
**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Numbers: HU/10087/2017,**

**HU/10094/2017 and**
**HU/10091/2017**

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Determination and Reasons Promulgated** |
|---|---|
| **On 14 November 2018** | **On 22 November 2018** |

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**(1) S C**
**(2) S M C**
**(3) S I C**
**(ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Mr T Shah, Solicitor
(Taj Solicitors)
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

**DETERMINATION AND REASONS**

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1. Permission to appeal was granted by First-tier Tribunal Judge P J M Hollingworth on 20 September 2018 against the decision to dismiss the Appellants' linked Article 8 ECHR appeals made by First-tier Tribunal Judge G Jones QC in a decision and reasons promulgated on 22 June 2018. The Appellants are nationals of Bangladesh, mother and dependent children, who entered the United Kingdom in 2010 as the dependants of their husband/father who held a Tier 2 visa. The husband/father was prosecuted for assault on the First Appellant in 2016 and was sentenced to 2 years, 3 months imprisonment. The family is now separated from him, although there is limited contact between him and the children.

2. The Respondent refused the Appellants' timely applications for further leave to remain on 29 August 2017. The First Appellant had not met the English language requirement under the Immigration Rules, nor the financial requirements. The First Appellant had contended that she would face difficulties in Bangladesh because of her Catholic religion, the breakdown of her marriage for which her family in Bangladesh blamed her and her lack of qualifications which would make finding employment difficult. Her children did not speak Bengali and would face problems in adapting to life in Bangladesh.

3. Judge Jones QC found that Article 8 ECHR was engaged but that there were no insurmountable obstacles to the continuation of family life in Bangladesh, and that it was reasonable for the British born children to leave the United Kingdom with their mother. He gave extensive reasons: see [17] of his decision. He recognised that the First Appellant had faced a difficult situation. Even so, he rejected much of the First Appellant's evidence, finding that she could obtain work in Bangladesh, her family had not disowned her and her children spoke at least some Bengali. Applying section 55 of the Borders, Citizenship and Nationality Act 2009, the children's best interests were to remain with their mother. The family could relocate to Bangladesh where the children would continue to be educated, and have the advantage of growing up within the country of their nationality, immersed in its culture and traditions. Hence the appeals were dismissed.

4. Permission to appeal was granted because it was considered arguable that the judge had not properly assessed section 117B of the Nationality, Immigration and Asylum Act 2002 and the reasonableness of the children's leaving the United Kingdom, as well as their degree of integration. It was also considered arguable that the judge had not considered the relevant parts of the Immigration Rules.

5. The Respondent served a rule 24 notice in the form of a letter dated 6 November 2018, indicating that the appeals were opposed.

6. Mr Shah for the Appellant relied on the grounds submitted and the grant of permission to appeal. The Notice of Appeal had raised paragraph 276ADE(1)(iv) of the Immigration Rules, which was also mentioned in the First Appellant's witness statement, but the judge had not dealt with the point. The oldest child was a qualifying child. The judge had not engaged sufficiently with the evidence about the family background and the children's position so the proportionality analysis was faulty. The onwards appeals should be allowed.

7. Mr Jarvis for the Respondent relied on the rule 24 notice dated 6 November 2018. It had been accepted that the Immigration Rules could not be met, as the judge had recorded. There was no evidence from the representative who appeared below to contradict the judge's statement. The children's best interests had been fully considered by the judge. The Appellants simply disagreed with the judge's decision. The onwards appeals should be dismissed.

8. The grant of permission to appeal was in the tribunal's view a generous one. Insufficient attention had been paid to the clear and succinct decision of a very experienced judge who had addressed all of the essential issues in the appeals, and had done so with sympathy for a difficult situation, as he noted at [21] of the determination.

9. The tribunal accepts the submissions made by Mr Jarvis on behalf of the Respondent. The claim that the Immigration Rules had not been considered was unarguable because, as the judge recorded at [7] of his decision and reasons, it was accepted by the Appellants' representative at the first instance hearing that the Immigration Rules could not be met and that the

appeals could only be argued on Article 8 ECHR grounds. There was no evidence from the representative to suggest that the judge had not recorded the submissions accurately.

10. There was no dispute that both children were Bangladeshi nationals born in the United Kingdom, nor that the older child (born on 10 February 2009, as the judge recorded) had been in the United Kingdom for more than 7 years. There was no dispute that the older child was a "qualifying child" within the definition set out in section 117D of the Nationality, Immigration and Asylum Act 2002, thus making section 117B(6) applicable. The length of that child's residence had been accepted and was fully factored into the judge's evaluation of proportionality for Article 8 ECHR purposes. The judge was fully entitled to reach his findings on the evidence placed before him.

11. There was no evidence that the position of the older child had been argued before the judge on any other basis. In reality, the issues which arise under paragraph 276ADE(1)(iv) (incorrectly identified as paragraph 276ADE(1)(vi) in the grounds of appeal, which has no application) are for all practical purposes in the context of the facts of the present appeal identical to those in section 117B(6): the focus is on "reasonableness". Thus the relevant issues were considered by the judge and so there is nothing in the point, ignoring the absence of any evidence that the point was in fact raised at the hearing.

12. The assertion that the judge had not taken into account all of the relevant facts of the family history has no substance. There were in truth a number of sensitive matters which had been examined in the Family Court proceedings, to which the judge made appropriately discreet reference: see, e.g., [10] of the determination. Ultimately the judge had cumulatively considered the reasonableness of the family's return, with specific reference to the children, and gave ample sound reasons. The judge's decision, although reached before the release of the Supreme Court's decision in KO (Nigeria) [2018] UKSC 53, reflects the key principles of reasonableness now enunciated.

13. As with so many similar appeals which come before the First-tier Tribunal and Upper Tribunal in the Immigration and Asylum Chamber, this was in reality about personal

choice, a choice which does not exist under Article 8 ECHR absent an ability to comply with the Immigration Rules or very compelling/exceptional circumstances. The family was not being split up. Their presence in the United Kingdom had at all times been precarious, lawful but temporary and not settled. The family were not being expected to return to an unsafe, uncivilised place, but to the country of their own nationality and culture, where the mother had spent the majority of her life, and where there were extended family members.

14. The tribunal finds that there was no error of law and the onwards appeal must be dismissed. The tribunal makes an anonymity direction in view of the fact that two of the Appellants are minors.

**DECISION**

The appeal to the Upper Tribunal is dismissed.

There was no error of law in the First-tier Tribunal's decision and reasons, which stands unchanged.

**Signed** **Dated** 15 November 2018

**Deputy Upper Tribunal Judge Manuell**