Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/02146/2016**

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THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons**
On 22 December 2017	**Promulgated On 4 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

KAZI AMDADUL HAQUE
SHARMIN AKTER
(ANONYMITY ORDER NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Nathan (counsel for Kilby Jones Solicitors)
For the Respondent: Ms A Fijiwala (Senior Presenting Officer)

DECISION AND REASONS

1. These are the appeals of Kazi Amdadul Haque, a citizen of Bangladesh, and of his dependent wife Sharmin Akter, against the decision of the First-tier Tribunal, dated 9 March 2017, to refuse their appeal on human rights against the decision of the Secretary of State to refuse their applications for leave to remain on human rights grounds, itself dated 12 January 2016.

2. Their application was made on the basis of the private and family life they claimed to have built up during the period over which Mr Haque had been present as a Tier 4 general student with his wife as his partner, since their arrival this country in 2013 and 2014 respectively. Mr Haque had been unable to secure further leave to remain, having completed a level 7 MBA on International Business from Anglia Ruskin University. They had nevertheless become attached to the society, culture and community of the United Kingdom, and they feared for Mrs Akter's well-being if they travelled following her recent health problems; furthermore they were concerned that their infant child A (born 21 August 2015) would be prejudiced if she was required to rely on the lower standard of medical and other care in Bangladesh.

3. The application was refused because it was not accepted that the child's best interests called for the grant of leave, and given the lack of evidence that the parents would face any very significant obstacles to their integration back in Bangladesh; there was no settled Sponsor who could found a viable partner application under Appendix FM. They had only resided in this country from 19 June 2013 and 26 January 2014 and the child's circumstances were not considered exceptional, given there was no evidence confirming the child's medical condition or that any immunisation programme was ongoing.

4. The First-tier Tribunal heard oral evidence from the Appellant, in English, recording that he had lived with his parents and family in Dhaka before coming to this country. The family home had been sold to fund his studies and accommodation here. His father had taken out a loan which he still paying back at high interest rates. The Appellant had a urinal condition that caused him discomfort and which was being treated here; his wife had a fungal infection, and his daughter had a sticky eye. It would expensive to replicate this treatment in Bangladesh, and he could not find work there, as there were no job prospects for a person of his age.

5. The First-tier Tribunal found the Appellants faced no very significant obstacles to integration back in their country of origin given Mr Haque had completed his studies here, had spent his formative years in Bangladesh where he had studied and worked in accounts and administration, and where his family lived. His claim to be supported by his uncle was uncorroborated, and his claim as to his parents' diminished financial circumstances was not fully supported by evidence, beyond a document from the Dhaka North City Corporation which only showed that that entity had taken some interest in their financial situation. The only evidence regarding Mrs Akter's health advising against her taking a flight related to the period shortly after her had given birth. The child's emotional and welfare needs would foreseeably be met by the care of her parents and any health problems were minor,

and any difficulties in their future treatment would be down to their cost rather than their non-availability.

6. Reviewing the appeal outside the Immigration Rules, the Appellant could speak English, claimed to be supported by his uncle, but there were nevertheless no exceptional or compelling circumstances counting against the return of him and his wife, given they could foreseeably access medical assistance and make arrangements for the daughter's education. Neither he nor Mrs Akter had any significant connections with this country and both were fully conversant with the culture of Bangladesh.

7. Grounds of appeal contended that inadequate consideration had been given to the private and family life of the Appellants, to section 117A and 117B of the Nationality Immigration and Asylum Act 2002, and to the best interests of the child.

8. The First-tier Tribunal granted permission to appeal on the basis that the child's best interests may not have been adequately assessed.

9. Before me, Mr Chowdhury submitted that there were essentially two errors in the approach to best interests: firstly the First-tier Tribunal had failed to consider the extent to which Mr Haque's documented kidney condition might diminish his prospects of supporting the family in circumstances where his wife would not necessarily be able to support the family alone given the difficult labour market conditions in Bangladesh, and secondly, the First-tier Tribunal had wholly failed to consider the child's own ill-health. Mr Duffy responded that the decision represented a rational and well-reasoned adjudication of all relevant issues, fully in line with the governing authorities such as *Azimi-Moayed*.

