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

Ahmad and others (removal of children over 18) [2012] UKUT 00267(IAC)

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Determination Promulgated** |
|---|---|
| **On 10 May 2012** | |
| | …… |

**Before**

**Mr Justice Collins**
**Upper Tribunal Judge Coker**

**Between**

**Tousif Ahmad a.k.a Touseef Mohammed**
**Jehan Mohammed a.k.a. Jehan Zeb**
**Ishrut Begum a.k.a. Tanzila Bi**
**Mohammed Atif a.k.a Atif Mahboob**
**Mobushra Begum a.k.a. Mobusha Bi**
**Furah Begum a.k.a. Farah Baz**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Ronan Toal, Counsel, instructed by Wilson Solicitors
For the Respondent: Mr David Blundell & Mr Andrew Byass, Counsel, instructed by Treasury solicitors

*There is no power under the provisions of section 10(1)(c) of the Immigration and Asylum Act 1999 to remove children who are over the age of 18 years as the family members of an adult being removed under section 10(1)(b) of that Act.*

## DETERMINATION AND REASONS

1. The appellants in these appeals are from four families. They raise common issues and have therefore been listed together. All four families (the principals of which Qadir Ahmed AA/08841/2008, Noreen Shakila Bi AA/08855/2008, Rungzaib Mohammed AA/08846/2008 and Mehmood Ahmed AA/01519/2009) are Pakistani citizens and inter-related either by blood or marriage or both. The family members not the subject of this determination also have appeals outstanding before the Upper Tribunal.

2. Each family obtained visit entry clearances in 2000 or 2001 as Pakistani nationals applying through the High Commissioner in Islamabad. Having arrived in this country, each family claimed asylum on the basis that they were Indian nationals giving names, dates of birth and histories which differed from what had been presented to obtain the entry clearances. In particular, each family alleged that the parent was single and his or her spouse had been murdered by the Indian army. They all have associated family members including a number of children some of whom were dependants upon the asylum claims of the principal appellants and were granted 'derivative' refugee status and indefinite leave to remain on that basis; other family members are failed asylum seekers and their dependants.

3. All the parents then engaged in fraudulent activities and were arrested in July 2004. They were charged with conspiracy to contravene section 25 of the Immigration Act 1971 and conspiracy to defraud by obtaining benefits to which they were not entitled. The immigration offences involved obtaining leave to enter by deception. All pleaded guilty. The grants of refugee status and indefinite leave to remain, where granted, were rescinded against all family members.

**Procedural history**

4. The Secretary of State served decisions to remove under the provisions of section 10 Immigration and Asylum Act 1999 on all the family members, including those who are not considered in this appeal. All the family members appealed; the Secretary of State conceded they had an in country right of appeal and all the appeals came to be heard together before a First-tier Tribunal (IAC) panel of Judge Renton and Judge Forrester between 7th and 22nd December 2009. At that hearing it was conceded:

    i. that all the appellants were Pakistani nationals and would not be at risk of persecution or serious harm on their return to Pakistan;

ii. they were not entitled to refugee status or humanitarian protection;
iii. the Secretary of State was entitled to cancel the grant of refugee status where it had been granted including those with 'derivative' status.

5. The appeals of all the family members were dismissed by the First-tier Tribunal. Permission to appeal was granted on 23rd April 2010 on all grounds submitted namely:

i. It is arguable that the Tribunal erred in law by failing to allow the appeals of those aged over 18 at the date of decision on the grounds that the decisions were not in accordance with the immigration rules and/or failing to allow the appeals on the grounds that the decisions were not in accordance with the law owing to the Secretary of State's failure to give effect to his policy as to how he would exercise his powers under section 10(1)(c) and/or failing to allow the appeals because they were not the spouses or partners or children under the age of 18 of a person in respect of whom removal directions under section 10 had been made and there was therefore no power in law to make those immigration decisions.
ii. It is arguable that the Tribunal erred in law in relation to those appellants nearing the age of 18 at the date of decision the decision was not in accordance with the law because it was made without regard to policy contained in Chapter 50 of the Enforcement Instructions and Guidance with regard to the exercise of the power under section 10(1)(c).
iii. It is arguable that the Tribunal erred in law in reaching its conclusion that the nature and consequences of the deception practised were of such gravity as to operate against the presumption not to remove families where the children have been in the UK for 7+ years, wrongly treated all appellants as parties to the deception, irrationally excluded the benefit of DP5/96 and Article 8, erred in its assessment of the individual culpability of each appellant, failed to make proper assessment of the trafficking submission.

