



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

Appeal Numbers: IA/08030/2014
IA/80209/2014
IA/08031/2014
& IA/08032/2014

THE IMMIGRATION ACTS

**Heard at North Shields
On 13 November 2014**

**Determination
Promulgated
On 17 December 2014**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**MUSHAMMAT MAMATAJ SULTANA (1)
MOHAMMAD MEHEDI HASAN KHAN (2)
MAARIJ HASAN KHAN (3)
SAFFAT HASAN KHAN (4)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Latif, Solicitor

For the Respondent: Mr P Mangion, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants appeal with permission against the determination of First-tier Tribunal Judge Duff promulgated on 26 August 2014 in which he dismissed their appeal against the decision of the respondent of 22

January 2014 to refuse applications for further leave to remain and to remove them pursuant to Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The first appellant is a citizen of Bangladesh born on 11 September 1980. She is the mother of the second and third appellants born on 1 October 2003 and 21 November 2004. Both are also citizens of Bangladesh. The husband of the first appellant and father of the second and third appellants was originally a joint appellant (IA/08029/2014) but he returned to Bangladesh in March 2004 and his appeal was subsequently deemed to be abandoned.
3. The appellants first entered the United Kingdom on 12 November 2007 to join their husband and father who had leave to remain here as a student and had done since 9 October 2006. They remained here with leave as his dependants until he successfully completed his PhD at Newcastle University in December 2010 and after he had been granted leave to remain in the United Kingdom as a post-study worker. Leave to remain in that capacity was granted until 9 February 2013. During that period, however, the applicant and the father returned to Bangladesh on 9 March 2011, returning on 29 April 2012. Not long after his return to the United Kingdom the third appellant was diagnosed as suffering from an aggressive form of cancer, rhabdomyosarcoma. That had previously been misdiagnosed in both the United Kingdom and subsequently in Bangladesh.
4. The third appellant underwent surgery, chemotherapy and radiotherapy to treat the cancer and is now in complete remission. The treatment he received requires substantial continuing management which, it is said, would not be available in Bangladesh.
5. In the application made on 6 February 2013 on the appellants' behalf, it was submitted that they should be granted further leave to remain in the United Kingdom to allow the third appellant to continue to receive therapy and that it would be in his best interests to be allowed to remain here. It was submitted that there would in this case be significant and potentially fatal consequences for the third appellant's physical health and also for his mental wellbeing and that of the second appellant.
6. The respondent refused the applications pursuant to Appendix FM and paragraph 276ADE of the Immigration Rules.
7. When the matter came before Judge Duff he heard evidence from the first appellant and submissions from both parties. He also had before him a substantial number of medical reports produced by the appellant's doctor in the United Kingdom, Dr Campbell-Hewson; Karen Heale, paediatric social worker, Michelle Luke, social worker with the CLIC Sergeant Organisation, Brigadier General Dr Golam Mohiuddin Chowdhury, specialist maxilo-facial surgeon in Bangladesh, and Dr Laura Coulthard, a consultant psychologist at the Royal Victoria Infirmary, Newcastle-upon- Tyne.

8. Judge Duff found that:-

- (i) the second and third appellants were well integrated and doing well in their studies at school [10];
- (ii) the third appellant is in complete remission from the cancer suffered and that it was hoped that he would not require further therapy for the cancer [11];
- (iii) the treatment he had received for the cancer has serious consequences in that he has had a substantial resection of his right jaw which had been reconstructed using a fibula from his leg and that as a result as he grows he will require further dental and other surgery associated with the reconstruction; that such surgery would not be available in Bangladesh;
- (iv) the high dose of radio therapy he had undergone will damage his nasal pharynx causing endocrine dysfunction and hormonal insufficiency, possibly resulting in cataracts which services in Bangladesh would be unable to manage and than the endocrine deficiency had not yet manifested itself;
- (v) the fibula graft has resulted in a fixed deformity of the right foot for which there has been partial corrective surgery but further surgery will be required when he is older, again which would not be available in Bangladesh;
- (vi) the chemotherapy he received has had a number of long term toxic effects currently managed by the care team including possible severe renal dysfunction and cardiac damage which could be damaged if occurred, but there was no treatment for that in Bangladesh; that there was evidence from Dr Brigadier Chowdhury that the treatment the third appellant required is not possible in Bangladesh;
- (vii) Dr Coulthard had concluded that the return to Bangladesh would be detrimental to the third appellant physically and psychologically;
- (viii) t having had regard to the primary considerations of both and second and third appellants the considerations set out in Section 117B of the Nationality, Immigration and Asylum Act 2002, he was driven to the conclusion that the removal of the appellants is proportionate and that it was not unreasonable to expect the third appellant to return to Bangladesh [15];
- (ix) the third appellant's initial cancer has now been successfully treated and his ongoing problems relate not to the cancer itself but to the management of the consequential difficulties [16] and whilst that would be better in the UK than in Bangladesh there is no certainty about precisely what treatments he would require in the future but that it was clear that his position is better understood than it was

initially; that if the appellants were to remain on in the United Kingdom whilst the second and third appellants well integrated, they have no financial means and would be a burden on the state [17];

