IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-006289
UI-2022-006287
UI-2022-006288
UI-2022-006290
First-tier Tribunal Nos:
PA/50217/2021 IA/01125/2021
PA/50094/2021 IA/01514/2021
PA/50097/2021 IA/01353/2021
PA/50093/2021 IA/00520/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 27 September 2024

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MD SABIKUR RAHMAN (First Appellant)
MIZANUR RAHMAN (Second Appellant)
MD JAYEDUR RAHMAN (Third Appellant)
MOSSOMMAT MAHDIYA RAHMAN (Fourth Appellant)
(NO ANONYMITY ORDER MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Unrepresented and no appearance
For the Respondent: Ms S Nwachuku, Senior Home Office Presenting Officer

Heard at Field House on 12 September 2024

DECISION AND REASONS

Introduction

1. In these four linked appeals the Appellants have been the subject of an anonymity direction made initially by the First-tier Tribunal and then maintained when the cases came to the Upper Tribunal. The direction was presumably made on the basis that there were protection issues in play. However, the decision of the First-tier Tribunal now under challenge rejected the Appellants' protection claim as well as issues relating to Article 3 ECHR. Those conclusions have not been challenged. There are no minor children involved in these cases and no other compelling circumstances which would otherwise justify maintaining the anonymity direction. In all the circumstances and having regard to the importance of open justice, I therefore discharge the anonymity directions previously made.

2. In this decision I shall refer to the Appellants in the order they are listed on the title page of my decision.

3. As will become clear, the Appellants are all in fact nationals of Bangladesh. The first Appellant is the father of the second, third and fourth, who were born in 1994, 1996 and 2003, respectively. The first Appellant is married to Nargis Akhtar ("NA", also a Bangladeshi national). She is dependent on the first Appellant's case.

4. The Appellants appeal against the decision of First-tier Tribunal Judge Handler (the Judge), promulgated on 24 November 2022. By that decision, the Judge dismissed the Appellants' appeals against the Respondent's refusal of their protection and human rights claims. Those claims were made on 28 February 2018 in respect of the first Appellant and 14 May 2018 in respect of the other three. The Respondent's decision for each of the Appellants was dated 21 December 2020. It is clear from the chronology already stated that there has been a significant period of time in these cases coming through the system and

being finally determined by me. A good deal of the delay was because of protected proceedings in the First-tier Tribunal, which involved a number of adjournments and the issuing of directions which were not complied with, either in time or at all in certain respects. The parties will be well-aware of the specific history and I need not set it out here.

5. In summary, the Appellants' case was as follows. The first Appellant asserted that he was the primary carer of the other three Appellants who, it was said, were British citizens. The claimed British citizenship was essentially predicated on the fact that NA had been issued with a British passport and that she had subsequently used this to obtain British passports for the second, third and fourth Appellants, they being her children. The first Appellant had never asserted to be British, but did say that he was the spouse of a British citizen (NA). This matrix formed the basis of the Appellants' Article 8 case. In respect of protection issues, it was said that there was a risk on return to Bangladesh from the first Appellant's family and the family of the first Appellant's ex-wife, Hanifa Masabbir ("HM"), who was a British citizen.

The Judge's decision

6. On any view, the Judge produced a conscientious decision which was well-structured and detailed without being overly-lengthy. The relevant background is set out before the Judge went on to deal with the live issues before him. In order to narrow the issues with which I am now concerned, it is right to note here that the Judge comprehensively rejected the protection and Article 3 claims: paragraphs 31–48 and 49. Those findings and conclusions have not been challenged on appeal and I need to say nothing more about them.

7. The first of the two issues with which I am concerned related to the question of the second, third and fourth Appellants' nationality. This was dealt with at paragraphs 22–30. In essence, the Judge concluded that whilst NA and the relevant Appellants had been issued with British

passports, they were not and never had been British citizens. The Judge stated in terms that the Appellants had not shown that possessing a British passport meant that they were British citizens, noting that no authorities (cases) or legislation had been produced to support the Appellants' submission to the contrary.

8. The obtaining of the British passports had been based on blatant deception by NA (with which the first Appellant had connived). The Judge concluded that, contrary to the Appellants' submission, the present cases were distinguishable from what was said by the Supreme Court in Hysaj v SSHD [2017] UKSC 82 because these cases concerned someone (NA) who had adopted the identity of another person (namely the first Appellant's first wife, HM. The situation considered in Hysaj concerned those who had been naturalised as British citizens (following an application) and whether, based on deception, the citizenship was either a nullity or could be taken away by means of deprivation proceedings under the British Nationality Act 1981.

