



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

Appeal Numbers: IA/23022/2015
IA/23026/2015
IA/23029/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 12th October 2017**

**Decision & Reasons Promulgated
On 27th October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MD KT (FIRST APPELLANT)
RT (SECOND APPELLANT)
A-S MT (THIRD APPELLANT)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms K Joshi of Counsel, instructed by A Bajwa & Co
Solicitors

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are nationals of Bangladesh. They appealed to the First-tier Tribunal against a decision of the Secretary of State of 5th June 2015 to refuse their application for leave to remain in the UK on the basis of their private and family life. In a decision promulgated on 23rd January 2017

First-tier Tribunal Judge Andonian dismissed the appeal and the Appellants now appeal with permission granted by First-tier Tribunal Judge Grimmett on 4th August 2017.

2. At the hearing Ms Joshi sought to introduce a further Ground of Appeal based on the findings made by the First-tier Tribunal Judge at paragraph 27 in relation to the first Appellant's claim that he is a carer for his parents and sister, all of whom are British citizens. She sought to amend the Grounds of Appeal to include a contention that the First-tier Tribunal Judge had failed to consider whether the first Appellant was the primary carer of his parents and sister. Ms Isherwood objected to the introduction of this completely new issue which had never been raised before. I refused permission to vary the Grounds of Appeal to include this ground as this related to a matter which was not raised before the First-tier Tribunal and which is not an obvious point that the judge should have dealt with.
3. The grounds identify one issue, which is the contention that the judge erred in his assessment of the appeal under paragraph 276ADE of the Immigration Rules and Article 8 in that he failed to consider the evidence that the second Appellant had formerly been a victim of domestic violence by her family members in Bangladesh and to assess the impact of that upon her return to Bangladesh.
4. It is clear from paragraph 28 that the judge took into account the fact that the second Appellant suffers from depression but concluded:

"Her condition is not life threatening and nor is the health condition of the first appellant and his children. There is no reason why the family cannot access any medical treatment they need once they return to their country. According to the country of origin report there is treatment available in the appellant's country of Bangladesh for their various ailments. The treatment in Bangladesh may not be as good as the treatment they are receiving under the NHS system in the UK but this does not mean that their case is exceptional and that they must be given leave to remain in the UK".

Accordingly I am satisfied on the basis of this that the judge did consider the second Appellant's mental health in his proportionality assessment.

5. That leave the contention that the judge failed to consider the second Appellant's circumstances in Bangladesh in assessing whether there were significant obstacles to the family's integration in Bangladesh under paragraph 276ADE(1)(vi) and in the assessment of proportionality under Article 8.
6. At paragraph 8 of the decision the judge notes the oral evidence from the first Appellant in relation to how his wife's family had bullied her and abused her before he was able to save her by marrying her and getting his sister to invite her to the UK as a visitor so that she could leave Bangladesh. At paragraph 12 the judge notes that the second Appellant

gave oral evidence corroborating what her husband had said, saying that she suffered from depression and that “her family had abused her at home since childhood and she had been sexually abused by them as well”. I accept that there is no explicit reference to this evidence in the proportionality assessment or in relation to paragraph 276ADE.

7. However it was Ms Isherwood’s submission that there was no evidence produced as to how the second Appellant’s past experiences would affect the family upon return. She highlighted that the second Appellant had not claimed asylum on the basis of any fear of risk of return to Bangladesh. She submitted that the evidence put to the judge was that the events in Bangladesh happened in the past and brought about the second Appellant’s depression but it is not said that there would be a risk to her upon return to Bangladesh.
8. Ms Joshi highlighted aspects of the witness statements before the First-tier Tribunal. In particular she highlighted the witness statement submitted with the application for further leave which were at pages 79 onwards of the First-tier Tribunal bundle. However, apart from a few general statements she was unable to point me to any specific or detailed statements going to the expression of any fear upon return to Bangladesh of the second Appellant’s family or anything which would have demonstrated to the First-tier Tribunal Judge that there was a risk upon return there. In these circumstances I find that the judge the judge’s findings were open to him on the evidence. There was insufficient evidence to require a fuller assessment of any risk to the second Appellant upon return to Bangladesh.
9. Ms Joshi further submitted that the judge had failed to consider the best interests of the children in considering the impact of removal upon the second Appellant and the children. However the judge considered the best interests of the children at paragraph 25 and concluded “their best interests would be served with their parents at such a young age so there would be no issues of concern in the children leaving the UK with their parents”. In my view Ms Joshi was unable to point to any evidence before the First-tier Tribunal Judge to indicate that the children’s wellbeing would be adversely affected by returning to Bangladesh with their mother or to any evidence detailing any impact of such a return upon her mental health.
10. I do not accept there was any evidence before the judge to indicate that the second Appellant would be unable to look after the children if she were returned to Bangladesh. The Appellant would be returned to Bangladesh with her husband and children and there was no evidence that there would be any adverse impact on the children.
11. In essence this appeal came down to one issue which is whether the judge had properly considered the second Appellant’s background in Bangladesh and the impact of her return upon her and the children. However I agree with Ms Isherwood that this is not the basis on which the appeal was put.

Apart from a few bare assertions there is no evidence as to any risk to the family or to the second Appellant upon return to Bangladesh.

12. Accordingly, the judge made a decision based on the evidence before him accepting that the second Appellant suffers from depression when assessing her condition, but there was no need for the judge to make any further assessment in relation to this issue as it was simply not in the evidence before him.
13. In these circumstances I am satisfied that the judge made no material error.

Notice of Decision

There is no material error in the First-tier Tribunal Judge's decision.

The decision of the First-tier Tribunal shall stand.

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

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

Signed

Date: 25th October 2017

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT FEE AWARD

As the appeal has been dismissed there is no fee award.

Signed

Date: 25th October 2017

Deputy Upper Tribunal Judge Grimes