



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

Appeal Numbers: HU/03423/2019  
HU/04327/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 October 2019**

**Decision & Reasons Promulgated  
On 25 October 2019**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**DILRUBA [A] (FIRST APPELLANT)  
AHMED [S] (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr M Hasan, Counsel instructed by Kalam Solicitors  
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of Bangladesh. The first appellant was born on 22 November 1982 and is the partner of the second appellant, who was born on 28 September 1978. The appellants have two children, who were born on 13 May 2014 and 16 August 2016. The first appellant has been in the UK since 2013 and the second appellant since 2009. Both of their children were born in the UK.

2. The appellants are appealing against a decision of First-tier Tribunal Judge Aujla (“the judge”) promulgated on 13 July 2019 dismissing their human rights appeal.
3. The appellants made their human rights application on 24 November 2017. The respondent rejected the application on the basis that they have spent most of their lives in Bangladesh and would not face obstacles integrating into that country; and because there would not be any unjustifiably harsh consequences for them, or their children, returning to Bangladesh. In respect of the first appellant’s mental health, which had been raised in the application, the respondent stated that she would be able to access treatment in Bangladesh and the second appellant would be able to continue providing her with support, as the family would be returned as a unit.

### **Decision of the First-tier Tribunal**

4. It is evident from the decision, as well as the papers that were before the First-Tier Tribunal, that the appellants’ case was not properly prepared. The judge observed that the appellants did not specify any grounds of appeal in the notice of appeal or submit a bundle of documents.
5. Neither of the appellants attended the First-tier Tribunal. Mr Hasan, who appeared in the First-tier Tribunal as well as at the hearing before me in the Upper Tribunal, sought an adjournment in the First-tier Tribunal on the basis that the first appellant had had a panic attack requiring attendance at hospital the previous evening and the second appellant was busy looking after the children. The judge refused the application in light of the absence of evidence certifying that the first appellant was unable to travel to court or was unfit to give evidence; and the absence of an adequate explanation for the non-attendance of the second appellant.
6. The judge found that removal of the appellants (along with their children) would be proportionate. In particular, the judge found that the claim by the first appellant to have mental health problems was “not made out as on the date of the hearing” and that there was no evidence “of any health problems affecting either of the two children”.
7. The findings of the judge at paragraphs 23 and 24 are of particular significance to this appeal and therefore I set them out in full:
  - “23. The appellant had submitted to the respondent with the application a number of letters from doctors and the psychiatric outpatient clinic. None of those letters were recent as they were all from 2016 and 2017. No comprehensive medical report, psychologists report or a psychiatric report was submitted. In the circumstances, I find that any claim by the appellant to having mental health problems was not made out as on the date of the hearing before. That claim did not add anything to her claim to established private life in the UK.

24. I have also considered the appellants' children and their best interests in accordance with section 55 of the 2009 Act as did the respondent. There was no evidence before me of any health problems affecting either of the two children. They are still too young, being aged 5 years and 2 years. They had no status in the United Kingdom. They are Bangladeshi nationals just like their parents. In the absence of credible evidence, I do not accept the appellants' claim that the Bangladeshi authorities had refused to issue them with passports."

### **Grounds of Appeal and Submissions**

8. The first ground of appeal argues that the failure to grant an adjournment was unjust and a material error of law. Mr Hasan did not pursue this argument at the error of law hearing. He was right to not do so given the absence of evidence before the First-tier Tribunal to substantiate that the first appellant was not medically fit to attend the hearing and the absence of any evidence to explain the second appellant's non-attendance.
9. The second and third grounds of appeal argue that the assessment of the best interests of the appellants' children was deficient because of a failure to consider all of the relevant information.
10. Mr Hasan drew my attention to three letters that he had handed to the judge in the First-Tier Tribunal hearing which, he claimed, had been overlooked by the judge. As these letters were on the court file, and the respondent also had a copy, I am satisfied that they were, as claimed, provided to the judge.
11. One of the letters is undated but refers to the family moving in March 2019, and therefore I am satisfied it is a letter that was written recently. It is a short letter from Dr Mees, a Senior Child and Adolescent Psychotherapist at the Tower Hamlets Child and Adolescent Mental Health Services. In the letter, Dr Mees states that the children have been subject to a child protection plan and there has been considerable concern about the family. The letter included the following:
- "Mother had been actively suicidal in front of the children and father was limited in his parenting availability.
- "The children's wellbeing in my view, depends on the effective management and stabilisation of mother's mental health and I would be concerned about any move that would unsettle this".
12. The second letter referred to by Mr Hasan is dated 28 May 2019. It is from a social worker at the Tower Hamlets Children's Services Directorate. It states that the children became known to Tower Hamlets Children Social Care in June 2016 and are currently now on a Child in Need Plan due to the family requiring support.
13. The third letter, also dated 28 May 2019, is from the first appellant's GP. The letter states that she "still gets episodes of severe depression".

