IAC-AH-CJ-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/26396/2014
IA/26400/2014
IA/26407/2014
IA/29093/2014
IA/26404/2014

THE IMMIGRATION ACTS

Heard at Newport	**Decision & Reasons Promulgated**
On 28th October 2015	**On 9th November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

NAZRUL ISLAM
JAMILA QURESHI
NABID ANJUM
NABIL ANJUM
NASIF NAHIYAN ANJUM
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr Abu Reza, MQ Hassan Solicitors
For the Respondent: Mr Irwin Richards, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants appeal with permission a decision of the First-tier Tribunal, Judge Callender Smith, promulgated on 31st March 2015. The judge found that this family which consists of the parents, adult child (18 years old) and two minor children born on 29th March 2000 (16 years old), and born on 20th March 2008 (7 years old) had no entitlement to remain under the Rules, specifically that it is reasonable to expect the two youngest children to return with their parents to Bangladesh, and that to remove the family unit was not a disproportionate interference with their right to enjoy private and family life.

2. The grounds challenged the judge's decision on Private Life grounds in respect of the two youngest children, and argue that properly considered their appeals should have been allowed, and in the light of those decisions positive decision for the parents and older child should have followed.

3. The test under the Private Life Rules, at HC 395 as amended paragraph 276 ADE (iv), is seven years residence and a finding as to whether it would be reasonable to expect the child concerned to leave the UK.

4. The grounds assert that in reaching his conclusion the judge failed to give due regard to the length of residence in the United Kingdom. Nabil entered the United Kingdom in 2006 when he was 10 years old and as at the date of hearing had been in the United Kingdom continuously since 2006 i.e. eight years, and the younger child Nasif was born here on 20th March 2008, and had remained here continuously i.e. seven years as at the date of hearing.

5. Before me Mr Reza submitted that the judge failed to have regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. Section 55 duties on the Secretary of State were twofold, namely to consider the best interests and to follow Home Office guidance in doing so, which included the need to take into account the views of the children. The reasons for refusal letter made no mention of Section 55 to the point that it was not established that the Secretary of State had considered the duty, and in particular there was no reference to the views of the children. The judge should have found that the decision was not in accordance with the law for failure to follow the policy, and remitted the case for reconsideration by the Secretary of State.

6. In the alternative the judge's own consideration of the issue was flawed. In that context the judge wrongly framed the question as to whether or not it was reasonable for the children to accompany their parents. The question was whether it was reasonable to expect them to leave. Insufficient weight had been given to their life and education in the United Kingdom, independent of their relationship with their parents. A child who spent a significant part of their childhood in the United Kingdom and been in full-time education and is completely integrated with life here, should not be expected to leave the country. Further the judge did not treat the best interests of the children as a primary consideration and failed to make

findings as to their best interests. The Appellants rely on MK (Best interests of child) India [2011] UKUT 00475 (IAC) and MK (Section 55 – Tribunal options) Sierra Leone [2015] UKUT 00223 (IAC).

7. Mr Reza argued that given the flawed assessment of the position of the children the consideration of Article 8 was infected by error.

8. I deal with the position under the Rules. The MK [2015] decision makes clear that where, as here, the Respondent has included a best interests consideration in the reasons for refusal letter, and in this context there is no requirement to make a reference to the Respondent's policy or Section 55 of the Act, it is open to the judge to proceed to determine the dispute as to the conclusion. That happened here because it expressly stated in the Reasons for Refusal Letter: paragraph 49; "it is considered it is in the best interests of Master Nabil Anjum to remain with your client and her spouse in their family unit, and in terms of Nasif at paragraph 59, in similar terms. The judge self directs by reference to the Immigration Rules in respect of Private life, s55 Borders, Citizenship and Immigration Act 2009 as well as Article 8 ECHR at paragraph 34. In the judge's findings and reasoning set out at paragraph 33 onwards it is quite clear that other than an issue as to the length of time the father had been in the United Kingdom in the context of his own private life Grounds of Appeal, a matter which was decided against the father, the judge's only concern is the position of the children. I find no error in the approach of the judge in this regard.

9. In terms of the dispute before the judge it is argued that it is not reasonable to expect the children to leave the country because it is not in their best interests to do so. Whether it was reasonable to go to Bangladesh because their parents were going was not a relevant consideration. It is important to note that, just as in the application before me, the basis upon which it was argued that it was not reasonable for the children to leave arose from the length of residence here and a broad assertion that the 16 year old having been in full-time education since his arrival in the United Kingdom at the age of 10 in 2006, and the younger having been here both were fully integrated into the United Kingdom. That was the position which does not seem to have been significantly disputed. The grounds are artificial when insisting that without more explicit reference to best interests the decision is flawed for inadequate self direction or reasoning.

10. The framing of the discussion by the judge at [36] sets out clearly that the issue he had to decide is how to treat those best interests:

> "The first case sets out the balancing exercise that needs to be conducted in terms of the treatment of the best interests of the children"

11. The judge notes the cases of EV (Philippines) v SSHD [2014] EWCA Civ 874 and Osawemwenze [2014] EWHC 1564 (Admin). The judge discusses at

[37] how in the case of EV (Phillipines) best interests to remain were outweighed by the fact that the children would be accompanying their parents. At [38] the judge reminds himself that holding the best interests of the children as a primary consideration is not to make it a paramount one and that in assessing reasonableness of expecting a child to leave the UK the position in the home country needs to be factored in.

12. The judge took into account the circumstances which the minor Appellants could expect to find themselves in Bangladesh, notably the existence of a family home where the eldest lived until he was 10 years old, the ability of the parents to live and work in Bangladesh as teachers, as they did before they came to the United Kingdom. The judge bore in mind that the children would be able to enjoy educational facilities and opportunities in Bangladesh which, whilst not of a standard and quality enjoyed in the United Kingdom, did not of itself give rise to any determinative issue in respect of their position. The judge noted that the family in Bangladesh could continue to receive the financial support that they had received from family members in the United Kingdom if required.

13. There is no basis to assert, as Mr. Reza argued, that the terms reasonableness of the child leaving is inevitably limited to the consideration of factors relating to the child.

14. Reading the decision in the round I am satisfied that the judge correctly self-directed and that these grounds rely on matters of form rather than substance. On the evidence there is simply no basis upon which it could properly be found that it was not reasonable to expect all the children to leave the United Kingdom with their parents. The rule is expressed in similar terms to S117 (6) of the 2002 Act in the context of an assessment of Article 8 proportionality. Case law instructs that where the test is the same there is no need to revisit the consideration. In that context it is incoherent to suggest that it being reasonable for the children to leave the UK nonetheless there was an arguable basis for the Appellants to be allowed to remain as a family unit outside of the Rules in the context of Article 8.

15. For all the reasons above I am satisfied that the decision of the judge revealed no material error of law requiring it to be set aside and the decision stands.

Signed Date

Deputy Upper Tribunal Judge Davidge