Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/03116/2015
IA/03117/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
Decision given immediately following hearing	
On 10 June 2016	On 12 July 2016

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MS SYED HAQUE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[A K]
~~(ANONYMITY DIRECTION NOT MADE)~~

Respondent

Representation:

For Ms Haque and [AK]: Ms M Ahammed, Legal Representative of RMS Immigration Limited
For the Secretary of State: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. In this appeal, I am dealing with cross-appeals made by the Secretary of State against a decision of First-tier Tribunal Judge Wilson allowing an appeal of [AK] and also by Ms Haque against Judge Wilson's decision refusing at the same time her appeal against the Secretary of State's decision refusing her leave to remain. For ease of convenience I shall refer jointly to Ms Haque and [AK] as "the claimants" and to the Secretary of State as "the Secretary of State".

2. The immigration history of the parties is as follows. The first claimant, Ms Haque, arrived in this country as a student with the appropriate leave on 2 March 2006. She has never been in this country unlawfully but received subsequent grants of leave. The second claimant, [AK], was born in this country on [ ] 2006, that is a little over nine months after the first claimant had arrived in this country. The first claimant's husband was in this country as a student. Subsequently the claimant has had two further children. Prior to the expiry of the first claimant's then current leave both claimants, that is Ms Haque and her oldest son applied for further leave to remain outside the Rules on the basis of their private and family life. I am not concerned with the position of the claimant's husband or children in this appeal. The application was made as long ago as 4 May 2014 but it was not considered until sometime within 2015 when it was refused and the appeal against that decision did not come on until 26 January 2016 when it was heard at Hatton Cross before First-tier Tribunal Judge Wilson. Following that hearing, in a decision promulgated on 11 February 2016, Judge Wilson dismissed the appeal of the first claimant, Ms Haque but allowed the appeal of the second claimant, her 9 year old son.

3. Both unsuccessful parties then sought permission to appeal against this decision. The Secretary of State appealed against the decision allowing [AK]'s appeal and Ms Haque appealed against the Secretary of State's decision dismissing her appeal. Both the Secretary of State and Ms Haque have been given permission to appeal which is why the matter is now before me.

4. The chronology is important in this appeal because the position now is that Ms Haque has been in the UK lawfully for over ten years and subject to passing the knowledge in the UK test and obtaining the appropriate certificates to show that her knowledge of English is sufficient she would, subject to any suitability issues that might be raised, be entitled to indefinite leave to remain under the ten year lawful residence provisions within the Rules. She has in fact passed the knowledge in the UK test and although the English language test certificates which she had previously obtained have now expired, it is quite clear to this Tribunal from listening to her during the hearing that she will have no difficulty whatsoever in passing this test. She has been in this country now for over ten years and speaks English to the standard to be expected from an educated and

intelligent person who has been in this country for that length of time. It follows that realistically it is in the judgment of this Tribunal inevitable that she is now entitled to and there would be no reason to doubt that she would be granted indefinite leave to remain. That must as Mr Wilding accepted during the hearing be a factor in any consideration that might have to be given to whether or not it will be proportionate for Article 8 purposes for her now to be removed from this country.

5. During the course of the hearing Mr Wilding accepted that in the event that this Tribunal now was to find either that the decision with regard to the second claimant, the 9 year old child was sustainable or in the event that even if it was not this Tribunal was to form the view that it would not be reasonable within paragraph 276ADE of the Rules to expect this child to be removed to Bangladesh, the decision with regard to Ms Haque could not be maintained because it would not be appropriate or proportionate for her to be removed to Bangladesh in circumstances where it was not reasonable for her 9 year old child to go with her. It is not necessary to set out the various authorities which have made it clear that decisions in family cases like this should be considered together because it is obviously the case that the decision with regard to Ms Haque should have been made in light of what was going to happen to her children and in particular that Judge Wilson had decided that it would not be proportionate for the reasons set out within the Rules to remove the second claimant. What Mr Wilding submitted, and I accept, is that the only basis upon which the first claimant, Ms Haque could be lawfully removed, would be if this Tribunal was to consider it would not be unreasonable for her 9 year old child to be removed at the same time.

6. It is against this background that I now turn to consider first the position with regard to the second claimant, [AK], who will be 10 in December. When that happens of course, as the position is currently, he would be entitled to British citizenship as a child born in the UK who has resided here for ten years but of course that is not yet the position and so that is not a consideration which at the present time is one that can be taken into account. Also, when considering whether or not Judge Wilson's decision with regard to his position is sustainable and although this would not necessarily be the position were I to have to reconsider the decision having found an error of law, as at that time the first claimant had not been in this country for ten years and so it could not be said as at that time that she would have had a right to remain under the ten year residence Rule. Accordingly, I turn to consider the reasons given by the judge to allow the second claimant's appeal.