6. The Secretary of State filed a response under rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

7. Directions given by Judge Latter on 13 March 2012 included a direction that an initial hearing will be listed for hearing to consider as a preliminary issue:-

> "Whether there is power in law to remove children who are over the age of 18 under the provisions of section 10(1)(c) of the Immigration and Asylum Act 1999 as family members of an adult being removed under section 10(1)(b)."

All other matters were to be listed after determination of this issue.

**Hearing**

8. It was agreed before us that we would determine whether there was an error of law in the First-tier Tribunal's decision with regard to those appellants with leave to remain in the UK who were over the age of 18 on the date of decision; if so we would remake the decision.

9. It was agreed between the parties that the individuals with whom we were concerned were as follows: Tousif Ahmad AA/08844/2008, Jehan Mohammed AA/08847/2008, Ishrut Begum AA/08849/2008, Mohammed Atif AA/08853/2008, Mobushra Begum AA/08852/2008 and Furah Begum AA/08856/2008.

10. The remaining grounds upon which permission to appeal the decision relating to all the other family members had been granted would be separately listed for a hearing before the Upper Tribunal after promulgation of our decision with regard to these 6 appellants.

**Discussion**

11. In each case, removal directions were given under section 10 of the Immigration and Asylum Act 1999 (the 1999 Act). This provides, under the heading "Removal of certain persons unlawfully in the United Kingdom", so far as material:-

> "(1) A person who is not a British citizen may be removed from the United Kingdom, in accordance with directions given by an immigration officer, if
> …
> (b) he uses deception in seeking (whether successfully or not) leave to remain;
> …
> (c) directions have been given for the removal, under this section, of a person to whose family he belongs
> …
> (5A) Directions for the removal of a person under subsection (1)(c) cease to have effect if he ceases to belong to the family of the person whose removal under subsection (1)(a) or (b) is the cause of the directions under subsection (1)(c) ….."
> …
> (7) In relation to any such directions, paragraphs 10, 11, 16 to 18, 21 and 22 to 24 of Schedule 2 to the Immigration Act 1971 (administrative provisions as to control or entry), apply as they apply in relation to directions given under paragraph 8 of that Schedule.

> (8) Where a person is notified that a decision has been made to remove him in accordance with this section, the notification invalidates any leave to enter or remain in the United Kingdom previously given to him."

Subsection (1)(a) covers overstayers and those who have breached a condition of their leave and subsection (1)(ba) covers those whose indefinite leave to enter or remain has been revoked because they have ceased to be refugees.

12. The issue we have to determine is whether the sons and daughters who have had removal directions under section 10(1)(c) and who were over 18 are to be regarded as belonging to the family of the parents whose removal has been directed under section 10(1)(b). This depends on whether "family" within the meaning of section 10(1)(c) should be limited so that only children under 18 fall within the subsection.

13. It is necessary to consider the legislative history since there have been a number of Acts which have dealt with deportation and administrative removal. In its original form, the Immigration Act 1971 provided by section 3(5) as follows:-

> "A person who is not a patrial [now a British Citizen] shall be liable to deportation from the United Kingdom –
>
> > (a) if, having only a limited leave to enter or remain, he does not observe a condition attached to the leave or remains beyond the time limited by the leave; or
> >
> > (b) if the Secretary of State deems his deportation to be conducive to the public good; and
> >
> > (c) if another person to whose family he belongs is or has been ordered to be deported."

A decision to make a deportation order attracted an in-country right of appeal. The Asylum and Immigration Act 1996 added a subsection (5)(aa) which provided as a further ground for deportation:

> "if he has obtained leave to remain by deception."

14. The addition in section 3(5)(aa) was limited to those who had obtained leave to remain by deception since those who obtained leave to enter by deception were illegal entrants. Illegal entrants are defined in section 33(1) of the 1971 Act (as amended by the 1996 Act) as meaning persons:

> "(a) unlawfully entering or seeking to enter in breach of a deportation order or of the immigration laws, or

(b) entering or seeking to enter by means which include deception by another person,
and include also a person who has entered as mentioned in paragraph (a) or (b) above."