9. The second of the two relevant issues related to Article 8 and the Judge dealt with this at paragraphs 50–73. It is abundantly clear that the Judge gave careful attention to a large number of factors relating to each of the Appellants, including:

    (a) The first, second and third Appellants' ability to reintegrate into Bangladeshi society;
    (b) The fourth Appellant's age at the time of the application in May and her ability to go to Bangladesh;
    (c) The conclusion that none of the Appellants could satisfy the Immigration Rules;
    (d) Section 117B of the Nationality, Immigration and Asylum Act 2002;
    (e) The fact that the second, third and fourth Appellants were not complicit in their parents' deception;

(f) The Appellants' private lives in the United Kingdom were conducted when they had no, or precarious, status;

(g) The time spent by the individual Appellants in the United Kingdom;

(h) The deception practised by the first Appellant and NA; and

(i) The absence of significant relationships beyond the immediate family unit.

10. On a cumulative basis, the Judge attributed varying degrees of weight to the factors considered.

11. Of particular significance in the appeals before me is the Judge's consideration of the position of the fourth Appellant. It appeared to be common ground that, as at the date of hearing in November 2022, she would hypothetically have been able to satisfy the requirements of Appendix Private Life to the Immigration Rules if a new application was made, with reference to paragraph 4.1 of those provisions. The relevant paragraph stated that:

> "Where the applicant is aged 18 or over and aged under 25 at the date of application and arrived in the UK before the age of 18, the applicant must have spent at least half their life continuously resident in the UK".

12. On the face of it, this applied to the fourth Appellant. The Appellants' representative had submitted that this should weigh heavily in favour of the fourth Appellant when conducting a proportionality exercise and, in turn, this would have had a positive impact on the other Appellants' appeals.

13. The Judge did not accept that submission in terms of the amount of weight sought to be attributed by the Appellants. Rather, it is apparent that the Judge took this factor into account alongside a wide variety of others (many of which have been referred to, above) and then conducted

a cumulative assessment, ultimately concluding that the Appellants' removal would not be disproportionate.

14. Accordingly, the appeals were dismissed on all grounds.

The grounds of appeal and grant of permission

15. The grounds of appeal are narrowly drawn and comprise two points. First, it is said that the Judge had not "fully engaged" with the submission made that the issuing of British passports to NA and the second, third and fourth Appellants represented "an implicit acceptance" that they were considered to be British citizens, albeit based on a deception practiced by NA. It is suggested that the issuing of the passports amounted to a recognition that NA and the relevant Appellants were British citizens. It is then, at least implicitly, suggested that as such, the Respondent should have an initiated nullity or deprivation proceedings against them and that their situation might be analogous to the Hysaj scenario.

16. Secondly, it is said that there was no reason, or at least the Judge provided no "adequate" reasons, as to why the apparent fact that the fourth Appellant could satisfy Appendix private life 4.1 did not have "an impact" on her Article 8 claim and those of the other Appellants.

17. The grant of permission by the First-tier Tribunal is somewhat odd in that the relevant Judge considered the first ground, described as "the Hysaj point", to be unarguable. It was only the Article 8 point which was deemed to have sufficient merit for permission to be granted. Notwithstanding that, the permission decision confirms that the grant was "not limited".

Procedural history in the Upper Tribunal

18. Once the linked appeals came into the Upper Tribunal's system, there were then further delays due to what I understand were technical difficulties relating to the remote link (the Appellants' representatives were based in Manchester and the CVP remote system was used to avoid the need for them to travel down to London for a hearing). In the event, further case management directions were issued. In response to these, the Respondent provided a skeleton argument, dated 29 February 2024. Since then nothing more has been received from the Appellants.

The error of law hearing

19. Two days prior to the error of law hearing a remote CVP link was sent to Maya Solicitors, based in Oldham, who were on record as acting for the Appellants, albeit on a *pro bono* basis. Prior to the commencement of the hearing itself at 10 o'clock, a solicitor from the firm, Ms Miah, informed the Tribunal's clerk that the solicitors were no longer acting for the Appellants and that, on instructions, the Appellants had requested that their appeals be decided "on the papers". Ms Miah confirmed that this request had been sent into the Tribunal some days previously, although there seemed to be no record of this on the CE-file system.

