

2005 the first-named appellant was served with form IS151A as an overstayer. An application to extend his stay further was refused on November 10, 2005 with no right of appeal.

2. On August 23, 2008 the second-named appellant entered the United Kingdom as a student and was granted leave until September 30, 2010.
3. On June 23, 2010 the first and second-named appellants made an application for a Certificate of Approval for Marriage but this was refused on March 15, 2011.
4. On September 24, 2010 the second-named appellant made an application for leave to remain as a Tier 4 (General) student migrant and was given leave to remain in this country and that leave was subsequently extended until September 21, 2015. These applications included the third-named appellant who had been born in the United Kingdom.
5. On February 12, 2012 the first-named appellant submitted a human rights article 8 application on behalf of all the appellants, but this was refused and certified on October 22, 2015.
6. On January 9, 2017 the appellants applied for leave to remain, as a family. The respondent considered this application under Appendix FM of the Immigration Rules but refused the application on August 22, 2017. He refused the application because the appellants did not satisfy the requirements necessary for either the partner or parent route. The respondent also refused the application under paragraph 276ADE HC 395 because there were no "very significant obstacles" to their integration into Bangladesh. Additionally, the respondent concluded that it would not be unreasonable to require the third-named appellant to leave the United Kingdom with his parents. In considering whether there were any exceptional circumstances that would lead to a breach of article 8 ECHR the respondent had regard to Section 55 of the Borders, Citizenship and Immigration Act 2009 and concluded it would be in the third-named appellant's best interest to remain with his parents.
7. The appellant appealed this decision under Section 82 of the Nationality, Immigration and Asylum Act 2002 on September 4, 2017 and their appeals came before Judge of the First-tier Tribunal Monson on November 20, 2017 and in a decision promulgated on December 6, 2017 the Judge dismissed their appeals.
8. The appellant's appealed that decision on December 21, 2017 but Judge of the First-tier Tribunal Holmes refused permission to appeal finding the application was out of time and that this was a disagreement with the Judge's assessment of the evidence. Permission to appeal was renewed to the Upper Tribunal and Upper Tribunal Judge Coker granted permission to appeal on August 1, 2018 finding it arguable the Judge had not properly considered the best interests of the child and the reasonableness of

leaving the United Kingdom when considering section 117B(6) of the 2002 Act.

9. Pursuant to Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Procedure Rules) I make an order prohibiting the disclosure or publication of specified documents or information relating to the proceedings or of any matter likely to lead members of the public to identify any person who the Upper Tribunal considers should not be identified. The effect of such an “anonymity order” may therefore be to prohibit anyone (not merely the parties in the case) from disclosing relevant information. Breach of the order may be punishable as a contempt of court.

SUBMISSIONS

10. Mr Bellara adopted the grounds of appeal that had been lodged but submitted the real issue for this Tribunal was whether the Judge had failed to assess reasonableness. The Judge had erred when considering evidence relating to which language the child spoke and he submitted that the Judge in finding the third-named appellant was bilingual had speculated. Whilst the Judge had made adverse findings on certain aspects of the first and second-named appellant’s evidence, Mr Bellara submitted that such discrepancies did not go to the issue of what language the child understood. Following the decisions in Kaur (children’s best interests/public interest interface) [2017] UKUT 14 and MA (Pakistan) [2016] EWCA Civ 705 Mr Bellara submitted the Judge had to identify strong adverse features which would outweigh allowing a child who has lived here for seven years to remain. In the circumstances, he submitted there was an error in law.
11. Mr Whitwell submitted that there was no error of law. This was not a case where the Judge rejected the appellants’ claims to speak English but concluded that given their heritage and culture it was reasonably likely they were all bilingual. In particular, the Judge took into account the fact the third-named appellant had never been to Bangladesh and had lived here all his life but in considering the reasonableness of return the Judge found that the adult appellants lacked credibility when considering the impact of relocation to Bangladesh. The Judge referred to the fact that the covering letter accompanying the application made no reference to problems the third-named appellant may face in Bangladesh and simply relied on the fact that he had lived here for over seven years. The findings in paragraph 33 were, he submitted, open to the Judge.
12. Mr Whitwell also referred to the fact that the extensive grounds of appeal did not place any weight on the Judge’s finding on language. He referred to the decisions of Kaur and MA (Pakistan) and submitted that the real issue was reasonableness and the Judge had considered the best interests of the child and then reasonableness of return. The Judge was entitled to find that the adult poor immigration history was a strong enough reason to outweigh the wishes of the child to remain here and whilst a different

Tribunal may have reached a different decision nevertheless this decision was open to the Judge.

13. In response, Mr Bellara submitted that more weight should have been placed on how well the third-named appellant was doing at school and whilst the child's parent's immigration history was not glowing he submitted this was not a strong enough reason to refuse the application.