This definition was substituted by the 1996 Act because, as originally enacted, the 1971 Act did not refer specifically to entry by deception. In Khawaja v Secretary of State for the Home Department [1984] AC 74 the House of Lords confirmed earlier authorities that, notwithstanding the failure to refer to deception, one who used deception to enter breached the immigration law and so was an illegal entrant. The 1996 Act thus did not need to refer to deception practised by the entrant himself but extended the definition to include those whose entry was achieved by another's deception. Thus for example children of deceiving parents would themselves be illegal entrants even if unaware of the deception.

15. Section 5 of the 1971 Act as currently in force deals with deportation. Section 5(4) provides:

"For the purposes of deportation the following shall be those who are regarded as belonging to another person's family –

(a) where that other person is a man, his wife or civil partner and his or her children under the age of eighteen; and

(b) where that other person is a woman, her husband or civil partner and her or his children under the age of eighteen."

Illegal entrants are not subject to deportation but to administrative removal pursuant to paragraphs 8, 9 and 10 of Schedule 2 to the 1971 Act. Paragraph 8 enables directions to be given to the owners or agents responsible for the ship or aircraft in which entry was achieved to remove the illegal entrant. Paragraph 10 enables the Secretary of State, if such directions are impractical (as no doubt they would often be if the discovery of deception occurred some time after the illegal entry) to "… give directions for his removal in accordance with arrangements to be made by the Secretary of State to any country or territory to which he could be removed …" (see paragraphs 10(1) and (2)). The power of the Secretary of State under paragraph 10 can be exercised when the immigration officer's powers under Paragraph 8 (which arise specifically on a refusal of leave to enter) are impractical.

16. Paragraph 9 of Schedule 2 is important since, albeit the preliminary issue was, as directed, limited as identified in paragraph 8 of this determination, the Secretary of State has requested that, if section 10(1)(c) does not in our judgment extend to sons and daughters over 18, removal should be

permitted under paragraph 9. As amended by the 1996 Act, paragraph 9 provides;-

> "(1) Where an illegal entrant is not given leave to enter or remain in the United Kingdom, an immigration officer may give any such directions in respect of him as in a case within paragraph 8 above are authorised by paragraph 8(1).
>
> (2) Any leave to enter the United Kingdom which is obtained by deception shall be disregarded for the purposes of this paragraph."

While paragraph 9(1) conveys on an immigration officer the same powers as he has under Paragraph 8 in removing a person refused leave to enter, paragraph 10 enables the Secretary of State to exercise those powers. The drafting is not as clear as would be desirable, but it is not disputed that paragraph 9 gives the necessary powers of removal found in paragraph 10 to the Secretary of State.

17. It is to be noted that there was no explicit power given to remove family members of an illegal entrant. After the definition of an illegal entrant was extended by the 1996 Act to include those who had achieved entry by the fraud of another that created no problem since, whatever their ages, any children whose parents achieved entry by deception were themselves illegal entrants.

18. However, the Nationality, Immigration and Asylum Act 2002 added a paragraph 10A in Schedule 2 to the 1971 Act which provides:

> "Where directions are given in respect of a person under any of paragraphs 8 to 10 above, directions to the same effect may be given under this paragraph in respect of a member of the person's family."

Since this is not needed where a family member has achieved entry by the deception of another member of the family, this provision can only sensibly apply to family members who did not for whatever reason achieve such entry. It would clearly cover, for example, children born or wives, husbands or partners in place after entry. But, as will be apparent, it creates a problem since family is not limited in the way that section 5(4) provides for the purpose of deportation.

19. As is apparent from the extracts from Hansard, to which we were referred, from the White Paper which led to the 1999 Act and from the explanatory notes to the Act, the purpose of section 10 was to substitute administrative removal for deportation in respect of all who fell within section 10. This meant that overstayers, those who breached conditions of their leave and those who obtained leave to remain by deception would not now be liable to deportation. This gave them some advantage, but some disadvantage.

The advantage lay in the removal of the bar to re-entry where a deportation order existed. The disadvantage lay in the removal of an in-country right of appeal (save where breaches of human rights were relied on).

20. Following the passing of the 1999 Act, new Immigration Rules were passed to deal with the provisions of section 10. Those were, so far as family members are concerned, paragraphs 395A, 395B and 395C inserted into HC 395 by Cm 6339 (and HC582), which provided:

> "395A. A person is now liable to administrative removal in certain circumstances in which he would, prior to 2 October 200, have been liable to deportation.
>
> 395B. Those circumstances are set out in s.10 of the 1999 Act. They are:
> …
> (iii) where the person is the spouse, civil partner or child under 18 of someone in respect of whom directions for removal have been given under section10.
>
> 395C
> …
> In the case of family members, the factors listed in Paragraphs 365-368 must also be taken into account."

