



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

Appeal Numbers: IA/23904/2014  
IA/23907/2014  
IA/23909/2014  
& IA/23910/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11<sup>th</sup> November 2015**

**Determination Promulgated  
On 13<sup>th</sup> November 2015**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

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

Appellant

**And**

**MR LIAKET ALI (1)  
MRS FATIMA JAHAN (2)  
MISS TANSUBA MEHJABIN LAMIA (3)  
MASTER MASRUR LIAQAT FAHIM (4)  
(ANONYMITY ORDER NOT MADE)**

Respondents

**Representation:**

For the Appellant: Mr T Islam, instructed by City Link Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

### *Introduction*

1. The first claimant is a citizen of Bangladesh born on 26<sup>th</sup> August 1976. The other claimants are also citizens of Bangladesh. The second claimant is his wife born on 7<sup>th</sup> February 1977. The third and fourth claimants are their children born on 17<sup>th</sup> October 2005 and 12<sup>th</sup> October 2010. The first claimant arrived in the UK on 7<sup>th</sup> September 2005 with leave to enter as a student. He had leave in this capacity until 30<sup>th</sup> April 2010. He was then granted as a Tier 1 post-study work migrant until February 2012. He then was granted further leave as a Tier 4 (general) student migrant until 30<sup>th</sup> April 2014. The claimants then made an application to remain in the UK on the basis of their private life ties with this country. This application was refused on 28<sup>th</sup> May 2014. The claimants' appeal against the decision was allowed by First-tier Tribunal Judge MPW Harris in a determination promulgated on the 22<sup>nd</sup> February 2015.
2. Permission to appeal was granted by Upper Tribunal Judge Martin on 29<sup>th</sup> July 2015 on the basis that it was arguable that the First-tier judge had erred in law in considering the third claimant's case first, and then finding that due to her success in her appeal the other claimants were also entitled to succeed. It was also arguable that the First-tier Tribunal had conflated the best interests of the child with the reasonableness of her returning to Bangladesh and elevated the best interests of the child above a primary consideration.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law

### *Submissions*

4. The Secretary of State argues in her grounds of appeal and also in an expanded grounds of appeal document that the First-tier Tribunal erred firstly by failing to assess the third claimant's circumstances in the context of her family circumstances; secondly by not giving the welfare of the child an integral part in the Article 8 proportionality assessment; thirdly by not giving consideration to the public purse costs of educating and maintaining the health of the two children; fourthly by failing to acknowledge that the families are citizens of Bangladesh who have no expectation of being allowed to remain in the UK; and fifthly by not considering the situation the family would face in Bangladesh if they were expected to return.
5. Mr Melvin added the following, in summary, in oral submissions. He said that the fact that the third claimant had been in the UK for more than 7 years had been wrongly used as a trump card to allow the appeal. Whilst he accepted that it was correct to look at the appeals under the Immigration Rules first he argued that the finding that it was not reasonable to expect the third appellant to go back to Bangladesh

lacked a careful consideration of all relevant facts. There was a lack of consideration of a real world view and the fact that the third claimant's parents were well educated and could support her on her return. In reality education was the only reason for it being seen as in her best interests to remain and there was insufficient consideration of the links she had made after the age of four years. As a result in the overall consideration of the other claimants the public interest had not been given sufficient weight, and the other appeals should not have been allowed even if the third claimant was entitled to succeed. There was a lack of consideration of the public purse cost of educating the children and providing healthcare to the family.

