Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/39481/2014
IA/39486/2014
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THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8th June 2015	**On 17th June 2015**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

MISS MARJANA BEGUM
MISS SHIULINA BEGUM
MR MD JANU MIAH
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms O Momoh, Counsel instructed by M-R Solicitors
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Bangladesh born on 17th July 1989, 2nd May 1991 and 1st November 1993 respectively. They are siblings, two sisters and a brother. They appeal against the decision of the First-tier Tribunal dated 20th December 2014 dismissing their appeals, against the refusal of indefinite leave to remain and the decision to remove them from the UK, under paragraph 276ADE(vi) of the Immigration Rules and on Article 8 grounds.

2. The Appellants entered the UK on 10th May 2005 on visit visas valid from 27th April 2005 to 27th October 2005. From 2008 onwards they made

successive applications under Article 8 all of which have been refused with no rights of appeal. Permission to appeal was granted by First-tier Tribunal Judge White for the following reasons.

(a) The judge found at paragraph 12 that the first Appellant was not at risk of an arranged marriage against her will. In doing so the judge refers to "Evidence which appears to have been considered by previous Tribunals". The judge, however, does not specifically identify any previous Tribunal determinations. Furthermore, it appears from the Respondent's reasons for refusal letter that the first Appellant's previous applications were refused without a right of appeal. It is arguable, therefore, that the judge's findings concerning the Appellants' familial ties with Bangladesh (paragraphs 12, 18 and 19) are flawed in that there has been no previous judicial finding on the issue.

(b) Given (a) above and the Appellants' long residence in the UK, it is arguable that the approach taken by the judge to the issue of ties is flawed in that the exercise that has to be conducted is a "rounded assessment of all the relevant circumstances", (see Ogundimu (Article 8 – new Rules) Nigeria [2013] UKUT 60 (IAC) and Bossadi (paragraph 276ADE; suitability; ties) [2015] UKUT 42).

3. In submissions, Ms Momoh stated that the judge erred in law with regard to familial ties by relying on previous decisions. The judge's findings at paragraph 12 were central to his assessment of 276ADE(vi) and whether there were significant obstacles to the Appellants' reintegration into Bangladesh.

4. The Appellants arrived in the UK as a family unit when they were 16, 14 and 11 years old. They were still children when they came to the UK. The first Appellant was fleeing an arranged marriage and was estranged from her other two siblings in Bangladesh. The judge did not consider the veracity of this evidence and his reasoning was premised on previous decisions which did not exist. There was a danger that in referring to previous decisions the judge was attaching undue weight to the Secretary of State's rejection of the Appellants' claims rather than considering whether the decision of the Secretary of State had been properly made and assessing the Appellants' evidence afresh under the Immigration Rules.

5. At the end of paragraph 12 the judge found that the Appellants could re-establish themselves in Bangladesh. This finding lacked adequate reasons. The judge should have conducted a more fact-sensitive enquiry about whether the Appellants had family in Bangladesh and should have considered the strength and nature of those ties. The judge had failed to properly consider the tensions which would exist on return because the first Appellant had fled an arranged marriage. If he did consider it then the nature of family ties in Bangladesh were weak.

6. The judge's finding that the first Appellant had social and cultural ties in Bangladesh is flawed because he did not assess the strength of those ties and there was no adequate reason for why the first Appellant could re-establish her social and cultural ties on return. The judge failed to consider all the evidence in the round.

7. The Appellants had spent their formative years in the UK, two of them were teenagers when they arrived. The third Appellant was close to being here half of his life and the judge had failed to properly assess whether he could reintegrate in Bangladesh given that he had taken his GCSE's in the UK and spent his formative years here.

8. The judge erred in applying the wrong version of the Immigration Rules. If the judge accepted that the first Appellant had fled an arranged marriage then this could be an obstacle to return. The judge's reasons were inadequate and he had not made a rounded assessment following Bossadi. The judge could have come to a different conclusion if he had considered the number of years the Appellants had been in the UK and their relative ages.

9. On behalf of the Respondent, Mr Clark relied on Singh v Secretary of State for the Home Department [2015] EWCA Civ 74, paragraph 64, in which it states that there is no need to conduct a full separate examination of Article 8 outside the Rules where in the circumstances of a particular case all the issues have been addressed in the consideration under the Rules.

10. Mr Clark submitted that there was no material error of law in the judge's decision. The Rules were capable of being a complete code and the new Rule struck a balance between public interest and private life taking into account ties and the ages of the Appellants. Assessing integration was fact-specific. The judge considered the Appellants' ties to Bangladesh and this can be applied to his assessment of integration. He carefully considered those ties and concluded that the Appellants had failed to show that they could not re-establish their social and cultural ties.

11. The position of the second Appellant was slightly different. It was accepted at paragraph 18 that she was not fleeing an arranged marriage and that she had an aunt and uncle in Bangladesh. Mr Clark referred me to paragraph 16 of Bossadi and submitted that familial ties could be pursued and strengthened.

12. The third Appellant could not satisfy paragraph 276ADE (v) and the argument put forward by Ms Momoh amounted to a 'near-miss argument'. Mr Clark submitted that I had been invited to draw an inference from how long the third Appellant had been in the country. The judge had made a rounded assessment of all the facts. It was not unusual that he went to school and established his private life here. This did not take the third Appellant's Article 8 claim outside the Immigration Rules.

13. In response, Ms Momoh, with reference to paragraph 16, noted that an assessment of ties should be both objective and subjective and she submitted that this was not demonstrated in the decision.

