IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No:UI-2023-004739
UI-2023-004740
UI-2023-004741

First-tier Tribunal No: HU/57752/2022
HU/57772/2022
HU/57771/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

9th January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

AFSANA BULBUL
MYHAMMAD ZUHAYER TAHMID SIDDIQUI
MUHAMMAD ZUNAID TAMJID SIDDIQUI

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr S Vokes (Counsel, instructed by
For the Respondent: Mrs R Arif (Senior Home Office Presenting Officer)

Heard at Birmingham on 21 December 2023.

DECISION AND REASONS

1. The Appellants are a mother and her 2 sons who challenge the decision of Judge Hena of the 6th of September 2023 in which she dismissed their appeals against the refusal by the Respondent to grant them leave to remain in the UK. The original applications, made on the basis of their private life, were made on the 14th of August 2021 and refused for the reasons given in the Refusal Letter of the 11th of October 2022.
2. The Appellants are the family members of a Bangladeshi diplomat, they entered the UK in April 2015 and by virtue of their status were exempt from immigration control, that exemption came to an end in April 2021. The applications were refused as it was not accepted that they could meet paragraph 276ADE, there being no very significant

obstacles to reintegration to Bangladesh and the second and third Appellants had not spent sufficient time in the UK, having been here for only 6 years.

3. Judge Hena dismissed the appeals setting out her findings in paragraphs 15 to 34 of her decision. The Appellants' circumstances and the basis of their case were summarised in paragraph 15 and Mr Voke's submissions in paragraph 16 which concluded with the point that the Appellants have lived where directed in accordance with their father's work and a return to Bangladesh to apply to study in the UK would entail disruption.

4. Permission to appeal to the Upper Tribunal was sought on a number of grounds but permission was only granted on the first 2 raised – the assessment under section 117B with regard to English language, financial independence and leave and the assessment of unjustifiably harsh consequences under the Immigration Rules and proportionality.

5. For the Appellants Mr Vokes argued that the assessment under section 117B was flawed and there was no structured balance sheet approach. They had built up their private and family life in the UK, the Second and Third Appellant had been educated here and they had entered as visa exempt nationals, not as students with limited leave and precariousness did not apply. The Immigration Rules applied once they ceased to be visa exempt. They had lived where their father had been posted and their education had followed that.

6. For the Respondent it was argued that there had been a proportionality assessment and that the Judge had looked at all the material circumstances and that the grounds amount to a disagreement with the decision.

7. The point relied on that the Second and Third Appellants had no choice about where they lived and their education is not a strong point. It applies to all children as it is parents who decide where the family live, what adults do for a living and how children are educated. The observation by Judge Hena is no more than a statement of the position that applies globally to families and their circumstances, the decisions taken reflect the options available.

8. The Appellants came to the UK with the advantage of being then exempt from immigration control but that is not a status that applies now and so the Immigration Rules formed the starting point for the consideration of their position. The Third Appellant had not been in the UK for 7 years or more before becoming an adult and there is no near-miss point to be made in immigration cases.

9. The observations of Judge Veloso in granting permission correctly note that the Appellants English language ability and financial independence are neutral factors. Judge Veloso went on to the state "it is not automatic in each case that little weight is to be attached to a private life established during a period of unlawful leave…".

10. Section 117B(5) provides that "Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious." The Appellants' presence in the UK was not dependent on leave under the Immigration Rules but was dependent on the status of the husband and father retaining diplomatic status in the UK, which clearly he did not.

11. Guidance is also provided by the Supreme Court decision in Patel [2013] UKSC 72. In paragraph 57 Lord Carnwath observed that article 8 is not a general dispensing power and that the Secretary of State retained a discretion to allow leave to remain outside the rules. With regard to students he concluded "The opportunity for a promising student to complete his course in this country, however, desirable in general terms, is not in itself a right protected under article 8."

12. In Nasim [2014] UKUT 25 (IAC) the headnote in the panel's decision summarised the position in this way "The judgments of the Supreme Court in Patel and Others v Secretary of State for the Home Department [2013] UKUT 72 serve to re-focus attention on the nature and purpose of Article 8 of the ECHR and, in particular, to recognise that Article's limited utility in private life cases that are far removed from the protection of an individual's moral and physical integrity. The question comes down to whether a fair balance has been struck between the interests of the individuals concerned and the public interest.

13. The assessment for this decision is whether the decision made was open to Judge Hena for the reasons given. As the Court of Appeal noted in Piglowska v Piglowski [1999] 1 WLR 1360 at 1372 "reasons should be read on the assumption that, unless he has demonstrated to the contrary, the Judge knew how he should perform his functions and which matters he should take into account." Some principles are so firmly embedded in judicial thinking they do not need repeating.

14. In addressing the obstacles to reintegration Judge Hena had regard to the very high threshold that applies. It had not been made clear why, given their ages, the First Appellant would be needed to support the Second and Third Appellants in their studies and Judge Hena had regard to the options that were available to the family. At paragraph 21 in particular she noted the difficulties that they could face and also the advantages that they had had. The First Appellant could live with her husband in Algeria or return to Bangladesh.

15. Judge Hena set out the Appellants' history and circumstances and was fully aware of their immigration history. She noted that the Second and Third Appellants would have to take gaps in their education but that that is not unusual and she found that to do so would not be disproportionate. The fact is that the Appellants do not meet the Immigration Rules and the test for the Judge was whether enforcement of immigration control in these circumstances would be disproportionate.

16. The term "balance sheet" was not used but the terminology is not central to the what was undertaken. Judge Hena had regard to the Appellants' history and their options and considered the consequences against the public interest in the maintenance of immigration control. In practical terms Judge Hena did conduct a balancing exercise which is what was required. The decision was appropriately structured and the conclusions reached were open to her for the reasons given.

Notice of Decision

17. For the reasons given I find that Judge Hena's decision was not infected by an error of law and it stands as the disposal of the Appellants' appeal.

Judge Parkes
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

2nd January 2024