

**ASYLUM AND IMMIGRATION TRIBUNAL**  
**APPEAL NUMBERS: IA/19020/2008, IA/19023/2008, IA/19025/2008 & IA/19028/2008**  
**THE IMMIGRATION ACTS**

Heard at Hatton Cross  
On 18 December 2008  
Prepared 18 December 2008

Determination Promulgated

- 2 JAN 2008

Before  
IMMIGRATION JUDGE JHIRAD

between

Appellants

and  
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**  
**For the Appellants:** , Counsel  
**For the Respondent:** No appearance

**DETERMINATION AND REASONS**

The 1971 Act means The Immigration Act 1971.  
The 1999 Act means The Immigration and Asylum Act 1999.  
The 2002 Act means The Nationality, Immigration and Asylum Act 2002.  
The 2004 Act means The Asylum and Immigration (Treatment of Claimants, etc) Act 2004.  
The 2005 Rules means The Asylum and Immigration (Procedure) Rules 2005  
The Regulations means The Immigration (European Economic Area) Regulations 2006  
The HR Act means the Human Rights Act 1998  
ECHR means the European Convention on Human Rights.

**Background**

1. The appellants are citizens of Pakistan and were born in , , and respectively. The second appellant is the wife of the first appellant (hereinafter called "the appellant") and the third and fourth appellants are their children. On 2 September 2004 the appellant was granted leave to enter the UK under the HSMP programme until 10 August 2005 which was later extended on 1 August 2005 until 10 August 2008. The second, third and fourth appellants were granted leave to remain in the UK on 1 August 2005 until 10 August 2008.

2. On 4 August 2008 the first appellant (with wife and children as his dependants) applied for indefinite leave to remain in the UK under the HSMP category. On 5 November 2008 the respondent refused the application under paragraph 135 GH with reference to paragraph 135 G(i) of HC 395, as amended. The second appellant was refused under paragraph 196 F with reference to paragraph 196 D of HC 395, as amended and the third and fourth appellants were refused under paragraph 199 of HC 395, as amended. The appellants lodged an appeal against the refusal under section 82 of the 2002 Act.

**3. The Burden and Standard of Proof**

The burden of proof is on the appellant and the standard of proof is a balance of probabilities. In considering and approaching family and private life issues under Article 8 ECHR where applicable and relevant, I have applied the analysis in *Razgar* [2004] UKHL 27 am mindful of *Huang* [2005] ECWA

Civ 105 followed the guidelines in **Mahmood [2000] All ER. (D) 219** and, where appropriate, undertaken a proper balancing exercise and the step-by-step approach recommended in **Nhundu & Chiwera (01TH0613)**. I may take into account only evidence which is available to the respondent at the time when the decision appealed against was taken or which relates to relevant facts as at that date section 85(5) of the 2002 Act. **DR (Morocco) \* 2005 UKIAT 00038**.

**The Hearing, Evidence and Findings**

4. I am satisfied that due notice of the hearing was given to the parties. The respondent was not represented owing to lack of resources in the Presenting Officers Unit. The Presenting Officer sent written submissions to the AIT. The appellant gave evidence but could not be cross examined. There was placed before me the respondent's bundle that included the application and supporting papers, grounds of appeal and its annexures.

I tendered the appellant's bundle that included a skeleton argument, his statement and personal and financial information. There was placed before me a copy of **HSMP Forum Ltd [2008] EWHC 664** and a Tribunal case of **AA** promulgated on 18 December 2007. I have given due consideration to the evidence and material before me, whether or not specifically mentioned herein, and to the submissions that are set out in full in the record of proceedings. At the conclusion of the hearing I reserved my determination.

5. The evidence of the first appellant may be summarised as follows: he graduated from University in 1989 and embarked on a course of accountancy in December 1990. He is a cost and management accountant and part qualified chartered accountant. In 1998 he completed a Masters degree in Economics. Before coming to the UK he was employed in his home country for six and a half years by **Compagnie Générale de Géophysique**, a French based multi national company providing seismic data services to oil and gas exploration companies worldwide. When he left this job he had risen to be a manager in the finance and administration section and branch representative in Pakistan. He was originally planning to emigrate to Canada as a skilled migrant and applied for Canadian immigration in December 2003 when he noticed in 2004 a scheme announced by the UK government for skilled migrants so he decided to switch to the UK. He applied for HSMP in January 2004 and obtained an approval letter in April 2004 and entry clearance was granted in August 2004. In September 2004 he arrived in the UK and initially stayed with a relative for a couple of months. He rented a house and his family joined him two months later. Although he was an accountant with many years experience, he found it difficult to gain suitable employment in the UK as most employers required some UK experience. He therefore decided to obtain work experience in the UK by undertaking voluntary work as an accountant in various charitable organisations. He eventually obtained a part time position in June 2005. His visa was renewed in August 2005 and was valid until August 2008. In August 2006 he bought a house in the UK and began transferring savings and funds from Pakistan.

