



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

Appeal Numbers: HU/13240/2017
HU/13312/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 29 October 2018**

**Decision & Reasons Promulgated
On 13 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**MRS SHAHNAJ RAHMAN
MR SHEIKH MUSLEH UDDIN
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J Acharyas, Solicitor

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Bangladesh born on 1 April 1979 and 10 February 1982. They are married and have two children who were born on 8 June 2011 and 12 June 2015.
2. On 27 June 2016 the appellants made a human rights application seeking leave to remain in the UK on the basis of their private and family life. The application was refused by the respondent on the basis that the suitability requirements under the

Immigration Rules were not met as Educational Test Service (ETS) had identified that the first appellant had used deception in an English language test and that in any event there were insufficient reasons under Article 8 (either within or outside the Immigration Rules) to grant leave to remain. The appellants appealed to the First-tier Tribunal where their appeal was heard by Judge of the First-tier Tribunal Phull. In a decision promulgated on 25 June 2018 the judge dismissed the appeal. The appellants are now appealing against that decision.

Decision of the First-tier Tribunal

3. The judge firstly considered the deception allegation and found that the respondent had not discharged the burden of establishing that the first appellant had engaged in fraud.
4. The judge then considered Paragraph 276ADE of the Immigration Rules and concluded that the requirements were not met. The judge found that the appellants would not face very significant obstacles integrating into Bangladesh.
5. With regard to Article 8 ECHR outwith the Rules the judge focused on the appellants' eldest child, who at the time of the hearing had lived her entire life of almost seven years in the UK. At paragraphs 39 to 42 the judge stated:
 - "39. Turning to the best interests of the appellant's eldest child [] I find, as follows. She was born in the UK and it is accepted that she has visited relatives once in Bangladesh with her parents. At the date of hearing she was 3-weeks from her 7th birthday. It is not in dispute that she has language and speech problems, as supported by the letters from her doctor and speech therapist. The evidence is that she started nursery in September 2014 and Dallows Primary School in September 2015.
 40. The school says that she is able to follow instructions involving ideas or actions. Dr Gupta at the Edwin Lobo School in his assessment of 18 August 2016 says that, '... [her] understanding of English and Bengali were assessed when she first came to the clinic. Her skills in both languages were considered to be at a similar level'. In her letter of 5 April 2017 the speech therapist says that, '[the eldest child] has progressed with her language and is able to use a range of simple sentences with a subject + verb + object structure'.
 41. I find that whilst [the eldest child] has speech and language skills she is improving as supported by the letters considered above. I find the evidence satisfies that her parents have also been supporting her to practice her language skills.
 42. I find although the appellant and his wife want [the eldest child] to remain in the UK and continue receiving the support of speech therapists, the evidence is that her circumstances are not exceptional because she is making progress in her speech and language. She receives help from her parents to practice the speech exercises. There is nothing to suggest that she cannot access speech therapy support in Bangladesh or continue receiving help from her parents. I find that she can continue to practice the skills she has learnt, with the support of her parents in Bangladesh, in the same way as she does in the UK. For all these reasons, I find it is

reasonable for [the eldest child] to leave the UK with her parents. They can help her adapt to her new surroundings and with the extended family in Bangladesh. Whilst there may be some disruption in her life, I find it is in her best interests to be with her parents and sibling, as a family unit. I find she is young enough to adapt and her parents are in the best position to help her settle”.

Grounds of Appeal and Submissions

6. The grounds of appeal submit that the judge erred by failing to consider whether it would be in the eldest child’s best interests to move to Bangladesh and by not having regard to the difficulties she would face or to her educational needs. It was also argued that the judge erred by failing to adequately consider the impact on the appellant’s family in the UK.
7. Mr Acharyas, on behalf of the appellants, argued that the judge erred by failing to give proper consideration to the fact that the appellants’ eldest child was about to turn seven when the hearing took place, and had turned seven before the decision was promulgated. He maintained that *MA (Pakistan)* [2016] EWCA Civ 705 makes clear that where a child has lived in the UK for over seven years there must be powerful reasons if leave to remain is not to be granted and he maintained that there were no such reasons advanced by the judge in this case. He also argued that the judge failed to adequately consider the eldest child’s age, length of time in the UK, education in the UK and the extent and nature of her linguistic difficulties.
8. Ms Isherwood argued that the submissions of Mr Acharyas were different to the grounds of appeal, but that in any event the judge had given proper consideration to the eldest child’s age, time spent in the UK, and all factors raised by Mr Acharyas.

Analysis

9. The appellants’ eldest child had been in the UK for over seven years when the decision was promulgated. She therefore was a qualifying child under Section 117D(1)(b) of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”).
10. Under Section 117B(6) of the 2002 Act where, as in this appeal, a person is not liable to deportation and has a genuine and subsisting parental relationship with a qualifying child the public interest will not require their removal where “it would not be reasonable to expect the child to leave the United Kingdom”. Accordingly, the central issue for the judge to determine was whether it would be reasonable to expect the appellants’ eldest child to leave the UK as part of a family unit in the context of her parents having no right to be in the UK and also leaving the UK.
11. Although the judge has not specifically referred to Section 117B(6), it is clear that he has applied his mind to the “reasonableness” test when considering the proportionality of the appellants’ oldest child leaving the UK. In both paragraphs 42 and 44 the judge stated that he found “it reasonable for [her] to leave the UK with her parents”. I therefore do not accept that the judge failed to apply the test in Section 117B(6) of the 2002 Act.

12. Nor do I accept that the judge's analysis of reasonableness was inadequate because of a failure to consider relevant factors such as age, duration in the UK and education. It is apparent from paragraphs 39-42 of the decision (as quoted above) that in determining the reasonableness of the eldest child leaving the UK and moving with her family to Bangladesh the judge had regard to a range of factors, including:
- a) that she was born in the UK (Para 39)
 - b) her age (para 39)
 - c) that she had been in the UK for almost seven years (para 39)
 - d) that she has speech and language problems and receives ongoing support in the UK (paras 39 - 41)
 - e) that she is supported by her parents (paras 41 and 42)
 - f) the absence of evidence speech therapy could not be accessed in Bangladesh (para 42)
 - g) the presence of extended family in Bangladesh (para 42)
 - h) her parents' familiarity with Bangladesh and ability to help her settle there (para 42).
13. Mr Acharyas submitted that the judge failed to take into account the appellant's eldest child's age, education and time spent in the UK. However it is clear from paragraphs 39-42, as summarised above, that consideration was given to the these factors.
14. Having correctly recognised that the applicable test is "reasonableness" and having, in the assessment of reasonableness, considered a range of factors that were focussed on the circumstances of the appellants' eldest child (rather than the conduct of the appellants), it was open to the judge (and consistent with the recent Supreme Court judgment in *KO (Nigeria) & Ors v Secretary of State for the Home Department (Respondent)* [2018] UKSC 53) to conclude that it was reasonable to expect the appellants' eldest child to leave the UK with her family. The appeal is therefore dismissed.

Notice of Decision

The decision of the First-tier Tribunal does not contain a material error of law and stands.

The appeal is dismissed.

No anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 7 November 2018