21. Paragraphs 365 to 368 deal with deportation. Paragraph 366 provides that deportation of a child will not normally be directed where the child and his mother or father are living apart from the deportee, where the child has left home and established himself on an independent basis or has married or formed a civil partnership before deportation came into prospect. Since by section 5(4) of the 1971 Act family members are limited as stated in paragraph 395B(iii) of the Rules, paragraph 366 can only apply to children under 18.

22. Six of the appellants were over 18 when the removal directions were made, Mr Toal submits that those six cannot be removed because they do not belong to their parents' family within the meaning of section 10(1)(c). 'Family' within section 10(1)(c) should, he submits, be limited to those specified in section 5(4) of the 1971 Act. That was the clear understanding of the draftsman of paragraph 395B of the Rules which has been approved by Parliament. Mr Blundell submits that it is noteworthy that Parliament did not, as it could have done, transfer to the 1999 Act the limitation contained in section 5(4) of the 1971 Act. That limitation is expressly stated to be 'for the purposes of deportation'. No such limitation is provided for in relation to administrative removal. Paragraph 10A of Schedule 2 to the 1971 Act shows that 'family' for the purposes of removal of illegal entrants must be wider than for the purposes of deportation since the limitation is not extended in the 1971 Act beyond deportation. This, submits Mr

Blundell, is consistent with his claim that 'family' for the purposes of administrative removal under the 1999 Act is also wider.

23. It is certainly unhelpful that Parliament did not make clear whether the limitation to the meaning of family was to be transferred to the 1999 Act. 'Family' is a word which can be used in a number of different senses. But it must take its particular meaning from its context. So much is clear from authorities which have considered its meaning in different legislative provisions. An example of this is to be found in a decision of the House of Lords in Carega Properties SA v Sharralt [1979] 2 All ER 1084, in which the issue was whether the appellant was a member of the original tenant's family so that he became on the tenant's death a statutory tenant. The House decided, as the headnote indicates, that the word 'family' was to be given its ordinary meaning in the context in which it appeared. Some of the reasoning in that case might well not survive civil partnerships, but the general approach to the meaning of family remains appropriate. Observations of Lord Nicholls in Fitzpatrick v Stirling Housing Association Ltd [2001] 1 AC 27 (another Rent Act case) at p.41B to D are also in point. He observed that the word family was not a term of art but a word in ordinary usage with a flexible meaning and Parliament had left it to the courts to determine, in any given case, whether a particular individual fell within the description.

24. There can be no doubt that sons and daughters over 18 can properly be regarded as continuing to be members of their parents' family. Under Article 8 of the ECHR, for example, such sons and daughters can be regarded as having family life with their parent or parents. Mr Blundell in his skeleton argument suggested that regard should be had to particular cultural arrangements whereby uncles, aunts or even relatively distant cousins might be regarded as members of the primary appellants' family. He asserted that the protection lies in the right of appeal and the need to exercise the power rationally so that, as he put it, "if the Secretary of State sought to remove A who had entered the country independently, without any reference to or reliance on their third cousin B, and who had an impeccable immigration history, for the sole reason that B was an overstayer, A would be able to challenge the decision on appeal on the grounds that it was irrational". We doubt that anyone would believe that A could properly regarded as removable under section 10(1)(c), particularly as he would immediately lose his leave to be in the United Kingdom and so his rights dependent on lawful presence; he could be liable to detention under paragraph 16 of Schedule 2 to the 1971 Act and he might have no in-country right of appeal.

25. On any view, the meaning of family in context must have some limitation. Section 10(5A) recognises that those who are family members can cease to be such. Children under 18 can marry and so move away from the family.

Accordingly, even within the household definition, consideration has to be given to whether a particular person is properly to be regarded as within section 10(1)(c). Mr Blundell makes the point that all the appellants entered by deception, whether or not they were personally aware of or involved in that deception, and all should be removable accordingly. But such removal should not necessarily be based on section 10(1)(c). If an over 18 had established an independent life and was not aware of the deception, it is difficult to see that his removal would necessarily be desirable. If there was evidence that he was aware of or complicit in the deception, he could be removed under section 10(1)(b) or, if he had not been given leave to remain, under paragraph 9 of Schedule 2 to the 1971 Act. Further, the Secretary of State could rely on conducive grounds if persuaded they arose.