14. Mr Hasan argued that the decision is undermined by a failure to have regard to these three letters.
15. Ms Cunha argued that even if the judge fell into error by overlooking the letters described above, this would not be material. She argued, firstly, that the letter from Dr Mees is in the past tense and is therefore referring to a situation which previously existed. She also argued that even if it referred to the current circumstances, the appellants had not shown that there would not be suitable treatment available in Bangladesh. She argued that in the absence of any more evidence than these three letters there was no basis upon which the judge could find that the first appellant's mental health was such that removal of the family would be disproportionate under Article 8 ECHR. She maintained that the analysis of the children's best interests at paragraph 24 was adequate given the young age of the appellants' children and the absence of any medical or other evidence to show that they have any vulnerabilities that would create difficulties on return to Bangladesh.

### **Analysis**

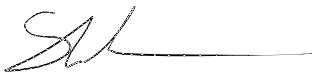
16. One of the main reason given by the judge (at paragraph 23 of the decision) for finding the first appellant had not established she had mental health problems was that the medical evidence submitted by the appellants was not recent and only dated from 2016 and 2017. However, the appellants' representative in fact submitted, on the day of the First-Tier Tribunal hearing, three recent letters from professionals which are clearly relevant to the first appellant's mental health. It is apparent from the wording used by the judge in paragraph 23 that these letters were overlooked - and not taken into consideration - in the evaluation of whether the first appellant had mental health problems. Failing to have regard to this evidence was an error of law.
17. Had the judge not overlooked these letters, it is likely he would have accepted that the first appellant has (and has had) mental health problems. However, there was no evidence before the judge to explain the nature and severity of her mental health difficulties or how the condition would be impacted by her removal to Bangladesh, apart from a single sentence in Dr Mees' letter expressing concern about a move unsettling her effective management and stabilisation. Nor was there any evidence before the First-Tier Tribunal about the availability of treatment in Bangladesh; or evidence indicating that her effective management and stabilisation would be negatively impacted by being in Bangladesh as opposed to the UK.
18. Given the content of Dr Mees' letter, one might have expected there to be a substantial amount of medical evidence before the First-Tier Tribunal about the mental health of the first appellant. However, apart from the three letters described above, there was no such evidence.

19. It was for the appellants to support their case, where appropriate, through evidence. Given the paucity of evidence before the First-Tier Tribunal about the first appellant's mental health, and the complete absence of evidence to show there would not be suitable treatment in Bangladesh, even if the judge had not overlooked the three letters handed to him at the hearing by Mr Hasan, I am satisfied that the judge would have reached the same conclusion in the assessment of the best interests of the appellants' children. This is because, apart from the three letters relating to the first appellant's mental health described above, there was no evidence (or even submissions) before the First-Tier Tribunal to show any health or other problems affecting, or any circumstances pertaining to, the appellants' children that would support the view that it is in their best interests to remain in the UK even though they, and their parents, are citizens of Bangladesh who would be returning to their country as a family unit. I therefore agree with Ms Cunha that the error in overlooking the three letters was not material to the outcome.

### **Notice of Decision**

- A. The appeal is dismissed.
- B. The decision of the First-Tier Tribunal does not contain an error of law that is material to the outcome and therefore, having regard to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007, I do not set aside the decision of the First-Tier Tribunal and it stands.
- C. No anonymity direction is made.

Signed



Upper Tribunal Judge Sheridan

Dated: 23 October 2019