Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/01081/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7th May 2019	**On 22nd May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MRS AYASHA BEGUM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rahman
For the Respondent: Mr Tufan, Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant born on 12th July 1962 is a citizen of Bangladesh. The Appellant was represented by Mr Rahman. The Respondent was represented by Mr Tufan a Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had made an application for asylum in August 2013 and her application was refused on 1st October 2014. She had appealed that decision and her appeal was heard by First-tier Tribunal Judge Bulpitt

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sitting at Hatton Cross on 30th October 2018. The judge had dismissed the Appellant's appeal on all grounds.

3. Application for permission to appeal had been made to the First-tier Tribunal and permission to appeal had been refused on 10th December 2018. The application was renewed and permission had been granted by the Upper Tribunal on 4th April 2019. Permission had been issued in respect of one matter only, that being that the judge arguably had not considered the Appellant's minor son's Article 8 matter.

Submissions on Behalf of the Appellant

4. It was noted that the Appellant was neither present nor represented at the First-tier hearing. It was further accepted that the Grounds of Appeal to the First-tier did not make reference to Article 8 of the ECHR. It was noted that the refusal letter had dealt with the son in a number of paragraphs.

Submissions on Behalf of the Respondent

5. It was submitted that the minor Appellant was not a qualifying child and even if it had been a qualifying child there would have to be evidence of unjustifiably harsh consequences on removal. It was further submitted that bearing in mind paragraph 51 of the case of **KO [2018]** there was nothing to show it was unreasonable for the child to leave with his mother. It was submitted that the two-page witness statement from the mother made no reference to the younger son and that the full bundle which ran to about 500 pages also made no reference to the younger son. Finally on behalf of the Appellant it was said that following the case of **MA (Pakistan)** it was possible for a judge in the First-tier Tribunal faced with no information about the child could in a rare case adjourn to obtain information.

6. At the conclusion I reserved my decision to consider the evidence and submissions raised. I now provide that decision with my reasons.

Decision and Reasons

7. Permission was granted on the basis that there had been an arguable error of law in the decision of the First-tier Tribunal Judge in that he had not considered the Appellant's minor son's Article 8 issues.

8. The procedural history of this case is somewhat complex and was summarised by the judge at paragraphs 10 to 17. In summary the Appellant's appeal notice had been drafted by her then solicitors. Thereafter they sought an adjournment and indicated that the Appellant "was just relying on her own protection claim based on her family killing and Article 3 medical grounds". Prior to the final hearing date of 30th October 2018 the Respondent served their bundle including the refusal letter on the Appellant's solicitor and they in turn served a 560-page Appellant's bundle. Thereafter the Appellant indicated she had withdrawn instructions from her solicitor and did not intend to attend the hearing and wished the judge to decide the matter on the papers.

9. Further the judge noted at paragraph 17 that the Appellant's case had been heard in February 2015 by another First-tier Tribunal Judge who had refused her appeal. The only new evidence postdating that decision was documentary evidence which was considered by the judge. As his starting point he correctly referred to the first decision and the findings therein on fact and credibility.

10. In respect of the Appellant's minor son he was a dependant upon the Appellant's claim. He had been in the UK less than seven years at the relevant date and was not a qualifying child. The Respondent in the refusal letter served upon the Appellant and her solicitor, had dealt with his position at paragraphs 42 to 43 of that letter under the terms of Article 8 of family and private life with specific reference to Section 55 of the Borders Act 2009 (best interests of the child). The Respondent had concluded the child's best interests were to return to Bangladesh with his mother.

11. The Appellant's Grounds of Appeal against the Respondent's refusal letter made no reference to Article 8 of the ECHR in respect of her son. The representative's letter of 15th February 2018, as noted by the judge at paragraph 11 of his decision, confirmed that the Appellant's appeal did not include any reference to Article 8 in respect of her dependent son. Mr Rahman conceded that the Appellant's own witness statement within her bundle made no reference to her son nor did that son (aged about 17 years) produce a witness statement or supporting evidence on his own behalf. The Appellant and her representatives were not present at the hearing and she had requested the judge to decide the matter on the basis of the papers before him. The judge did that.

12. He made proper and sustainable findings that were not found arguably wanting by the Upper Tribunal who granted permission to appeal. In respect of the Appellant's son the Respondent had reached a conclusion in the refusal letter that the child's best interests were to return to Bangladesh with his mother and removal did not breach Article 8 of the ECHR. The Appellant had not challenged that decision nor produced any evidence to the contrary either within her Grounds of Appeal to the First-tier Tribunal or in any documentary evidence. Further the representative's letter of February 2018 made no reference or challenge to that finding. The judge in those circumstances was understandably silent upon a matter that had not been raised at any point as an issue in the case. It cannot necessarily be said that in those circumstances the judge should have taken it upon himself to raise and deal with the issue under the "**Robinson** obvious" criteria.

13. However even if it was an error of law to fail to do so it was not material because in the absence of the Appellant being a qualifying child and any evidence as to his circumstances it is difficult to see what other conclusion could have been reached by the judge.

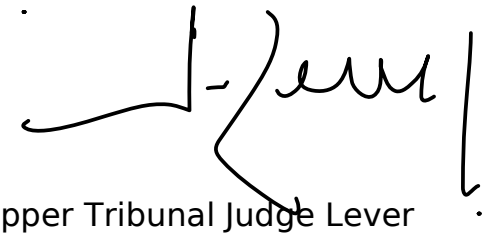
14. Further, even if it was a material error then in remaking the decision there has been no fresh evidence served on the Upper Tribunal in accordance

with Rule 15(2A) or in line with direction (v) dated 8th April 2019. Accordingly the material to be considered in the Upper Tribunal and that which I do consider is exactly the same as that which was before the First-tier Tribunal. I further take account of the recent authority in **KO [2018]** in particular paragraph 51. I find that this is a case where the only relevant parent (the Appellant mother) was required to leave the UK and the natural expectation would be that her dependent son would go with her. Neither she nor he have provided any evidence to the contrary and I would find therefore that his removal with his mother would be both reasonable and proportionate.

Notice of Decision

15. I find no material error of law made by the judge in the First-tier Tribunal and uphold the decision. I further find in any event that if required to remake the decision I would arrive at the same finding and dismiss the appeal.

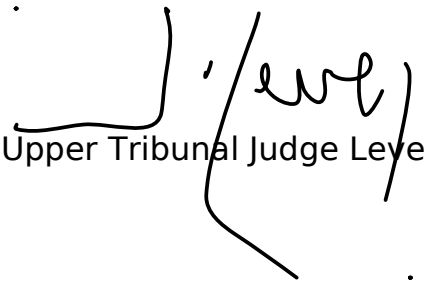
No anonymity direction is made.

Signed  Date 24/5/19

Deputy Upper Tribunal Judge Lever

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed  Date 24/5/19

Deputy Upper Tribunal Judge Lever