26. Mr Blundell draws attention to section 8(3) of the 1971 Act which disapplies the provisions of the Act relating to those who are not British citizens or members of a mission within the meaning of the Diplomatic Privileges Act 1964 and 'a person who is a member of the family and forms part of the household of such a member'. In Gupta v Secretary of State for the Home Department [1979-80] Imm AR 52 the IAT decided that a sister could be (but on the facts was not) a member of her brother's family within the meaning of section 8(3). Woolf J later on in a judicial review challenge approved the Tribunal's approach. It is understandable that family should not be limited in the same way as for deportation since there was the additional requirement that any family member should also be a member of the diplomat's household. Reference was also made to section 29 which enabled the Secretary of State to make payments to cover the expenses of, inter alia, members of the families or households of those non-citizens leaving the United Kingdom to live permanently abroad. These provisions, and now paragraph 10(5A), show, submits Mr Blundell, that family is to be given a wider meaning when not used in the context of deportation.

27. Mr Toal submits that there is an ambiguity having regard to the potential width of the word family if not specifically defined. Thus, he submits, reference can be made to Hansard, the explanatory notes and to the Rules. We do not regard Hansard as particularly helpful since nothing said by the minister is in any way explicit. The explanatory notes say no more than is clear from the legislation, namely that 'those currently liable to deportation action under sections 3(5)(a) and 3(5)(aa) of the 1971 Act, and the family members of such people will be subject to new administrative removal procedures'. This is perhaps more consistent with Mr Toal's contention that Parliament must have intended that the same definition of family should apply. As against that, Mr. Blundell refers to section 167(2) of the 1999 Act which provides that various expressions should have the same meaning as in the 1971 Act but 'family' is not included.

28. Mr Blundell also refers to sections 74 and 76 of the 1999 Act as originally enacted. Those contained the so-called 'one-stop' procedure and enabled Regulations to be made to prescribe who were relevant members of an applicant's family for the purposes of one-stop notices (sections 74(8) and 76(6)). The Immigration and Asylum Appeals (One-Stop Procedure) Regulations 2000 (SI 2000/2244) provided that relevant family members were spouses, children, a partner who had been such for at least 3 years, dependents and persons upon whom the person was dependent. While all this shows that Parliament could have made the position clear, it does not in our view mean that in context the limited meaning in section 5(4) should not have been intended by Parliament to be transferred.

29. Mr Toal made what seemed to us to be a compelling point. If Mr Blundell were correct, a son or daughter who before the 1999 Act came into force on 2 October 2000 was over 18 and so could not be deported as a family member would suddenly on that date be liable to removal. The purpose behind section 10 of the 1999 Act was clearly said to be to make those within sections 3(5)(a) and 3(5)(aa) of the 1971 who could be deported thereafter subject to administrative removal. It must be borne in mind that the power of removal carries with it a power to detain and automatic rescission of leave to remain in this country. There is ample authority for the proposition that powers of administrative detention must clearly exist and a statute conferring such powers will be strictly and narrowly construed: see for example Khawaja in which all members sitting made this clear. As Lord Scarman put it;-

> "As I understand the law, it cannot extend to interference with liberty unless Parliament has unequivocally enacted that it should".

30. No-one can properly be subject to penal consequences upon an ambiguous or unclear provision. It would in our view be extraordinary if Parliament is to be taken as having, without making it clear that it was intending so to do, made a person whose position in this country was irremovable because he was not liable to deportation suddenly liable to administrative removal when the deportation powers were transferred.

31. Mr Toal in addition sought to rely on paragraph 395B of the Immigration Rules as a guide to construction of section 10(1)(c). That the Rules can be used if there is an ambiguity is supported by a decision of Roch LJ in R v Secretary of State for the Home Department ex p Valdic QBCOF 98/0808/4 (unreported). Paragraph 395B certainly shows the understanding of the Secretary of State at the time and we are entitled to have regard to this and to Parliament's approval of the paragraph in the Rules. However, it is necessary to bear in mind that the Rules are a statement of the policy to be applied by the Secretary of State in dealing with immigration. Thus it was open to the Secretary of State to limit in the Rules those to be regarded as

family members even though the statute could have meant that a wider category could properly have been included.

