



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

Appeal Numbers: IA492902014
IA492942014

THE IMMIGRATION ACTS

**Heard at: Field House
On: 3 May 2017**

**Determination Promulgated
On: 19 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[J H]

[R]

~~(NO ANONYMITY DIRECTIONS MADE)~~

Respondent

Representation:

For the Appellant: Mr L Tarlow, Senior Presenting Officer
For the Respondent: Mr L Rahman of Counsel

DECISION AND REASONS

1. The appellant before the Upper Tribunal is the Secretary of State for the Home Department and the [respondents are citizens] of Bangladesh born [1982 and 1984 respectively]. However, for the sake of convenience, I shall continue to refer to the latter as the “appellants” and to the Secretary of the State as the “respondent”, which are the designations they had in the proceedings before the First-tier Tribunal.
2. The appellants, who are husband and wife, appealed to the First-tier Tribunal against the decision of the respondent refusing their application for indefinite leave to remain pursuant to Article 8 of the European

Convention on Human Rights. First-tier Tribunal Judge Fletcher Hill allowed the appeal pursuant to Article 8 of the European Convention on Human Rights.

3. Deputy Tribunal Judge Saini found there was an error of law in the determination as the Judge's findings were contradictory because at paragraph 60 of the decision the Judge states that the removal of the oldest child would be reasonable in respect of paragraph 276 ADE (1) (iv) of the Immigration Rules but in respect of Article 8 and section 117B (6) of the Nationality, Immigration and Asylum Act 2002 at paragraph 67 the Judge finds that the removal would not be proportionate because the appellant is a qualifying child and that 117B (6) is met. The Judge allowed the respondents appeal and retained the appeal in the Upper Tribunal for a substantive hearing.
4. Thus, the appeal came before me.

Remaking of the decision

5. At the hearing, I heard evidence from the appellants where they were questioned, cross-examined and I asked some questions. The full notes of the hearing are in my record of proceedings.
6. It was accepted that the appellant and his wife have three minor children who were all born in the United Kingdom, on [] 2008, [] 2012 and [] 2014 respectively. The first and second appellant married in Bangladesh two months before the first appellant left to come to the United Kingdom with a work permit visa valid from 17 July 2005 until 17 July 2006. On 29 June 2006, the appellant submitted an application for leave to remain in the United Kingdom as a student which was refused with no right of appeal on 24 July 2006. Thereafter the first appellant was served with Notices IS 151A and IS. 96 on 24 November 2006 and remained at large until he was arrested.
7. The appellant's wife entered the United Kingdom on 10 September 2007 with a visit visa valid until 28 February 2008, the reason for the purported visit being to visit her siblings in the United Kingdom. I note here that she did not mention that she was also visiting her husband. Their children were all born in this country. The first appellant was encountered and arrested for working illegally at [] in Essex.
8. The ultimate question in this appeal is whether it would be reasonable for the appellants to be denied further leave to remain given that their daughter is a qualified child as she has been here for about nine years and whether it would be unreasonable for the family to leave the United Kingdom as a family unit taking into account the best interests of the

qualifying child including the other children. I also consider whether there are insurmountable obstacles to the family relocating to Bangladesh.

9. What are the best of interests the children have to be determined taking into account all the circumstances in this appeal, especially her circumstances. The best interests of the child must be based on a careful consideration of the likely circumstances of the appellant and the children if returned as a family unit to Bangladesh. I have to take into account all the factors relevant to the appellant's qualifying child's well-being if returned to Bangladesh.
10. I find the starting point as to what is in the best interests of children lie with living with their parents wherever they live. The bond between parent and child cannot be underestimated and the child's equilibrium and security rests with being with his or her parents. The other best interests of the children, also includes that they are provided with security, well-being, social integration, education and to be clothed, housed and fed. If these objectives can be accomplished, the best interests of the child would have been met.
11. It is clear from the case of ***MA Pakistan [2016] EWCA Civ 705***, that the fact that there is a qualified child is a relevant consideration and one that might be said to point to it being in the child interest to remain in the United Kingdom, but it is equally clear that the assessment of reasonableness must take account of the conduct of the claimant and his wife. To make an adequate legally and factually finding, a proper assessment of the best interests of the child must be based on a careful consideration of the likely circumstances of the children, if returned as a unit to Bangladesh.
12. An objective evaluation needs to be made on the question of whether the appellant and his wife would be able to get a job in Bangladesh. The evidence is that the appellant has worked in this country and came here on a work permit. He was arrested while working in a tandoori restaurant but at the hearing he denied that he was working and said that it belongs to his brother-in-law and he was visiting. I do not accept this evidence that the appellant was not working at the restaurant given that his brother in law owned it. Even if he was not working at the restaurant, my decision would remain the same.
13. The appellant's evidence was that all men of his and his wife's family work as taxi drivers. He was asked whether he has a driving licence and he said that he was issued one in the year that he worked, in this country, on a work permit. When he was asked why would he apply for a driving licence