6. From December 2004 to May 2005 he worked voluntarily for two to three days a week. During the same period he also worked for part time, two days a week. He commenced working in the UK in a remunerated capacity from 1 June 2005. This was part time work three days per week and he was a finance officer at a charity called

In July 2005 he worked full time in paid employment with as an accountant until August 2006. In November 2006 he was employed by full time on a contract basis for approximately nine months as a finance officer until July 2007. In July 2007 he commenced employment as a bursar, at an independent prep school, initially on a contract basis for a month. In August 2007 the School engaged him permanently and he has been working there full time ever since. There is credible evidence to that effect in the form of a letter from the School and on 19 September 2008 the School confirmed that his salary was per annum for the academic year 2008-2009. References from previous employers indicated that the appellant was regarded as an individual and as an accountant. During the period when the appellant was not working, he supported himself from his own resources. The appellant is settled in the UK and has established a private and family life here with

his wife and children. He owns a three bedroom terraced house secured on mortgage and his two sons attend the school where he is employed.

7. A new HSMP scheme was introduced by the government in November 2006. The appellant has demonstrated that he had spent at least four years continuously in the UK under the HSMP programme without having had recourse to public funds and that he had become lawfully economically active and continues so to do. I find that there was a legitimate expectation on the part of the appellant that he would enjoy the benefits of the scheme according to the terms prevailing at the date he joined and was granted entry clearance. I find that the respondent has not applied the decision made by the administrative court in **HSMP Forum Ltd**. The appellant in this instance is in the same position as the appellant in that case. It cannot be said that the appellant is not making the financial contribution expected of him. In **HSMP Forum Ltd** it was stated *I am satisfied that the terms of the original scheme should be honoured and that there is no good reason why those already on the scheme should not enjoy the benefits of it as originally offered to them. A good administration and straight forward dealing with the public require it. Not to restrain the impact of the changes would, in my judgement, give rise to conspicuous unfairness and an abuse of power. Bad faith, rightly, has not been alleged, but I am concerned about the repeated refusal to consider the undeniable evidence of hardship and the extent of the special commitment required of those migrants which has been placed before the defendant from a number of quarters. The January 2003 guidance on HSMP stated that even if the programme was suspended: those already in the UK as skilled migrants would continue to benefit from the programme's provision. In answer to the questions what if the scheme changes? and I have already applied successfully under the HSMP and how does the revised HSMP affect me?, it was stated not at all. It is important to know that once you have entered under the programme you are in a category that has an avenue of settlement. Those who have already entered under the HSMP will be allowed to stay and apply for settlement after four years' qualifying residence regardless of revisions to HSMP. In HSMP Forum Ltd it was stated it can be said (indeed it was emphasised) that the revisions did not touch the extension and settlement criteria and that the statement cannot be read as applying to such revisions. I am not so much influenced by the reference to 'revisions' as I am by the 'important... note' in general terms '...once you have entered...you are in a category that has an avenue to settlement'. This seems to me to accurately describe the character and intended manner of operation of the scheme. I find that the terms of the scheme, properly interpreted in context and read with the guidance and the Rules, contain a clear representation, made by the defendant, that once a migrant had embarked on the scheme he would enjoy the benefits of the scheme according to the terms prevailing at the date he joined.*

8. I find that the appellant has had a continuous period of at least four years leave to remain and that the respondent ought to have granted the appellants indefinite leave to remain since the appellant could show that he had spent at least four years continuously in the UK under the HSMP programme without having recourse to public funds and that he had become lawfully economically active and continues to be such. I find that the respondent's decision was not in accordance with the law.

#### **Decision**

The appeal is allowed.

Dated: 30.12.08

Immigration Judge Jhirad