32. As is apparent, 395B is consistent with Mr Toal's submissions, and it is open to us to have regard to it. But it carries a further bar to Mr Blundell's success. Section 86(3) of the Nationality, Immigration and Asylum Act 2002, which concerns the powers of the Tribunal on determination of appeals, provides;-

> "The Tribunal must allow the appeal in so far as it thinks that –
>
> (a) a decision against which the appeal is brought … was not in accordance with the law (including immigration rules) …"

33. The decision was not in accordance with paragraph 395B. It is correctly accepted by Mr Blundell that, even if the Tribunal could disregard a rule if it decided it was *ultra vires*, 395B was not *ultra vires*.

34. Mr Blundell sought to extricate himself from this difficulty by submitting that 395B represented policy which the Secretary of State was lawfully entitled to disapply if the primary legislation gave her the relevant power. That argument we reject. Section 86(3) is clear. The Secretary of State must not make a Rule which she wishes not to follow given particular circumstances. Once in a Rule, a policy must be followed. Thus whether we are right or wrong in deciding in Mr Toal's favour on the true construction of section 10(1)(c), 395B would require us to allow the appeals of those over 18.

35. Foreseeing this possibility, Mr Blundell sought to rely on paragraph 9 of the 1971 Act. There was an issue whether the application so to do was made in time, but, since we reject his attempt to rely on it, we need not go into that.

36. It is common ground that all the appellants are illegal entrants since the grants of leave to enter as visitors from Pakistan were obtained by deception. All the children gained entry as a result of that deception whether or not any knew of or were complicit in it. Some but not all were given leave to remain and those grants of leave were obtained by deception. Paragraph 9(2) requires a leave to enter granted as a result of deception to be disregarded. Paragraph 9(1) applies to a person granted leave to enter obtained by deception. But paragraph 9(2) does not require a leave to remain even if obtained by deception to be disregarded. The reason for this is obvious. Section 10(1)(b) deals with leave to remain obtained by deception, but this is limited to a deception in which the person to be removed was himself or herself involved.

37. Mr Blundell sought to rely on a recent decision of the Supreme Court, Welwyn Hatfield BC v SSCLG and Beesley [2011] 2 AC 304. He contended that this decision showed that a course of prolonged deception aimed at circumventing a statutory system of control could, on the principle that 'fraud unravels everything', enable a statutory provision to be construed in a way which covered such conduct. We do not find it necessary to go into the details of the Welwyn Hatfield decision, which concerned a dishonest attempt to avoid planning control. Having got permission to construct a barn, what in fact Mr Beesley constructed was a dwelling house which was concealed within what looked like a barn. Mr Beesley than argued that enforcement action could not be taken against him once 4 years had elapsed.

38. Here, Parliament has clearly decided how deception in obtaining leave should be dealt with. Whether or not complicit, no-one can take advantage of leave to enter obtained by deception. But deception in obtaining leave to remain must be deception in which the person whose removal is sought was complicit. Mr Blundell is in effect asking us to rewrite paragraph 9(2) so that it extends to one obtaining leave to remain by deception. Furthermore, his suggestion that fraud unravels all is not needed since any child over 18 could, if complicit in the deception, be removed under section 10(1)(b).

39. Since paragraphs 395A to C of the Immigration Rules have been revoked, the provisions of section 10 will prevail. Accordingly, although as we say in paragraphs 32 and 33 above, these appeals are governed by the paragraphs which were in force at the time of the decisions, it is clearly desirable that we should have indicated how in our view section 10(1)(c) should be construed. The limitations on who should be regarded as family members in deportation are as set out in section 5(4) of the 1971 Act. We do not need to decide whether the failure to apply the definition in section 5(4) to paragraph 10A of Schedule 2 to the 1971 Act has the effect of widening the ambit of family members in that Paragraph. We are strongly inclined to the view that in context and having regard to the legislative history the limitations should apply and we are faced with a drafting error. Such drafting problems are by no means unknown in the Immigration Acts as a whole.

40. Accordingly, the six who are now over 18 and who have leave to remain must have their appeals allowed. They are Tousif Ahmad a.k.a Touseef Mohammed, Jehan Mohammed a.k.a. Jehan Zeb, Ishrut Begum a.k.a. Tanzila Bi, Mohammed Atif a.k.a Atif Mahboob, Mobushra Begum a.k.a. Mobusha Bi, and Furah Begum a.k.a. Farah Baz. The remaining family member appeals will proceed. The Secretary of State can decide whether any further action should be taken against any of the six if, for example,

there is evidence that any were complicit in the deception in obtaining leave to remain.

**Conclusion**

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

We set aside the decision.

We re-make the decision in these appeals by allowing them.

Signed

Mr Justice Collins