



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

Appeal Numbers: IA264732015
IA264762015

THE IMMIGRATION ACTS

Heard at Field House

On 25 April 2017

**Determination given orally at the
hearing**

**Decision &
Promulgated**

On 17 May 2017

Reasons

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

**MR MOHAMMAD JALAL UDDIN
MRS PARVIN AKTER
(ANONYMITY DIRECTION NOT MADE)
and**

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A I Khan, instructed by Universal Solicitors
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal against a decision of Judge of the First-tier Tribunal Phull who in a determination promulgated on 5 September 2016 dismissed the appellants' appeal against a decision of the Secretary of State to refuse their application for an extension of stay as a student and his dependant. The judge dealt with the issue of the student application

clearly. She noted that it was accepted that the 1st appellant did not have a CAS and found that he could not meet the requirements of the student Rules. She therefore dismissed the appeal.

2. Although that issue was challenged in the grounds of appeal permission was not given to argue that before me the judge considering the application for permission to appeal clearly and quite correctly said there was no merit in that point. What he did give permission on was the issue of the fact that the judge had not dealt with the question of the rights of the appellants under Article 8 of the ECHR. It is correct that the judge did not do so and I have to consider whether or not that error is material and if it were material then to remake the decision.
3. The reality in this case is that the appellants came to Britain in 2009 as a student and his dependant. The principal appellant has studied here and he has received qualifications here including an MBA and a diploma in IT. They also have a child born here in 2014 and I consider it likely that their second child was born recently. Clearly the appellants do not qualify for leave to remain on human rights grounds under the Rules and I have to consider whether or not there are any other factors which would mean that their removal would be disproportionate.
4. Mr Khan has put to me that the father of the first appellant died in 2011 and that his mother is ill and elderly and supported by him. Given of course that he has been a student here, that support cannot have been of any great size. Moreover it is said that the appellant has no financial resources in his own country nor was he able to get work there. I have to say that that surprises me given his qualifications. His qualifications should assist him in obtaining work in Bangladesh and of course if he returned to Bangladesh he would be able to give his mother the emotional support of his being present in that country. It is clear that the appellant has taken part in the local community and I understand that he is also a member of the Labour Party but the reality is that he entered as a student indicating an intention to return at the end of his studies. He does not qualify for leave to remain here and I consider that, particularly given the short period of time which the appellants have lived in Britain, that there seems no obstacles to their returning to their home country and that their removal to Bangladesh would in no way be disproportionate.
5. There is really nothing that the judge could have taken into consideration which could have led her to conclude that this was one of those exceptional or compelling cases in which permission should have been given for leave to remain on human rights grounds. The fact that she did not take into account what had been stated in the grounds of appeal is in my view not material and therefore it is appropriate that her decision to dismiss the appeal on immigration side should stand and that she should have dismissed the appeal on human rights grounds.

6. Insofar as the end of the determination clearly referred to immigration grounds, for the reasons which I have set out above I remake the decision and also dismiss this appeal on human rights grounds. This was an appeal which simply could not have succeeded on those grounds.

Notice of Decision

The appeal is dismissed on both immigration and human rights grounds.

No anonymity direction is made.



Signed

Date 15 May 2017

Upper Tribunal Judge McGeachy