- (x) there would be a positive aspect the return of the appellants to Bangladesh and that they would be able to reunite with the father [18];
- (xi) it was manifestly the case and well established that the interests of the children were best served by being the with both of their parents being the departure of the father to Bangladesh must have played some part and have a negative effect on the appellants and in the psychological difficulties the second and third appellants suffered and that reuniting with them would be a benefit; that it may be that the father would the wherewithal to pay for any necessary treatment for the third appellant in Bangladesh or for him to come to the UK if necessary.

9. He therefore dismissed the appeal on Article 8 grounds.

10. The appellants sought permission to appeal on the grounds that Judge Duff had erred:-

- (i) In concluding [16] that the evidence was not that the third appellant would be completely untreatable in Bangladesh but that it would be better managed in the UK as in doing so he ignored the medical evidence that the services that would be required was not available in Bangladesh, the evidence of Dr Campbell Hewson and Brigadier Chowdhury being unchallenged, as this is not a case in which there would be different levels of management but that management for the ongoing care would simply not be available in Bangladesh;
- (ii) in completely disregarding the impact of the psychological problems the third appellant would face in Bangladesh as set out in the letter of Dr Coulthard, in particular ignoring the conclusion that if returned it was likely that the third appellant would come to significant harm either physically or psychologically [10];
- (iii) in not taking into account in assessing proportionality the evidence from the head teacher that they are integrated and doing well at school, and in particular that the third appellant faces bullying in Bangladesh due to his physical appearance, a matter having a potentially significant psychological effect as stated by Dr Coulthard [11];
- (iv) in taking into account in assessing proportionality that the appellants would be a financial burden on the country and they would absorb substantial resources on the NHS, the latter not being a permissible factor;

- (v) in failing adequately to explain why he believed the effect of the father being in Bangladesh would not now be helpful to the second and third appellants.
11. On 29 September 2014 First-tier Tribunal Judge Nicholson granted permission noting that it was arguable that the judge may have erred in proceeding on the basis that this is more of a question of better treatment being available in the UK, there being evidence of the complex surgery the third appellant would require would not available in Bangladesh; and, that the judge had not specifically stated what the best interests of the third appellant were.
 12. I heard submissions from both of the representatives. Mr Latif submitted that given that the judge had accepted the medical evidence, he had erred in concluding that there were different levels of management, when in fact there would be no management of different conditions in Bangladesh. He submitted that the judge had failed adequately to deal with the report from the clinical psychiatrist and had not taken it into account in assessing proportionality which, like the psychological harm, was a factor which should have been taken into account in assessing the effect on the private life also. He submitted also that the judge failed to take into account the amount of support that the appellants had from the wider community in the United Kingdom.
 13. Mr Mangion submitted that there was no dispute as to the medical evidence but that this is not a case where there is continuing treatment; rather, it is a case where there is to be a management in the future of secondary conditions arising from the treatment the appellant had received. He submitted that it was unclear when the treatment either to the leg or to the jaw would be required, nor was it clear when and if there would be any treatment necessary as a result of the effect of radiotherapy and chemotherapy.
 14. Mr Mangion submitted also that it was evident from the determination at [13] and at [18] that the judge had taken into account the psychological report and the possible impact and that this just a factor to be taken into account.
 15. In reply, Mr Latif accepted that it was a very bold statement by Dr Coulthard but nonetheless is one that should be taken into account as the opinion of a consultant psychologist.

Discussion

16. I note from **AE (Algeria) v SSHD [2014] EWCA Civ 653** where the child was receiving highly specialised medical treatment, was severely disabled and had severe learning difficulties and extremely complex needs, that Maurice Kaye LJ held [9]:-

“What was required was a structured approach with the best interests of Mia and her siblings as a primary consideration but with careful consideration also of factors pointing the other way. Such factors include but are not limited to the overstaying of the children and their mother and the illegal entry and bogus asylum claims of the appellants' father. But that is no doubt what the UT had in mind when referring to ‘the need to maintain immigration control’. Moreover, I do not consider that it would be inappropriate for the future cost and duration of Mia’s treatment and care in this country to play a part in the balancing exercise as matters relating to the economic wellbeing of this country, given the strains on the public finances.”