20. When I commenced the hearing, I deemed it appropriate to take the unusual step of ringing the solicitor's firm directly in order to obtain confirmation as to their position and indeed the position of the Appellants themselves. I was able to speak directly to Ms Miah who confirmed in terms that (a) they had always been acting on a *pro bono* basis, (b) that they were no longer acting, (c) that the Appellants had given them instructions that they did not wish to attend the hearing and instead wished their cases to be decided "on the papers". I had no reason to doubt the word of Ms Miah, but I asked her to provide written confirmation of this, which she duly did by way of an email sent at 11:15 on the day of the hearing. That email contained an attachment of a previous email sent to the Tribunal at 18:04 on 2 August 2024 confirming

the cessation of the solicitors acting for the Appellants and that the Appellants had been informed of the hearing date on 12 September 2024. It is not immediately apparent to me that this earlier email had been sent to an appropriate Tribunal address, but the substance of the emails was in clear terms.

21. There had been no correspondence from the Appellants to the Tribunal concerning non-attendance at the hearing.

22. Based on the information before me, I was satisfied that (a) the solicitors were no longer acting for the Appellants, (b) the Appellants were aware of the hearing today and (c) that the Appellants had indeed provided instructions that they no longer wished to attend the hearing and that they wished to have their cases decided in their absence based on the materials already provided.

23. Ms Nwachuku confirmed the Respondent's position that the error of law hearing should proceed in the Appellants' absence.

24. I considered all of the circumstances of these cases in the context of fairness and rule 38 of the Tribunal's Procedure Rules. I was satisfied as to the Appellants' knowledge of their hearing and their instructions. I was satisfied that there were no other significant reasons why I should adjourn. For example, none of the Appellants are minors or otherwise vulnerable, there are no significant health issues involved in any of these cases, and there was no evidence that the Appellants wished to attend the hearing but were for some reason unable to do so. The Respondent was ready to proceed. I had materials from the Appellants which I was able to consider and it was quite clear that there would be no further written submissions coming from the Appellants' side. I concluded that it was fair and in the interests of justice to proceed in the Appellants' absence.

The Respondent's submissions

25. Ms Nwachuku made helpful submissions, in addition to relying on the Respondent's skeleton argument of February 2024. In essence, she submitted that the Judge had addressed the Hysaj point and had dealt with it entirely appropriately. Neither NA nor the second, third of fourth Appellants had ever been British citizens and the Appellants' first ground of appeal was simply misconceived.

26. In respect of the Article 8 point, she submitted that the Judge had dealt with the fourth Appellant's situation adequately. The hypothetical ability to meet Appendix Private Life had been noted and the Judge took this into account as part of the overall balancing exercise. Issues of weight were for the Judge, subject to any irrationality challenge and the Judge's overall assessment was not in any way irrational. She submitted that the Appellant's case had not been put on the basis that the fourth Appellant's Article 8 claim should have succeeded by virtue solely that she could hypothetically meet the Rules as at the date of hearing before the Judge. Rather, the Appellants had submitted that the fourth Appellant's situation should heavily in her favour, with positive consequences for the other Appellants. The Judge had been entitled to reject that submission and to place whatever weight he deemed appropriate on the point.

27. At the end of the hearing, I reserved my decision.

Conclusions

28. I remind myself that I should exercise appropriate judicial restraint before interfering with a decision of the First-tier Tribunal. In the present case, the Judge had a good deal of information before him and, as mentioned earlier, seemingly gave careful consideration to the issues which had been canvassed before him. With this in mind I turn to address the two grounds of appeal.

Ground 1: The Hysaj point

29. I conclude that the Appellant's argument as to the claimed British citizenship of NA and the second, third and fourth Appellants is and always has been misconceived. I say this for the following reasons.

30. First, the issuing and possession of a British passport does not confer British citizenship: see for example Gjini v SSHD [2021] EWHC 1677 (Admin), at [8]. As noted by the Judge, the Appellants had not provided any authority and/or legislation to indicate that this was not the case. No such materials had been referred to in the grounds of appeal or at any other time since permission was granted. A passport is simply evidence of citizenship, nothing more.

