live in the shelter given the difficulties there would be with her sons both of whom are well over the age of 5. It cannot be argued that forced separation from her two sons who would have no-one else to depend on given the rupture of the family could be anything other than very harsh indeed. It would rupture the whole idea of the family unit.
3. In considering the children’s best interests, I note that they have established private lives in the United Kingdom, in the case of the two older children, who are progressing well at school. I accept the evidence that they have a circle of friends and whilst they have not been here for seven years, equally the years that they have spent here are important. Whilst not yet reaching the level at which on the basis of **MA (Pakistan)** there would need to be significant reasons why their removal would be proportionate these are factors in their favour.
4. I accept that there is a family life between the appellants and I find that there would in reality be no real prospect of that family life being able to continue in anything like its current situation were they to return to Pakistan. For the reasons set out above there is no prospect of a family being able to stay together in accommodation paid for by the first appellant and they could not be expected to be in contact with other members of the family given the risk to them that would exist. In addition, whilst the fear has not on the basis of the fear of persecution been objectively found to exist given the somewhat unusual finding that there would be a sufficiency of protection in this case, a finding which may not be sustainable in the light of the more recent evidence, nonetheless the family would be living in a state of subjective fear in the case of the first appellant and the youngest appellant.
5. Whilst the family would be returning to Pakistan, the country of their birth, and the first appellant had lived there for most of her life, it is the situation that she had lived a closed, sheltered life in which she was not allowed out on her own except in limited circumstances and while she has been able to do so in the United Kingdom, the situation in Pakistan is different. I accept that she has a subjective fear that she would, if she goes out, be noticed.
6. Applying the decision in **Kamara** and considering paragraph 276ADE, I am satisfied that the family would, given the very limited circumstances in which they could return to Pakistan, effectively face very severe obstacles to re-establishing themselves. That is because it is unrealistic to expect her to obtain a job given her age, lack of experience and limited qualifications and, that these are unlikely to allow her to provide for accommodation for the family or to provide childcare for the youngest child. They would have to live very limited lives out of the fear of being discovered or notice of them getting back to those who have threatened the first appellant and the fourth appellant. Taking all these into account, I must now turn to Section 117B of the 2002 Act.
7. Whilst I accept that the first appellant’s life here has been precarious, I do not accept that that is the case in the case of the second to fourth appellants given that they have had no control over their being here – see Agyarko [2017] UKSC 11.
8. I accept that there is a strong public interest in the maintenance of immigration control. I accept it is only in very rare cases in which that would be outweighed. In assessing the other factors set out in Section 117B I note that the second to fourth appellants speak English and that the first appellant speaks some English albeit not sufficiently well to dispense with an interpreter. She is, as indeed are the children, financially dependent on the state not financially independent. The first appellant’s position here is precarious as she was not settled and she is now an overstayer. That said, it must be borne in mind that the circumstances in which she became an overstayer in this country arise out of what happened to the credible threats to her from her husband who abandoned her.
9. As against that, the particular set of circumstances affecting this family are such that their private and family lives would effectively be negated were they to return to Pakistan out of a combination of the first appellant’s inability to obtain employment, the difficulties there would be in renting suitable accommodation, in providing childcare were she to obtain work, there being no other source of income to support the family, and because shelters would not be appropriate given the ages of her sons. Accordingly, for these reasons I consider that their removal would be disproportionate. I allow the appeal on Article 8 grounds.

Postscript

1. Had I been remaking this decision on asylum grounds in light of the new evidence which appears in the respondent’s guidance, I would have allowed the appeal on refugee grounds on the basis that there does now appear to be no sufficiency of protection from the police for the first appellant and the fourth appellant, given the risk of honour killing and as there appears to have been no consideration that in any event, the appellants could not live in the same house as the family either of the estranged husband, or the first appellant’s parents. Further, for the reasons set out above there would be no shelters available for the family as a unit and there is no realistic prospect of them being able to relocate to another area where they would not be at risk.