17. For the reasons set out below, I consider that Judge Duff did, as he is enjoined to do by **AE (Algeria)**, carry out a structured assessment of Article 8 in what was not an easy case.
18. There was no dispute about the medical evidence in this case. Dr Campbell-Hewson was clear that the appellant was in complete remission and that the problems as to the future related not to the cancer or any ongoing condition or illness but the management of the physical difficulties the third appellant faces as a result of the treatment he received. What is not, however, clear from the letters as to when surgery and dental surgery will be required in the future, how often, nor is it clear when the right foot will require further corrective surgery. There does, however, appear to be no doubt that the surgery will be necessary.
19. The consequences flowing from radiotherapy, that is endocrine dysfunction, is less clear but it would appear to require monitoring to identify in the future the problems which may flow from the chemotherapy. It was therefore open to Judge Duff to consider as he does [16] that there is no certainty as to what will be required in future or when. No timescale is provided nor is there any indication of what, if any, monitoring is carried out with regards to the third appellant’s endocrine system or in relation to the possible toxic effects of chemotherapy. Further, there is little evidence as to the consequences of the failure to monitor or of a failure to carry out corrective surgery.
20. This is not a case in which there will be an absence of continuing treatment. It cannot be argued that the appellant is receiving ongoing care. Still less is it arguable on the basis of the evidence of Dr Campbell-Hewson or Brigadier Dr Chowdhury that the appellant requires to be in the United Kingdom for the foreseeable future with leave in order to continue treatment. And it was in the circumstances open to Judge Duff to conclude that care and management would be better in the United Kingdom than in Bangladesh. It may be that testing will need to be done in Bangladesh but Brigadier Dr Chowdhury says nothing about the availability of ongoing testing; his report is geared towards the possibility of further surgery. A comparison of what is available between the United Kingdom and Bangladesh is therefore predicated on the assumption that something will

be continuing in the United Kingdom and there is no evidence that that is the case.

21. In the light of the above, Judge Duff was therefore entitled to the conclusions about continuing treatment that he did.
22. Turning to the letter from Dr Coulthard, she states that he requires longer term medical care but as noted above, that is not treatment for an existing complaint. It is evident from Judge Duff's determination [11] that he had taken all the factors relating to the appellants into account, particularly of the second and third. He then goes on to discuss the evidence of Dr Campbell-Hewson and Brigadier Dr Chowdhury before turning to the letter from Dr Coulthard. It is evident from his determination at [18] that he has taken into account the psychological difficulties. It is therefore incorrect to state as is averred in the grounds [10] that the judge had not considered the conclusions and had made no reference to the strongly worded conclusion.
23. There is no requirement on the judge to quote every part of evidence and it is evident in this case that the judge had had regard to it. In essence this is really an argument about the weight to attach to various factors in assessing proportionality, as indeed other submissions in the grounds [11] regarding the submission that the judge had not considered the evidence about their education produced by the head teacher. A judge is not required to deal with each and every piece of evidence particularly where, as here, there is no indication that specific attention was drawn to it, or that it is of necessity of particular significance or that the attention to Miss B.. letter had been raised in submissions or in a skeleton argument. In conclusion, therefore, it is not properly arguable that the judge erred in his approach to the evidence of Dr Coulthard or to the weight he attached thereto.
24. In the light of **AE (Algeria)** it is not arguable that the judge erred in taking into account the cost there would be of treating the appellant; on the contrary, he was entirely right so to do.
25. Contrary to what is averred in the grounds at [13] the statement of the first appellant at [5] records that the children are distressed that their father is abandoning them in the UK and [15] that the children would be particularly affected by their father's abandonment of them in the UK. She states "I am worried about the effect it has had on both children, in particular [the third appellant] because he has already had to go through so much with his illness". In the light of that and the agreement that the family is still a family unit, it is not properly arguable that the judge did not give adequate reasons for reaching his conclusion. Further, a possible amelioration of the children's psychological condition and the distress they suffered was a factor to be taken into account. His submission to the contrary is unsustainable.

26. Accordingly, for these reasons, I am satisfied that the determination of First-tier Tribunal Judge Duff did not involve the making of an error of law and I uphold it.

Signed

Date **17 December 2014**

Upper Tribunal Judge Rintoul