Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/12809/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26 June 2018	**On 24 July 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MOHIMA [K]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: [M M], Sponsor
For the Respondent: Mr C Avery, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Bangladesh, date of birth 22 August 1974, appealed against the Respondent's decision, dated 4 May 2016, to refuse leave to remain with particular reference to the issue of the Appellant's suitability. The appeal came before First-tier Tribunal Judge E B Grant who on 1 November 2017 dismissed the appeal.

Permission to appeal was given on 3 May 2018 on a renewed application before Upper Tribunal Judge Storey.

2. The Judge made adverse decisions against the Appellant in relation to her use of a proxy test taker and concluded that the Appellant having entered the UK illegally and acted unlawfully through arranging to use a proxy test taker had not shown that there were sufficient grounds for the view that the Appellant should remove was wrong. The decision was brief in its analysis of the Article 8 ECHR claim and it is certainly arguable that the Judge's consideration of the issue under 117B(6) of the NIAA 2002, as amended, is scant.

3. The Secretary of State said that the Appellant's removal was perfectly acceptable because the three children of the Appellant and her Sponsor were all British nationals born in the UK, had lived their lives here and could reasonably remain in the UK, without their mother, in the company of their father. Therefore Section 117B(6) was not engaged because there was no need for them to remove with their mother.

4. Irrespective of that interpretation, which I do not have to address particularly, the issue has really been raised as to whether or not in the light of the case law of *MA Pakistan* [2016] EWCA Civ 205 or *AM (Pakistan)* [2017] EWCA Civ 180 or *MT and ET* [2018] UKUT 88 the Judge has properly addressed the question of proportionality bearing in mind the children are respectively 12, 11 and 9 years of age and all in full-time education: The evidence was before the Judge of that matter. More particularly in assessing proportionality the Judge seems to have completely ignored the impact or the potential impact on the children of being separated from their mother. It was submitted on behalf of the Appellant by her representative, as noted in the decision at paragraph 4 that it was not reasonable to expect the children to live without their mother and she should not be expected to leave them behind. They were it was said still young and need full time maternal care.

5. The Judge in dealing with this point rather took the view that it was a matter of choice as to whether or not he and the children should remain in the UK. If they chose to do so, so be it and if not then they could have the Appellant's company back in Bangladesh.

6. The Judge did address the children's best interests but the analysis of that is wayward in terms of assessing the proportionality of the decision bearing in mind, although the Appellant has a poor immigration history, the considerations of the impact of separating her from their children. It is enough to say the Judge simply does not address their best interests in terms of the implications of them needing their excluded mother. I find that the Judge's reasoning was insufficient and no adequate and proper reasons have been given. There is therefore an error of law. The Original Tribunal's decision cannot stand.

DECISION

7. The appeal is allowed to the extent that the matter must be remade in the First-Tier Tribunal.

DIRECTIONS

(1) The matter is to be remade in the First-tier Tribunal not before First-tier Tribunal Judge E B Grant.

(2) Hearing for two hours.

(3) Bengali interpreter required.

(4) Any further updated Article 8 ECHR evidence to be served not later than ten working days before the further hearing.

(5) The matter to be remade at Hatton Cross Hearing Centre.

(6) The findings by the Judge in relation to the ETS test results to stand unless otherwise agreed between the Appellant and the Respondent.

(7) No anonymity direction is made.

Signed Date 4 July 2018

Deputy Upper Tribunal Judge Davey