### *Conclusions*

6. There can be no error of law on the part of the First-tier Tribunal in assessing the appeal of the claimants under the Immigration Rules to start with, and as it was conceded that all claimants other than the third claimant could not meet the Immigration Rules then the assessment of the third claimant's appeal under the Immigration Rules was rightly the first issue. This approach is clearly correct from many authorities: the assessment of an Article 8 ECHR appeal should commence with an assessment as to whether the Immigration Rules can be met and only proceed to a consideration outside of those Rules where the Rules are not a complete code, see MF (Nigeria) v SSHD [2013] EWCA Civ 1192.
7. The First-tier Tribunal, at paragraph 12 of the decision, directed itself correctly on the test to be met by the third claimant under paragraph 276ADE(1)(iv) of the Immigration Rules: as she was indisputably a child who had been in the UK for more than seven years the question was whether it would be reasonable to expect her to leave the UK.
8. It is clear that the First-tier Tribunal appreciated that the removal of the third claimant would only take place in the sense that the third claimant would be removed with her family, and that this is the starting point at paragraph 13 of the decision, and further weight is given to the help they would give her if she were removed. I understand this as meaning that the Tribunal were satisfied that she would be provided for and assisted by them in all senses on her return to Bangladesh.
9. The Tribunal then moves correctly to look at the best interests of the child, again correctly directed itself to look at these "as a primary consideration" at paragraph 15 of the decision. In this context the Tribunal reminds itself that the correct starting point for a young child regarding these best interests will be to live with and be brought up by its parents, see paragraph 16 of the decision. At paragraph 17 the Tribunal is clear that simply disrupting her education would not suffice to show it would not be reasonable to expect her to leave the UK as there is a functioning education system in Bangladesh, and an expectation of return to Bangladesh would have been there for the

family as they had come to the UK only for the purpose of study. It is therefore clear that academic success or disruption of studies has not been seen here as a trump card.

10. The decision that it would be in the best interests of the third claimant to remain in the UK is based on her wider private life ties with the UK, and in particular on her own evidence (written and oral to the First-tier Tribunal) of these ties, see paragraphs 20 and 21 of the decision.
11. The Tribunal then weighs all the matters before it and concludes that it would not be reasonable to expect her to leave the UK at paragraph 23.
12. I do not find that the First-tier Tribunal has fallen into any of the errors in the assessment of the third claimant's claim to remain under the Immigration Rules argued for by the Secretary of State.
13. In circumstances where the third claimant had made out an entitlement to remain under the Immigration Rules it was entirely correct for the Tribunal to conclude that there were compelling reasons to consider whether the remaining claimants could succeed on Article 8 ECHR ground outside of the Immigration Rules: this decision is clearly consistent with MM (Lebanon) v SSHD [2014] EWCA Civ 985, and with SS (Congo) v SSHD [2015] EWCA Civ 387.
14. In considering the proportionality of the interference with the claimants' private and family lives by removal from the UK the First-tier Tribunal rightly has regard to the considerations at s.117B of the Nationality, Immigration and Asylum Act 2002. A very fair consideration of all factors under s.117B takes place at paragraphs 37 to 39 of the decision, which included a careful assessment of their English language abilities and finances, noting currently that the first and second claimants were not financially independent, and giving significant weight to the need to maintain effective immigration control in the public interest. The fact that these claimants came to the UK for studies and had no expectation of being allowed to remain in this country is also placed in the balance.
15. It was entirely open to the First-tier Tribunal to ultimately conclude however that the remaining claimants were entitled to succeed in their appeal given the fact that the public interest does not require the first and second claimants' removal when they have a genuine and subsisting parental relationship with a qualifying child when it would not be reasonable to expect the child to leave the UK (namely with the third claimant), in accordance with s.117B(6). The First-tier Tribunal had already reached the conclusion that the third claimant was a qualifying child who could not reasonably be expected to leave the UK in their analysis under paragraph 276ADE of the Immigration Rules, and in accordance with AM (s.117B) Malawi [2015] UKUT 260 conclusion (6) did not need to perform this process a second time having properly assessed the third claimant under the same test under the Rules.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. I uphold the decision of the First-tier Tribunal allowing the appeal.

Fiona Lindsley  
Signed:

Date: 11<sup>th</sup> November 2015

Upper Tribunal Judge Lindsley