**Notice of decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside so far as it relates to human rights grounds. I maintain the decision refusing the appeal on asylum and humanitarian protection grounds.
2. I remake the decision by allowing the appeal 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 12 June 2018



Upper Tribunal Judge Rintoul

Annex – error of law decision



**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: AA/06297/2014**

**AA/06298/2014**

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**AA/06300/2014**

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** |
| **On 9 January 2018** |  |
|  | ………………………………… |

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**M A**

**I A K**

**S D K**

**J A**

**(ANONYMITY DIRECTION made)**

Appellants

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Shilliday, instructed by Rashid & Rashid solicitors

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Povey promulgated on 23 March 2015, allowing the appellants’ appeals against a decision to refuse them leave to remain and to refused their asylum and human rights claims she made on 15 August 2014.
2. Judge Povey dismissed the appeals on asylum and humanitarian protection grounds but allowed them on an article 8 basis. The appellants were refused permission to challenge those aspects of their appeals which were dismissed.
3. The first appellant is the mother of the second to fourth appellants. All are citizens of Pakistan. The first appellant was marred to KA in 2001. IAK was born in 2001; SDK in 2005. In 2007 KA came to the United Kingdom as a student; his wife and their children remained in Pakistan, living with her in-laws in a situation she found intolerable. She left, and went to live in rented accommodation. Eventually pressure was put on KA to make arrangements for the first appellant and the children to join him in the UK which they did on 7 August 2011. The situation again became difficult; the marriage broke down, and the husband left.
4. Following that, threats were made by the first appellant’s father, and her in-laws, to her and her as then unborn child, JA, who was born in 2012. Later, the first appellant received letters from Pakistan; from her father, disowning her, and from her brother in law threatening her and her unborn child with death. The latter is consistent with the husband’s allegation that the first appellant had had an affair and the child is not his.
5. Although the judge found [62] that there was a continuing risk as the threat to their lives continued, and that there would be a real risk of harm in her home area, it was concluded that there was a sufficiency of protection from the state in her home area [69], notwithstanding the police becoming aware of the allegations that had given rise to the threat. It was also concluded, [73] – [75] that the first appellant would be able to relocate and that it would be reasonable to expect her to do so.
6. The judge concluded, however, that removal would be disproportionate in article 8 terms [85], given the effect there would be on I A K and S D K, given that they had by then spent a particularly formative period of their lives in the United Kingdom [80] and were qualifying children for the purposes of section 117B of the Nationality, Immigration and Asylum Act 2002. The judge also took into account the first appellant’s depression and the difficulty there would be without any support network to draw upon. [84]
7. The Secretary of State sought permission to appeal on the grounds that the judge had erred in not explaining why removal would be unreasonable, the length of residency not being determinative and in failing to consider what the family life would be life they were returned to Pakistan.
8. I am satisfied that the decision of the First-tier Tribunal did involve the making of an error of law. I gave brief reasons for doing so at the hearing upon which I now expand.
9. While I note the submission that the judge did set out the law correctly in the first part of the decision, there is no proper indication as to the weight attached to the public interest in removal, given a failure to meet the requirements of the Immigration Rules. Further, there appears to have been no consideration of where the family would live, and in what conditions, given the findings about the risks in the home area.
10. More importantly, and this was not noted at the hearing, the judge erred at [80] - [82] in assuming that the older children had lived in the United Kingdom for over 7 years, yet they only arrived in August 2011, less than 4 years before the hearing before Judge Povey. They cannot therefore be qualifying children for the purposes of section 117B of the 2002 Act, and did not spend half of their life in the United Kingdom. Given that much of the reasoning relied on this timeline, and given the lack of other reasoning, I am satisfied that the decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.
11. I consider that it is appropriate to remake the decision in the Upper Tribunal, the error of fact set out at [10] above notwithstanding.

**DIRECTIONS**

1. The appeal is listed to be remade in the Upper Tribunal. The findings of fact in respect of the threat to the first appellant in her home area, and as to her credibility. It will, however, be necessary to make further findings as to where the appellants would be able to live, and as to what difficulties and obstacles there may be.
2. Any further material to be relied upon must be served at least 5 working days before the date of hearing.

Signed Date 10 January 2018



Upper Tribunal Judge Rintoul