7. When considering the position of the second claimant Judge Wilson looked at the provisions set out within paragraph 276ADE(1)(iv) of the Rules where it is provided that the requirements of paragraph 276ADE(1) will be made out if an applicant can show that he or she is "under the age of 18 years and [has] lived continuously in the UK for at least seven years (discounting any period of imprisonment) and it would not be reasonable to expect [him or her] to leave the UK". In this case the second claimant

had lived continuously in the UK for over seven years and was obviously under the age of 18 years and so the issue which had to be considered was whether or not it was reasonable to require him to be removed to Bangladesh. The judge in his decision considered a number of factors and although he discounted an argument based on the different levels of schooling between this country and Bangladesh, nonetheless he found for the reasons which he gave that it was in his best interests to remain in this country and that it would not be reasonable for him to return to Bangladesh with his family "absent any other very positive public interest elements and so justifying it" of which "none have been brought to my attention either in the refusal letter or the submissions from the Presenting Officer before me".

8. This was in my judgment a decision for Judge Wilson to make and it is again in my judgment adequately reasoned. The second claimant was at the time of the judge's decision clearly thriving at school. He was over 9 years old and had built up a network of friends with whom he had developed good friendships and as the judge found at paragraph 7 of his decision he also had built up positive relationships with his teachers. He also bore in mind the evidence of Dr O'Leary who had carried out a number of standard psychological screening tests that the disruption to the second claimant's life would be certainly contrary to his best interests. Having regard to all these factors I do not consider that the judge's decision to the effect that it would not be in the child's best interests to remove him and that, having regard to the other matters, it would not be reasonable either was outside the range of reasonable decisions available to him and for that reason I do not find that his decision with regard to the second claimant contained any material errors of law.

9. For the sake of clarity I should also make it clear that had I found that that aspect of his decision needed to be re-made I would have had to re-make it now in circumstances where the second claimant's mother has by this time which is June 2016 been put in a position where she would clearly be able to obtain indefinite leave to remain under the ten years' residence criteria so when this factor is added in it would in my judgment, in any event, were I re-making the decision, not be reasonable now to require the second claimant to return.

10. With this in mind I turn now to consider formally the position of the first claimant. Mr Wilding quite properly accepted that it was an error of law for the judge not to consider her position having regard to the decision he was making in the case of the second claimant and that concession was rightly made. The first claimant did not at the time have any right to remain under the Rules but I do have to have regard to Section 117B of the Nationality, Immigration and Asylum Act 2002 which was inserted by Section 19 of the Immigration Act 2014. With regard to the public interest considerations applicable in all cases where consideration is given to the Article 8 rights of an applicant the relevant provisions are as follows:

> "**117B Article 8: public interest consideration applicable in all cases**
>
> (1) The maintenance of effective immigration controls is in the public interest.
>
> (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English
>
> ...
>
> (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –
>
> (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
>
> (b) it would not be reasonable to expect the child to leave the United Kingdom."

11. The interpretation of 'qualifying child' is set out at Section 117D which provides that

> "(a) 'qualifying child' means a person who is under the age of 18 and who –
>
> ...
>
> (b) has lived in the United Kingdom for a continuous period of seven years or more."

12. As the second claimant has lived in the United Kingdom for over seven years and Judge Wilson found that it would not be reasonable to expect him to leave the United Kingdom. As it is not suggested on behalf of the Secretary of State that the first claimant does not have a genuine and subsisting parental relationship with her son, it must follow that in light of the judge's decision that it would not be reasonable for the second claimant to leave the UK, his decision dismissing the first claimant's appeal cannot stand. I accordingly must remake the decision with regard to the first claimant which I now do.

13. As I have already found, the first claimant is entitled to remain having regard to what is provided within Section 117B of the 2002 Act, because it would not be reasonable to expect the second claimant to leave the United Kingdom. Moreover, her case is much stronger than that now because she also should now be entitled to remain under the long

residence provisions within the Rules. She speaks very good English and she has passed the knowledge in the UK test.

14. Accordingly it follows that my decision in this case must be to dismiss the Secretary of State's appeal with regard to the second claimant and to remake the decision in respect of the first claimant, allowing her appeal, which I shall now do.

Decision

(1) **The appeal of the first claimant, Ms Haque, against the decision of Judge Wilson dismissing her appeal against the Secretary of State's decision refusing her leave to remain is set aside and I remake the decision allowing Ms Haque's appeal.**

(2) **The Secretary of State's appeal against the decision of Judge Wilson allowing the second claimant's appeal against the decision refusing him leave to remain is dismissed; Judge Wilson's decision allowing the second claimant's appeal is affirmed.**

Signed:

Upper Tribunal Judge Craig Date: 29 June 2016