



IAC-FH-NL-V1

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

Appeal Numbers: IA/19300/2014
IA/19305/2014
IA/19308/2014
IA/19314/2014
IA/19318/2014
IA/19322/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16 December 2015**

**Decisions and Reasons
Promulgated
On 14 January 2016**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**MR A K M ARIFUL ISLAM
MRS NUSRAT SULTANA TANIA
SIT
GTI
MRS UMMEA KULSUM AKTER
MR TWOHIDUL GOLAM ISLAM
(NO ANONYMITY ORDER MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr T Shah instructed by Taj Solicitors

For the Respondent: Mrs N Willocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal with permission against the decision of the First-tier Tribunal dismissing their appeal against the respondent's refusal to grant them leave to remain as Tier 1 (Entrepreneur) Migrants and dependants pursuant to paragraphs 245DD, 319C and 319H of HC395 as amended. It is right to note that no application for leave to remain outside the Rules or within the Rules on Article 8 grounds has been made by these parties.
2. The appellants are two married couples and their minor children. All of the adult and child appellants are citizens of Bangladesh and none of the children is a British citizen.
3. The third appellant, the son of the first and second appellant was born in the United Kingdom on 27 June 2010 and has been in the United Kingdom for 5 years. He will just have begun to go to school.
4. The fourth appellant, the son of the sixth and fifth appellants, was born in 2005 and came to the United Kingdom as a young child in 2007. He is now 10 years old, almost 11 and has been in the United Kingdom for 8 years. He will have been in education for about 5 years. There is a further child born to the fifth and sixth appellants on 18 July 2012 who is not an appellant in these proceedings and in respect of whom no application at all has been made. That child also has only Bangladeshi citizenship.
5. The grounds of appeal contain no challenge to the decision in relation to the Tier 1 (Entrepreneur) applications. They rely on Article 8 family and private life and the best interests of the children. The First-tier Tribunal Judge considered Section 55 of the 2009 Act (see [52]-[57]) as follows:
 - "52. I also bear in mind my duty under Section 117B of the Nationality, Immigration and Asylum Act 2002 which requires me to accord weight to the respondent's public duty of maintaining an effective system of immigration control. I am also cognisant of Section 55 of the Borders, Citizenship and Immigration Act 2009.
 53. Applying Lord Bingham's five step test laid down in *Razgar* I accept that the appellants have established family life together. However, both families will be removed together so I am satisfied that the respondent's decisions do not represent an interference with their family life or that Article 8 is engaged.
 54. The main issue relates to private life. Mr Franco relied on an undated letter from Barts Health Trust (C12) relating to the sixth appellant's child. I note that she is not a party to these appeals. As Ms Deshraj rightly submitted, the letter does not provide any basis upon which I could conclude that it would be unduly harsh for her to accompany her parents on return to Bangladesh. It simply states that she has been under the consultant's care since her birth on 18 July 2012 and has

four daily medications in addition to an infusion every eight weeks. I am not satisfied on a balance of probabilities that the respondent's decisions breach Section 55.

55. I accept that each of the appellants has established a degree of private life in the UK over their relatively long residence. Mr Franco submitted that the first and sixth appellants had set up a flourishing business but for the reasons given above, I do not find their account credible. If they are able to provide cogent evidence to counter the respondent's concerns and to show the business is succeeding, they could submit a new application. On the basis of the evidence before me I do not consider that the respondent's decisions represent a significant interference with the appellants' right to respect for their private life.
56. I have concluded that the respondent's decisions were in accordance with the law.
57. If there were any interference with Article 8 it must be balanced against the important public duty, which is reinforced by Section 117B, of maintaining effective immigration control. I bear in mind the fact that the appellants were always aware that their leave to remain was only temporary and would be extended only if they submitted valid applications for further leave."

6. That was the basis on which the judge dealt with Article 8, Section 55 and considerations outside the Rules generally.

Upper Tribunal hearing

7. The First-tier Tribunal Judge erred in his decision at paragraph 50 in relation to the standard of proof, applying the lower standard of proof applicable to protection cases, rather than the civil standard of balance of probabilities, which is the correct standard of proof when dealing with immigration and Article 8 cases. Such error is not material: if the decision appellants' case were to be remade to the higher standard, a case which failed at the lower standard would be certain to fail at any higher standard.
8. As regards Article 8 ECHR, the Judge dealt with these matters robustly. I consider that he was entitled to do so: his record of proceedings records no submissions made at the First-tier Tribunal hearing on the appellants' behalf regarding Article 8 or paragraph 276ADE.
9. At the Upper Tribunal hearing, Mr Shah accepted on the appellants' behalf that in relation to Article 8 ECHR, both within and outwith the Immigration Rules, and section 55 of the 2009 Act, very little evidence had been placed before the First-tier Tribunal, and that such evidence was not sufficient for the appellants to succeed on family and private life or the best interests of the children. The appellants had an opportunity to file further evidence pursuant to the directions which accompanied the Upper Tribunal notice of hearing on 29 November 2015, but failed to do so. No application has

Appeal Numbers: IA/19300/2014
IA/19305/2014
IA/19308/2014
IA/19314/2014
IA/19318/2014
IA/19322/2014

been made to adduce additional evidence under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. The position remains that the evidence of the family and private life of these families, and the best interests of their children, is the same as that which Mr Shah for the appellants acknowledged was inadequate before the First-tier Tribunal.

10. I am satisfied that the First-tier Tribunal Judge dealt properly with the limited evidence before him and that the conclusions he reached thereon were open to him.
11. Accordingly this appeal is dismissed.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I do not set aside the decision. The decision of the First-tier Tribunal stands.

Signed: Judith AJC Gleeson
Upper Tribunal Judge Gleeson

Date: 12 January 2016