Discussion and Conclusion

14. At paragraph 12 of the determination the judge made the following findings in relation to the appeal of the first Appellant:

> "The Appellant is 25 years old, having arrived in the UK when she was 16 years of age. She has therefore spent the majority of her life and her formative years in Bangladesh. Her family live in Bangladesh including two siblings. She maintains that she is estranged from her family because of her refusal to countenance an arranged marriage. Whether this is still the case and these existing tensions still exist nine years later I have nothing but the Appellant's own evidence and that of her fellow Appellants on this point. Evidence which appears to have been considered by previous Tribunals, at least with regard to the central element, whether she was fleeing an arranged marriage. That evidence has apparently been rejected on numerous occasions and by the Tribunal in the past. Even if that were the case and that she is estranged from her entire family she nevertheless has social and cultural ties to Bangladesh. Indeed she admitted in evidence that her English was poor (she is ESOL Stage 2) and that she is primarily a Bangladeshi speaker. She is 25 years of age and I have heard no evidence to suggest that she could not re-establish her cultural and social ties even if they have been lost. I am satisfied that the Appellant does not meet the requirements of paragraph 276ADE(vi)."

15. The Judge went on to consider Article 8 and found that on the basis of the evidence before him there were no insurmountable obstacles to the first Appellant continuing her family life with her siblings outside the UK in Bangladesh. The fact that the first Appellant and her siblings would prefer to live in the UK rather than Bangladesh did not amount to insurmountable obstacles to relocating. The judge found that the interference with the first Appellant's private life was lawful and proportionate.

16. In relation to the second Appellant the judge found that all the considerations in relation to the first Appellant were identical save that the second Appellant did not suggest she had been a victim of a possible arranged marriage or that she was estranged from her sister and brother and she also indicated she had an aunt and uncle in Bangladesh.

17. In relation to the third Appellant, at paragraph 19 the judge found that he could not satisfy paragraph 276ADE(v) because he had not spent at least half his life continuously in the UK. The judge then went on to consider paragraph 276ADE(vi) and found:

> "Whilst I accept that in terms of the proportion of his life lived in the UK, getting on for half his life, he like his siblings is a native speaker

of Bangladeshi and I cannot find in all the circumstances he is in a significantly different position from his fellow Appellants. I make the same points in respect of Article 8 as has been made previously in respect of the first two Appellants."

18. The Appellants' previous applications for leave to remain under Article 3 and Article 8 had been refused with no right of appeal. The judge acknowledged this fact at paragraph 9 of the determination. His finding at paragraph 12 that the first Appellant's evidence in relation to fleeing an arranged marriage had been rejected by the Tribunal on numerous occasions had no basis in fact. However, the judge went on to consider, at paragraph 12, the first Appellant's evidence, taken at its highest, stating that even if the Appellant was estranged from her entire family, she nevertheless had social and cultural ties to Bangladesh because she had lived there until she was 16 years old, the majority of her life and her formative years.

19. The judge therefore considered the first Appellant's circumstances on the basis that even if it was accepted she had fled an arranged marriage and had become estranged from her family, she still had social and cultural ties to Bangladesh which she could re-establish on return. Accordingly, the judge's error of fact did not amount to an error of law because in effect the judge went on to consider the first Appellant's evidence taken at its highest.

20. At the start of the hearing there was some discussion as to the relevant Immigration Rule. The Secretary of State's decision is made on the basis that the Appellant has no ties including social, cultural or family with the country to which he would have to go if required to leave the UK. This decision is made on 23rd September 2014 and the Immigration Rules were amended on 28th July 2014. The new relevant Immigration Rule, paragraph 276ADE (vi) states:

> "The applicant is aged 18 years or above, has lived in the UK continuously for less than twenty years but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK'."

The appeal was therefore put forward and argued on the basis of the old Immigration Rule instead of the new Immigration Rule.

21. I find that an assessment of whether there are significant obstacles to the Appellants' integration into Bangladesh encompasses an assessment of whether the Appellants have any ties to the Bangladesh. I find that there is no error of law in the judge's decision because his findings of fact in relation to 'ties' is relevant to an assessment of whether there are any significant obstacles to the Appellants integration.

22. Further, at paragraph 15, the judge found there were no insurmountable obstacles to family life continuing outside Bangladesh. Therefore, reading the determination as a whole, I find that the judge did conduct a rounded assessment of all the evidence relevant to whether there were significant obstacles to integration.

23. Accordingly, the issue to determine is whether, looking at that evidence, an application of the Immigration Rule in force at the date of decision could have led to a different conclusion. I am not persuaded by Ms Momoh's submission that the judge has failed to take into account the first Appellant's claim to have fled an arranged marriage, which could amount to a significant obstacle to integration. I am satisfied that on reading paragraph 12 the judge has in effect accepted the first Appellant's evidence because he makes no reference to familial ties. He accepts that because she has fled an arranged marriage she is estranged from her entire family. I find that the judge has looked at the length of residence in the UK. He is well aware that the first Appellant was 16 years of age when she came to the UK and she has spent a significant amount of time here.

24. The judge is equally aware of the ages of the second and third Appellants. He specifically considers the fact that the third Appellant has lived here for nearly half of his life. I find that the judge's conclusions that the Appellants could re-establish themselves on return to Bangladesh and there were no insurmountable obstacles to continuing family life in Bangladesh was a finding which was open to him on the evidence before him.

25. I find that the judge's reasons at paragraphs 12 to 19 are adequate. The judge accepts that the Appellants have been here for over nine years, but finds that there was insufficient evidence before him to show that ties could not be re-established or that there were insurmountable obstacles to integration on return to Bangladesh. Accordingly, I find that there was no error of law in the judge's determination and the Appellants' appeals are dismissed.

Notice of Decision

The appeal is dismissed

No anonymity direction is made.

Signed Date 15th June 2015

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 15th June 2015

Upper Tribunal Judge Frances