



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

Appeal Numbers: IA/05648/2015
IA/05646/2015
IA/05645/2015
IA/05647/2015

THE IMMIGRATION ACTS

**Heard at Field House
26 January 2016**

**Promulgated on
18 April 2016**

Before

**Mr C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE DAWSON**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MD ABDUL MUHITH AND OTHERS

Respondents

Representation:

For the Appellant: Mr Tufan, Senior Presenting Officer
For the Respondents: Mr Reza, instructed by MQ Hassan Solicitor

DETERMINATION AND REASONS

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge Graham, who for reasons given in her decision dated 11 May 2015 allowed the appeals by the Respondents against the decisions dated 21 January 2015 refusing the applications by the

Respondents for further leave to remain. They are nationals of Bangladesh and as indicated in paragraph [1] of the decision of the First-tier Tribunal (the Tribunal), the first and second Respondents are the parents of the third and fourth Respondents.

2. As to their immigration history, the first Respondent had arrived in the United Kingdom in September 2001 as a student. His wife arrived in March 2003 with the elder child, the third Respondent. The fourth Respondent was born in the United Kingdom in August 2004. The decisions under appeal were in response to applications the Respondents had made on human rights grounds for further leave to remain.
3. It appears that following the refusal of those applications, reconsideration was sought based on the imminent completion of 10 years' residence in the United Kingdom by the fourth Respondent and that child's eligibility to register as a British Citizen. By the time the matter reached the Tribunal, a certificate of registration had been issued.
4. It was submitted by the Respondents' representative at the hearing that the first and second Respondents had, as a consequence of the circumstances of the fourth Respondent, a "... derivative right to stay in the United Kingdom under the Zambrano concession". The Tribunal was invited to remit the matter to the Secretary of State "... for further consideration as paragraph E-LTRPT. 2.3 of appendix FM and that the case of Zambrano needs to be considered".
5. The Tribunal determined the appeal by concluding thus:
 - (11) The Home Office Presenting Officer was in agreement with this course of action.
 - (12) I am satisfied that the decision of the Secretary of State was not in accordance with the law. It suffered from a defect in procedure. The effect of this decision in relation to this element of the Secretary of State's decision is accordingly that the decision is quashed and that these applications remain outstanding awaiting a lawful decision.
 - (13) The Appeals are allowed to the extent they are returned to the Respondent for a lawful decision."
6. The Secretary of State's challenge to the decision led to the grant of permission by First-tier Tribunal Judge Coates in these terms:
 - (1) The Appellants, who are citizens of Bangladesh are a family consisting of husband, wife and their two children.
 - (2) The first Appellant entered the United Kingdom in September 2001 with valid leave as a student. He was joined by his wife and elder child in March 2003. The fourth Appellant was born in the UK in August 2004. All four Appellants applied for further leave to remain on human rights grounds. Their applications were refused by the Respondent on 21 January 2005 but appeals against that refusal were allowed by Judge of the First-tier Tribunal Graham on the 3 June 2015.

The appeals were allowed to the limited extent that the decisions were not in accordance with the law and remained outstanding with the Respondent for lawful decisions to be made.

- (3) Grounds submitted by the Respondent's representative in support of an application for permission to appeal argue that the First-tier Judge made a material misdirection in law. The grounds refer to paragraph 10 of the determination which indicates that there has been a change in circumstances since the date of decision. It is contended that when the decision was made it was lawful and correct. No application has been made under the EEA Regulations for a derivative right of residence in the UK. The Respondent's representative argues that it is not clear why the First-tier Judge sought to remit the matter to the Respondent rather than consider the change of circumstances in the course of the appeal.
- (4) I am satisfied that the grounds are arguable."

7. We were provided at the hearing with a copy of a letter from the Secretary of State to the Respondents' solicitors dated 28 October 2015 which states:

"I am in receipt of your letter dated 13 July 2015 and apologise for the delay in replying.

The application for permission to appeal has been granted and there are arguable errors in law in the determination.

The fact of any concession made by the Presenting Officer will be considered by the Upper Tribunal, however if such concession was made, and I do not here accept that one was made, it was wrongly made and then it is formally withdrawn."

8. Mr Toufan sought to rely on this "withdrawal" of this "concession" in support of his challenge. We are not persuaded that the recorded (and unchallenged) agreement by the Home Office Presenting Officer was a concession either as to fact or law: it instead, constituted consent to the disposal of the proceedings between the parties that was properly open to the Secretary of State at any stage in the appeal. Rule 39 of the Tribunal Procedure (Upper Tribunal) Rules 2008 provides for such an eventuality and it was open to the Tribunal in this appeal to give effect to the matters agreed. Even if we were persuaded that agreement was a concession, its purported withdrawal in the letter of 28 October 2015 arose *after* the Tribunal reached its decision and does not have any material bearing on the task before us to consider whether the Tribunal had erred in law. The Presenting Officer had authority to agree with the course of action that led to the disposal of the case irrespective of the questionable merit of the new factor that had been advanced by the Respondents. Accordingly the applications remain pending before the Secretary of State for a decision. Her appeal is dismissed.

Signed

Date: 14 April 2016

A handwritten signature in blue ink, appearing to read "Dawson", with a long horizontal flourish extending to the right.

Upper Tribunal Judge Dawson