FINDINGS

14. The appellants had each applied for leave to remain and it appears accepted both in the First-tier Tribunal and today that this appeal centred around the third-named appellant. Without the third-named appellant's case the first and second-named appellants were unlikely to succeed given:
 - (a) The fact the first-named appellant had been here unlawfully since late 2004.
 - (b) The fact the second-named appellant had been here unlawfully since late 2015.
 - (c) The fact they formed their relationship whilst the first-named appellant was here unlawfully.
 - (d) Their immigration status had always been precarious.
 - (e) They had ties to Bangladesh.
15. When the appellants applied for leave to remain on January 9, 2017 the third-named appellant had been living in the United Kingdom for just over seven years and accordingly the third-named appellant's application fell to be considered by the respondent under paragraph 276ADE(1)(iv) HC 395 and article 8 ECHR. When considering article 8 section 117B(6) of the 2002 Act would apply. The Judge had to consider whether it would be reasonable to require the third-named appellant to leave the United Kingdom.
16. It is clear from the Judge's decision that he was fully aware of the respective arguments being advanced both by the parties. In particular, the Judge noted the third-named appellant had integrated into the British way of life and spoke English as his first language and had always been educated in this country.
17. The appellants argued that were he to be removed his education and welfare would be severely disturbed and disrupted and he would be taught in Bengali and would not be able to adjust to that language. It was claimed, on his behalf, that he only spoke a few words of Bengali. The respondent disputed this claim and highlighted inconsistencies in the evidence given by the adult appellants and submitted that this called into question their claims that the third-named appellant did not speak Bengali.

18. Having heard the evidence and submissions the Judge then went on to consider the credibility issues and identified two material discrepancies concerning whether the first-named appellant had worked unlawfully and secondly whether the third-named appellant was aware that relocation to Bangladesh was a possibility.
19. The Judge concluded that these discrepancies undermined their general credibility and the reliability of their evidence and taking into account the original application made no reference to any specific problems that the third-named appellant would experience in Bangladesh the Judge found that it was unlikely that the third-named appellant was not bilingual especially as he had a number of relatives of Bangladeshi heritage who were likely, like his parents did from time to time, to communicate in Bengali given that they were living in a part of London where there was likely to be a significant Bangladeshi diaspora. Mr Bellara submitted that the Judge speculated on issues and placed too much weight on inconsistencies in evidence.
20. The Judge, in my assessment, was entitled to make the findings he did on credibility and where adverse findings were made he was then entitled to place such weight on those findings, as he felt appropriate, when he considered other aspects of the appellants' evidence.
21. Looking at the grounds of appeal I note that with the exception of paragraphs 9 and 14 the grounds made no reference to the issue of language. Paragraphs 9 and 14 were recognised by the Judge who accepted the third-named appellant would speak English in school. Accordingly, I do not find the Judge erred in his approach to language.
22. Both representatives agreed the issue was reasonableness and I was referred to the leading authority is on this matter. I should add that subsequent to today's hearing the Supreme Court have handed down their decision in KO (Nigeria) and others v The Secretary of State for the Home Department [2018] UKSC 53. This appears to make clear that Section 117B(6) incorporated the substance of para 276ADE(1)(iv) without material change, but in the context of the right of the parent to remain. It was intended to have the same effect. The question was what was "reasonable" for the child. Nothing in the subsection imported a reference to the parent's conduct but it was relevant to consider where the parents were expected to be, since it would normally be reasonable to expect the child to be with them. To that extent, the parents' record could become indirectly material, if it led to their having to leave. It was only if, even on that hypothesis, it would not be reasonable for the child to leave that the provision could give the parents a right to remain.
23. The Supreme Court therefore emphasised that "there is nothing in the section to suggest that "reasonableness" is to be considered otherwise than in the real world in which the children find themselves" and if neither parent had the right to remain, then that is the background against which the assessment is conducted.

24. The ultimate question will be is whether it was reasonable to expect the child to follow a parent with no right to remain to the country of origin?
25. The Court of Appeal in MA (Pakistan) made it clear that they did not have to be compelling reasons in order to disrupt a child's life in the United Kingdom where that child had lived here for more than seven years but instead the Court had to consider whether it was reasonable to require the child to leave where there were good cogent reasons, even if those reasons were are not compelling. The Court concluded that the conduct of the parents should be taken into account when the general public interest in effective immigration control was under consideration.
26. In Kaur the Tribunal made clear that where there was a "qualifying" child under 117B (6)(a) of the 2002 Act "strong" or "powerful" reasons were required to outweigh the child's best interests.
27. The Judge considered in detail not only the best interests of the third-named appellant and had regard to the decision in Kaur but concluded at paragraph 49 of his decision that the best interests of the child must yield to the public interest.
28. A very poor immigration history and the fact neither parent had any right to remain themselves is a factor which can be weighed in the balance and whilst the third-named appellant's mother had been here unlawfully for only two years the child's father had been here unlawfully since his leave ended on March 31, 2004. The family life had started whilst he was here unlawfully.
29. Mr Bellara accepted that there is a fine line between success and failure for an appellant when the real issue was the reasonableness of removal from the United Kingdom.
30. I am satisfied that in a detailed and thorough decision the Judge had full regard to all matters but ultimately concluded the public interest including the very poor immigration history outweighed the child's desire to remain in the United Kingdom and whilst a different Judge may have reached a different decision the fact remained this decision was open to the Judge on the evidence before him.
31. I therefore find there was no error of law.

Notice of Decision

32. There is no error of law. I uphold the original decision.

Signed

Date 24/10/2018

A handwritten signature in black ink, appearing to read "SPAL" with a stylized flourish extending from the end.

Deputy Upper Tribunal Judge Alis

FEE AWARD
TO THE RESPONDENT

I do not make a fee award as I have dismissed the appeal.

Signed

Date 24/10/2018

A handwritten signature in black ink, appearing to read "SPALIS", with a horizontal line underneath the name.

Deputy Upper Tribunal Judge Alis