Decision and reasons

10. I indicated that I would uphold the decision of the First-tier Tribunal at the hearing, and these are my reasons.

11. The submissions by Mr Chowdhury essentially amount to a disguised rationality challenge. The issues upon which he focussed were by no means matters that were overlooked by the First-tier Tribunal: it referenced Mr Haque's kidney condition, and it was plainly alive to the child's health issue, which is a rather mild one, "sticky" eye. So the question is whether the decision actually made was beyond the range of reasonable responses to the evidence before the Tribunal.

12. Jackson LJ in *EV (Philippines)* [2014] EWCA Civ 874 at [35] stated: "A decision as to what is in the best interests of children will depend on a number of factors such as (a) their age; (b) the length of time that they have been here; (c) how long they have been in education; (c) what stage their education has reached; (d) to what extent they have become

distanced from the country to which it is proposed that they return; (e) how renewable their connection with it may be; (f) to what extent they will have linguistic, medical or other difficulties in adapting to life in that country; and (g) the extent to which the course proposed will interfere with their family life ...” *Jeunesse* as cited in *MM Lebanon* (UKSC) stated that national decision-makers should:

> “... advert to and assess evidence in respect of the practicality, feasibility and proportionality [of any such removal of a non-national parent] in order to give effective protection and sufficient weight to the best interests of the children directly affected by it.”

13. It seems to me that the principles identified in those authorities were effectively applied in this case. The reality is that for a very young child such as the infant in question, it is rather difficult to see what factors could possibly point to her departure to her country of nationality where her extended family live being contrary to her best interests. She is of an age where the entirety of her needs can be met by the care provided by the parents, who are clearly devoted to her, with the additional emotional support that can be presumed available from the extended family. There is no suggestion in the medical evidence that her eye condition is anything other than minor, nor is there objective evidence to suggest that the health authorities in Bangladesh would be unable to treat her in the event it endures. Although the First-tier Tribunal posited the possibility that Mr Haque’s parents might lack funds, it expressed reservations about the lack of corroborative evidence regarding his father’s attempts to put his finances on a more secure footing. It cannot be said that the case as put was accepted at its highest on balance of probabilities. The evidence as to any financial difficulties suffered by the family was found wanting by the First-tier Tribunal when assessed, given the paucity of supporting documents, unsurprisingly given the vagueness of the case as put below.

14. There is no evidence to suggest that Mr Haque’s health problem will foreseeably deteriorate to a level that prevents him from working, and Mr Chowdhury directed me to no objective or independent evidence to corroborate his submission that it would be impossible for Ms Akter to work in Bangladesh even were his health to worsen.

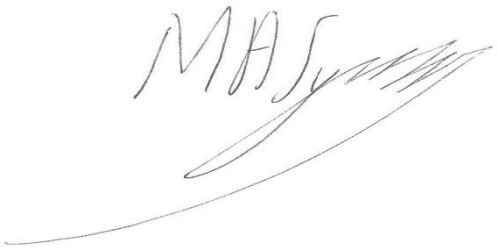
15. It seems to me that the First-tier Tribunal’s reasoning was sufficiently detailed to fully address the rather limited case put to it.

16. Stepping back to review the case put by the Appellants objectively, they have lived in the United Kingdom for rather a short period, only four years for the longest resident of them, Mr Haque. They came in a capacity that was temporary in nature, with a view to Mr Haque studying for a course which he completed, to his credit, at Anglia Ruskin University. It is not obvious why they would not have made plans to cater for their inevitable return to their country of nationality. The

difficulties they had to confront, arising from their decision to start a family at this moment in time and from their chosen mode of financing the studies, were inevitably ones for which they would need to make arrangements. It is very difficult to accept that educated individuals would in truth have had no such plans in place. The connections put forward with this country are extremely fragile and barely evidenced. The reaction of the First-tier Tribunal to their case is unsurprising.

17. I do not consider that the findings of the First-tier Tribunal were irrational or took into account irrelevant considerations. The appeal is dismissed.

Signed: Date: 22 December 2017



Deputy Upper Tribunal Judge Symes