31. Secondly, the present cases are readily distinguishable from the Hysaj situation. Here, the British passport was obtained because NA dishonestly adopted the identity of the first Appellant's first wife, HM, and used that identity to obtain the passport. This is not a case in which a false identity was created by an individual in order to obtain citizenship by way of registration or naturalisation, and therefore the question of nullity and/or deprivation does not arise. Indeed, it is abundantly clear that NA or the second, third or fourth Appellants never applied to be, nor were, registered or naturalised as British citizens. There was no question of the Respondent having to take nullity or deprivation proceedings.

32. Thirdly, it is a fact that at some point in 2017 the Respondent revoked the British passports. The Respondent was plainly entitled to do that, under the Royal Prerogative. That revocation was susceptible to judicial review: see for example the case of ex parte Everett [1989] 1 QB 8111. However, NA and the relevant Appellants did not seek to pursue that course of action, as they might have done.

33. Fourthly, the Judge addressed all of the issues I have just mentioned in his decision at paragraphs 24–27, with reference to a

detailed review document provided by the Respondent, dated 13 March 2022. It is also of note that the Judge addressed the point from the perspective both that the Appellant bore the burden of proof, but also that, in the alternative, that burden rested with the Respondent.

34. Fifthly, and in summary, the Judge was entitled to conclude that neither NA or the second, third or fourth Appellants had ever been British citizens, that the Respondent had been entitled to revoke the British passports, that the cases were distinguishable from the Hysaj case, and that there was simply nothing in the point sought to be relied on by the Appellants in this regard.

35. On any view, ground 1 fails.

Article 8 issue

36. As summarised earlier, the Judge gave careful consideration to Article 8 as a whole. I do not propose to set all of the matters he discussed here, but the reader of my decision should undertake a fair and sensible reading of paragraphs 50–73 of the Judge's decision.

37. I focus here on the position of the fourth Appellant, as that forms the core of the second ground of appeal. On a purely hypothetical basis, it did appear as though the fourth Appellant could satisfy the requirements of paragraph 4.1 of Appendix Private Life on the basis of her age at the date of hearing and the time spent in the United Kingdom. The Judge recognised this at paragraph 64. I note in passing that the satisfaction of that provision could not of course have been based on the only application which had *in fact* been made back in May 2018 (at which time the fourth Appellant fell outside of the relevant age bracket).

38. It is clear to me that the submission made by the Appellants' representatives in relation to the fourth Appellant's circumstances was not that her appeal should be allowed *solely* on the ability to meet the

provision. That much is clear enough from reading the Judge's decision as a whole and nothing to the contrary is stated in the grounds of appeal. If such a submission had been made, it would very probably have constituted a "new matter" within section 85 of the Nationality, Immigration and Asylum 2002 Act and associated case-law. Instead, I am satisfied that the submission was that significant, or even very significant, weight should have been given to the hypothetical ability to meet the Immigration Rules as at the date of hearing and the Judge was undoubtedly aware of this. What is equally clear is that the Judge took that particular factor into account amongst a very wide variety of other considerations which both proceeded and followed from paragraph 64 (see the summary of these set out earlier). Weight was clearly attributed to that particular factor and favourable weight was given to others relating to both the fourth Appellant and her siblings, particularly given their position as minors during a past period and the fact that they were not to blame for their parents' wholesale dishonesty. Yet, the Judge was entitled (indeed obliged) to assess the second, third and fourth Appellants' situation as at the date of hearing, (and of course the Appellants' submission set out at paragraph 64 was based on that approach) and this included the public interest attaching to the use of deception by NA and the first Appellant. The Judge was undoubtedly entitled to take this wider factor into account.

39. The Judge was not obliged to place particularly significant weight on the fourth Appellant's hypothetical ability to satisfy the Appendix Private Life provision. The amount of weight to be attached to the various factors was a matter for the Judge to decide. His disinclination to place a great deal of weight on the Appendix Private Life factor was far from being irrational.

40. Further, it simply cannot be said that he failed to provide legally adequate reasons for his assessment of that factor when his overall assessment is read holistically and sensibly. The reasons are part and

parcel of what was, in my respectful view, an exemplary proportionality balancing exercise carried out in this case.

41. Stepping back, I am satisfied that there is no legal error in respect of either of the two grounds of appeal put forward. On this basis I dismiss the Appellants' appeals to the Upper Tribunal.

Notice of Decision

The decision of the First-tier Tribunal does not contain any errors of law and that decision stands
The Appellants' appeals to the Upper Tribunal are dismissed.

H Norton-Taylor
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 23 September 2024