



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

Appeal Number: IA/33065/2013

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 29 May 2014**

**Determination  
promulgated  
On 29<sup>th</sup> May 2014**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

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

Appellant

**and**

**JAHANGIR ALAM**

Respondent

For the Appellant: Mr D Brown, of Drummond Miller, Solicitors  
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

No anonymity order requested or made

**DETERMINATION AND REASONS**

- 1) This determination refers to parties as they were in the First-tier Tribunal.
- 2) The SSHD appeals against a determination by First-tier Tribunal Judge P Grant-Hutchison, promulgated on 3 February 2014, allowing on human rights grounds the appellant's appeal against removal to Bangladesh.

3) The appellant is a citizen of Bangladesh, born on 16 June 1970. He came here as a student in 2006. His wife is also a citizen of Bangladesh. Her daughter was born on 22 December 2007. The appeal was allowed mainly on the basis of the best interests of the daughter of the appellant's wife, his stepdaughter, she being a UK citizen.

4) These are the SSHD's grounds of appeal to the Upper Tribunal:

Failing to give reasons or adequate reasons for findings on a material matters

1 ... the Tribunal has erred in law in its approach to the Article 8 assessment ...

2 *MF Nigeria* [2013] EWCA Civ 1192 confirms that the Immigration Rules are a complete code that form the starting point for the decision maker. Any Article 8 assessment should only be made after consideration under these Rules. It was made clear in *Gulshan* [2013] UKUT 00640 (**IAC**) that the Article 8 assessment shall only be carried out when there are compelling circumstances not recognised by these Rules. In this case the Tribunal did not identify such compelling circumstances and its findings are therefore unsustainable.

3 *Gulshan* also makes clear at this stage an appeal should only be allowed where there are exceptional circumstances. *Nagre* [2013] EWHC 720 Admin endorsed the Secretary of State's guidance on the meaning of exceptional circumstances, namely ones where refusal would lead to an unjustifiably harsh outcome ... the Tribunal has not followed this approach and thereby has erred.

4 ... the Tribunal has failed to provide adequate reasons why the appellant's circumstances are compelling or exceptional ... the appellant can maintain contact with his wife and stepchild via modern methods of communication and via visits and they were fully aware when they began their relationship that he may be required to return to Bangladesh ... his wife only has temporary status in the UK and there is no guarantee she will be able to remain so his wife may be forced to make a decision as to whether her daughter remains in the UK without her or they both relocate to Bangladesh ... the Tribunal has failed to provide adequate reasons why his stepdaughter could not relocate to Bangladesh given she was born there and has spent half her life there, whilst she may have established some form of private life here she is young enough to be able to fully re-adapt to life in Bangladesh and as a British citizen would be fully able to return to the UK at any stage ... this is a choice for the appellant and his wife to make and there are no insurmountable obstacles from them continuing their family life together in Bangladesh. At paragraph 20 the Tribunal has found that the appellant's wife's child may experience difficulties in Bangladesh due to her skin colour ... the Tribunal has failed to provide adequate reasons for their finding and has provided no reference to any evidence in support of their findings ... there is no evidence the appellant's stepchild would suffer any difficulties and there is no evidence she suffered any difficulties during her time there.

5 ... had the Tribunal taken these issues into consideration they would have found that the decision to remove is proportionate.

5) Mr Mullen acknowledged that paragraph 4 of the grounds argues on lines which overlook the SSHD's concession in *Sanade and others* (British children - *Zambrano* - *Dereci*) [2012] UKUT 00048(IAC), which has the effect that where a child is a British citizen and therefore a citizen of the European Union, it is not possible to require the child to relocate outside of the European Union or to submit that it would be reasonable for her to do so.

He also acknowledged that the judge correctly took as his starting point on whether to go outside the terms of the Rules the case of *MS v SSHD* [2013] CSIH 52 (paragraph 13 of the determination) as well as referring to *MF* (paragraph 14).

- 6) I find that the judge directed himself correctly on when a case might succeed outside the Rules, and reached a conclusion on proportionality which was properly open to him for the reasons he gave. The SSHD's grounds do not disclose any error of law which might entitle the Upper Tribunal to interfere.
- 7) The SSHD's appeal to the UT is dismissed. The determination of the FtT shall stand.

A handwritten signature in black ink, reading "Hugh Maclemon". The signature is written in a cursive style with a large, stylized initial 'H'.

29 May 2014  
Judge of the Upper Tribunal