



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: HU/04538/2017**

**Appeal**

**HU/04536/2017  
HU/04540/2017  
HU/04542/2017**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 October 2018**

**Decision & Reasons  
Promulgated  
On 24 October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**MOHAMMED [A]  
MAHMUDA [B]  
[A M]  
[M A]**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr T J Shah of Taj Solicitors

For the Respondent: Ms Z Kiss, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of the Appellants. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Paul promulgated on 23 May 2018, which dismissed the Appellants' appeals.

### Background

3. The Appellant are all members of the same family; the third and fourth appellants are the children of the first and second appellants. They are all Bangladeshi nationals. The first appellant was born on 09/10/1974. The second appellant was born on 10/12/1984. The third appellant was born on 25/06/2011. The fourth appellant was born on 25/06/2011.

4. The first appellant says that he entered the UK in 1996 (The respondent disagrees). In 2007 he submitted an application for leave to remain. That application was refused. The first appellant appealed unsuccessfully. In 2009 the second appellant entered the UK as a student. The third and fourth appellants were born in the UK. On 29/12/2011 the second appellant submitted an application for leave to remain with the first and third appellants listed as her dependents. That application was refused on 8 May 2013. The second appellant initially appealed, but then withdrew her appeal.

5. On 11/11/2015 the appellants applied for leave to remain in the UK on article 8 ECHR grounds. On 01/03/2017 the Secretary of State refused their application.

### The Judge's Decision

6. The Appellants appealed to the First-tier Tribunal. First-tier Tribunal Judge N M Paul ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 15/08/2018 Judge Landes gave permission to appeal stating

1. These are in time applications by the appellants, citizens of Bangladesh, parents and their UK born children (dates of birth 26 February 2014 and 25 June 2011) for permission to appeal against the decision of Judge of the First-tier Tribunal Paul promulgated on 23 May 2018 which dismissed the appellants' appeals against the respondent's decision to refuse their human rights claim.

2. It is arguable that the Judge should have made findings on the witness evidence. There were four witnesses who gave evidence that they had met the first appellant in or around 1996 (see [16] - [19]) but the Judge

does not come to any explicit conclusions on that evidence at all (see para 15 grounds).

3. It is also arguable that the Judge should have made explicit findings on the best interests of the children, although if the Judge's other findings stand and in the absence of specific evidence to conclude that it would be detrimental to the children's welfare to go to Bangladesh with their parents it would be difficult to see how as at the date of hearing the appellant could have succeeded on the basis that it might just be in the interests of the older child to remain in the UK because of his continuing education in the UK.

4. Whilst I do not restrict the grounds which may be argued I consider the other grounds amount to mere argument with the Judge's conclusions; when considering the first appellant's ability to integrate into Bangladesh it should be noted that the first appellant would be returning with his wife, who had left Bangladesh on any view much more recently.

### The Hearing

7. For the appellant, Mr Shah told me that the Judge's decision is tainted by material errors of law. He told me that the first and second appellants gave evidence, and so did four other witnesses, but the Judge does not analyse the evidence of those witnesses nor does the Judge make any findings of fact on the basis of that evidence.

8. Ms Kiss interjected and told me that the respondent accepts that the Judge has failed to make findings of fact and failed to analyse the evidence of witnesses. Although between [16] and [19] the Judge records that those witnesses gave evidence, the Judge goes on to (effectively) ignore that evidence. Ms Kiss told me that it is now conceded that the failure to deal with the evidence provided is a material error of law. She urged me to set the decision aside.

### Analysis

9. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

10. The Judge's decision does not contain an analysis of the evidence provided by the appellant's witnesses. Between [16] and [19] the Judge says that he heard evidence from three particular witnesses. I am now told that the Judge heard from 4 additional witnesses. The Judge

reasoning & conclusions lie between [20] and [28] of the decision, but the Judge does not say anything about the evidence he heard from the appellant's witnesses. The Judge neither accepts nor rejects evidence which goes to a central issue in the appeal. The Judge does not say what weight is placed on the oral evidence. The Judge does not balance the oral evidence against the evidence that he discusses between [21] and [24] of the decision.

11. The decision is incomplete and creates the impression that the Judge ignores the oral evidence of the appellant's witnesses. That is a material error of law. I set the decision aside.

12. Mr Shah told me that the first and second appellants together with three witnesses are present today, but that a Bengali interpreter is necessary and no request for an interpreter had been made. He told me that one of the child appellants has now been in the UK for seven years and is a qualifying child, but no updated evidence in relation to the two child appellants is available today.

13. Ms Kiss told me that she wanted an opportunity to consider the evidence of the appellant's witnesses and to make enquiry about their status in the UK.

14. The net effect is that neither the appellant nor the respondent are in a position to deal with a further fact-finding exercise today. Mr Shah and Ms Kiss joined in asking me to remit this case to the First-tier Tribunal for a further fact-finding exercise.

15. I consider whether I can substitute my own decision but find that I cannot because further fact-finding is necessary.

#### Remittal to First-Tier Tribunal

16. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

17. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

18. I remit the matter to the First-tier Tribunal sitting at Taylor House to be heard before any First-tier Judge other than Judge N M Paul.

A handwritten signature in grey ink that reads "Paul Doyle". The signature is written in a cursive, flowing style.

### **Decision**

**The decision of the First-tier Tribunal is tainted by material errors of law.**

**I set aside the Judge's decision promulgated on 23 May 2018. The appeal is remitted to the First-tier Tribunal to be determined of new.**

Signed  
October 2018

Date 19

Deputy Upper Tribunal Judge Doyle