when he did not have a car, the appellant said that he had always dreamt about having a car which is why he applied for the driving licence.

14. I find that the more reasonable explanation for why the appellant obtained a driving licence was because he has been working in this country as a taxi driver. This shows that the appellant has the skills to be a taxi driver in this country and he can find a job as a taxi driver in Bangladesh. There is no evidence before me that the appellant will not be employed in Bangladesh and therefore can look after all his children, including the qualifying child.
15. It has been alleged that the education of the qualifying child would be interrupted and the syllabus in the United Kingdom is not consistent with the education system in Bangladesh. There is no dispute that there is an education system in Bangladesh, which the minor children can access even if the syllabuses are different. Education does not cease to be education because the syllabus is different. Therefore, the qualifying child would have access to education in Bangladesh.
16. The qualifying child being at the age of nine is not at a pivotal stage of her education and can adapt to life and the education system in Bangladesh. In the case of ***Azmi Moyed and others [2013] UKUT*** it was stated that the children's connections to the United Kingdom become more important from ages of 4 to 11. The qualifying child is nine years old and therefore her ties to this country are still tenuous.
17. The evidence is that the qualifying child is clever and a fast learner and therefore will not have any problems in readjusting to education in Bangladesh. Requiring her to leave the United Kingdom in respect of her education is reasonable even if the quality of education is better in the United Kingdom than it may be in Bangladesh. There is no evidence before me that the education in Bangladesh is such that it is tantamount to the child effectively not getting an education. It is not the quality of education which is the test that the fact that education will be given to the qualifying child, meets her best interests.
18. The first appellant has been working in this country and therefore has adequate skills to find a job and look after his family in Bangladesh. Therefore, the qualifying child will have parents to look after her and her siblings and will provide them with security, education, and their general upkeep. This would take into account the qualifying child's best interests to be in a stable environment with her parents with her basic needs met. This equally applies to the other two children.

19. The first appellant came to the United Kingdom in July 2005 for one year with a work permit. He had no legal right to remain after his work permit expired. Even though he was in this country illegally, his wife entered the United Kingdom on a visit visa and continue to live in this country after her visit visa expired. They gave birth to 3 children in this country knowing that there were here illegally. I emphasise that I do not take into account only the illegal status of the qualifying child's parents in determining the best interests of the child however, I find that it is a material factor to be taken into account to determine reasonableness of return.
20. The other reason given was that the appellant does not speak Bangladeshi. At the renewed hearing the appellant and his wife gave evidence through an interpreter. The appellant said that he does not speak English very well and nor does his wife and that they speak to their children in broken English. However, their evidence was that the children speak in English with each other.
21. I find it wholly incredible that the appellant and his wife would have their three children living with them with whom they cannot communicate. I do not find it in the least credible that the appellant's children speak amongst themselves in English and the appellant and his wife cannot understand what they are saying other than a few words. I find that the appellant's children speak Bangladeshi and therefore they can enter education in Bangladesh. Even if they cannot speak Bangladeshi sufficiently well, they can learn the language on their return.
22. I accept that in respect of Article 8 all family relationships have a knock-on effect on each other. The appellant's daughter is not a British citizen but a citizen of Bangladesh. I find there would be nothing unreasonable about requiring this family to leave the United Kingdom and settle back in their country in Bangladesh, as a family unit. I also find that there are no insurmountable obstacles for the appellant and his family to return to their country Bangladesh, of which they are nationals.
23. Considering all the evidence in this appeal, I dismiss the appellant's appeal. That finalises this appeal.

DECISION

The Secretary of State's appeal is allowed.

I remake the decision and dismiss the appellant's appeal.

Signed by

Mrs S Chana

A Deputy Judge of the Upper Tribunal

The 16th day of May 2017