



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

Appeal Numbers: HU/03895/2015  
HU/03896/2015  
HU/03897/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 August 2017**

**Decision & Reasons Promulgated  
On 8 September 2017**

**Before**

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**BB (FIRST APPELLANT)  
NB (SECOND APPELLANT)  
SB (THIRD APPELLANT)  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr M Mustafa, Counsel, instructed by Kalam Solicitors  
For the Respondent: Mr S Staunton, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of Bangladesh. They are father, mother and son. The third appellant was born in November 1999. It is not in dispute that he suffers from autism, autistic spectrum disorder, OCD and agoraphobia. The first appellant arrived in the UK in October 2006, the second and third appellants entered in July 2007. The decision under challenge in this case is that made by the respondent on 24 July 2015 refusing to grant them leave to remain on family and private life grounds. Their appeal against that decision had been dismissed by First-tier Tribunal (FtT) Judge Abebrese in September 2016, but the latter's decision was set aside for legal error by Deputy Upper Tribunal Judge Bagral on 4 July 2017. Thus their case comes before me to re-make the decision against the appellants' appeal. In doing so I must also take into account a letter of 10 August 2017 from the third appellant's surgery and a letter dated 10 August 2017 from Dr Priti Patel, a Consultant Child and Adolescent Psychiatrist.
2. In the proceedings before Judges Abebrese and Bagral the central issue was whether the third appellant met the requirements of paragraph 276ADE(1)(iv) of the Immigration Rules by virtue of it being unreasonable to expect him to leave the UK and live in Bangladesh. The appellants' argument has consistently been that the third appellant satisfies the reasonableness test because his case is on all fours with the sixth appellant (AZ) in **MA (Pakistan) [2016] EWCA Civ 705**. Elias LJ allowed AZ's appeal in the following terms at paragraphs 95-104:

"95. The judge considered extensive evidence relating to the child's autism, which had resulted in him being identified as a child with special educational needs. He has significant problems with language, social interaction and communication and displays stereotyped behavior and mannerisms. Very active steps have been taken to deal with his problems through regular therapy and specialist teaching. The judge accepted that there would be very little prospect that the child would receive support at this level in Pakistan since the evidence was that there is simply not the degree of expertise available. The judge considered the best interests of this child and concluded that they would be to remain in the UK. He treated this as the 'strongest element' in favour of the appeal.

...

102. With all due respect to the careful analysis of the judge, in my judgment this was not a conclusion open to him given the overwhelming and permanent harm which would be caused to this child's way of life if he were to return to Pakistan. I recognize that the child is relatively young and has not developed significant social and cultural ties in the UK, and but for this autism, there would be a strong case for saying that it would not

be unreasonable to expect him to leave and live with his parents and younger brother in Pakistan. But the consequences for him would be little short of catastrophic. The judge observed that allowing him to remain would be treating him as a citizen of the UK. It is perhaps pertinent to note that qualifying children are UK citizens or those with seven years' residence. It is not so surprising, therefore, that they might be treated in a similar way.

103. In my judgment, the observation of the judge to the effect that people who come on a temporary basis can be expected to leave cannot be true of the child. The purpose underlying the seven year rule is that this kind of reasoning ought not to be adopted in their case. They are not to be blamed for the fact that their parents overstayed illegally, and the starting point is that their status should be legitimized unless there is good reason not to do so. I accept that the position might have been otherwise without the seven years' residence, but that is a factor which must weigh heavily in this case. The fact that the parents are overstayers and have no right to remain in their own right can thereafter be weighed in the proportionality balance against allowing the child to remain, but that is after a recognition that the child's seven years of residence is a significant factor pointing the other way.

104. I would therefore allow this appeal and since, in my view, the only conclusion open to the judge on the facts was that it would not be reasonable to require the child to leave the UK, I would substitute a finding that the appellants' appeal should be allowed.

..."

3. It is common ground that if the third appellant meets the requirements of paragraph 276ADE(1)(iv), then the first and second appellants are also entitled to succeed in their appeals on the basis of s. 117B(6) of the NIAA 2002 as parents of a qualifying child who cannot reasonably be expected to leave the UK.
4. I have set out the findings of the Court of Appeal in **MA** as regards the case of AZ because it is clearly central to the issue I have to decide whether there is a valid basis for distinguishing the third appellant's case from that of AZ.
5. In the course of very brief submissions Mr Staunton said that there was a valid basis for distinction, namely that the country was different (Bangladesh, not Pakistan) and the relevant COI in relation to there being an Institute in Dhaka for the treatment of autism which was set out by FtT Judge Abebrese in paragraph 26 of his decision.

6. In response Mr Mustapha sought to rely on two main points. First, the fact that there was this Institute in Dhaka did not mean it would be accessible to the third appellant as he had agoraphobia and all the treatment and education he received was in his parents' home and that would be the case in Bangladesh as well. Second, he submitted that the existence of this Institute did not in itself establish that autistic children would not face very significant difficulties. He relied in particular on *The Link Magazine - Issue No. 60 December 2013* published by Autism - Europe and the following passages:

“...  
...

In Bangladesh, children with autism who are fortunate enough to access medical services at all are frequently misdiagnosed and given antipsychotic drugs due to the lack of knowledge about autism among doctors and professionals. People with autism and their families often suffer from the stigma associated with autism. Parents are often frustrated and in a state of anguish over the lack of information and services that could enable them to help with their children.

The mainstream education system in Bangladesh rarely meets the needs of children with autism and other disabilities, despite the fact that the country has ratified the United Nations Convention on the Rights of Persons with Disabilities and that the right to educate is enshrined in its constitution. And the situation is much worse for children in rural and slum areas.

Currently, around 500 disability organisations are working to provide services for people with disabilities in Bangladesh, mainly concentrated in the capital city, Dhaka. There are now numerous schools for children with disabilities throughout the country, including around 20 schools in Dhaka.

...

*Autism awareness in Bangladesh and its challenges* - 11 April 2016 published by the Independent, a national English newspaper, provides as follows:

...

Due to lack of trained professionals we are unable to reach autistic children. They don't have easy access to a tertiary level hospital. Not all doctors at Upazila and district level are educated on autism. So misdiagnosis and mistreatment still occurs.

Another challenge that has to be overcome is in education. Autistic children have difficulties entering normal schools, even if they are capable intellectually and have relatively 'good' behaviour. Most

schools are reluctant to have autistic students, they foresee many difficulties in handling and teaching autistic children.

There are no curriculums for training of teachers of autistic children, by government and private institutions. Even there is no facility for short-term training for teachers of autistic children. Late diagnosis of autism in children occurs due to poor awareness regarding autism among many doctors. And even of those doctors screening children with autism, many do not know to whom to refer their patients. The cast is more acute for under-privileged autistic children.

We now have many adolescents on the spectrum who are not going to school, there is no occupational training for them, so most of them stay home and live with their parents, which creates a big stress for the family. New babies are still being born who later get a diagnosis of autism. Without knowing the possible causes of autism we cannot stop the autism known. No research is being done in this field either.”

7. Having considered the evidence and submissions, I consider that I can give my decision quite shortly. The principal reasons why Elias LJ allowed the appeal of AZ were (1) that in the case of a child who had resided in the UK for more than seven years “there must be a very strong expectation that the child’s best interests will be to remain in the UK with his parents as part of a family unit” ([46]) and that “very significant weight” needs to be given to the seven year residence in the proportionality exercise ([49]); and (2) that the eldest son AZ had resided in the UK for over seven years and was an autistic child with special needs. The given facts regarding AZ were as set out at paragraph 95. Significantly Elias LJ considered that the consequences of removal for AZ “would be little short of catastrophic” ([102]). What is apparent from a comparison of the third appellant’s and AZ’s circumstances is that the former’s are, if anything, significantly worse than AZ’s. In addition to autism he has OCD and agoraphobia and as a result is effectively housebound. His condition is also said to be worsening. I have not been provided with the COI relating to the facilities for treatment of autism in Pakistan that were before the Court of Appeal in **MA**, but leaving aside that I very much doubt they are inferior to those in Bangladesh, the important fact in the third appellant’s case is that he is housebound so whether his parents were to live 60 miles away (as they claimed they would have to or nearby to the Institute, this Institute’s treatment would not be accessible to him (the respondent has not suggested that this Institute provides treatment for autistic children in their own homes).
8. There is a further respect in which the third appellant’s circumstances are worse than AZ’s, namely that one of the parents (the second appellant) also has health problems: she suffers from depression, anxiety and suicidal ideation.

9. In light of the above considerations, it would be perverse to arrive at a different conclusion in the third appellant's case than that which was reached by the Court of Appeal in the AZ case. Like cases should be treated alike and the third appellant's circumstances were if anything worse than those of AZ. There is no tenable distinguishing feature in terms of the likely catastrophic effect of his removal. Given that the third appellant meets the requirements of paragraph 276ADE(1)(iv) in full, there can be no public interest outweighing his right to protected family life. Given that it is in his best interests to remain in the UK with his parents, the appeals of the first two appellants must also succeed.

### **Notice of Decision**

10. For the above reasons:

The decision of the FtT judge has already been set aside for material error of law.

The decision I re-make is to allow the appellants' appeals on human rights grounds.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 6 September 2017



Dr H H Storey  
Judge of the Upper Tribunal