



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/14184/2016  
HU/14185/2016  
HU/14188/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 31 July 2018

Decision & Reasons Promulgated  
On 30 August 2018

Before

DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MOHAMMAD [I]  
FARZANA [I]  
[M A]  
(ANONYMITY DIRECTION NOT MADE)

Respondents

**Representation:**

For the Appellant: Mr L Tarlow, Home Office Presenting Officer  
For the Respondents: Mr J Plowright, Legal Representative, Nandy & Co

**DECISION AND REASONS**

1. In a decision posted on 18 December 2017 Judge Oliver of the First-tier Tribunal (FtT) allowed the appeal of the respondents (hereafter the claimants) against the decision of

the appellant (hereafter the Secretary of State or SSHD) dated 19 May 2016 refusing them leave to remain in the UK.

2. The principal ground advanced by the SSHD is that the judge erred in permitting the principal claimant to amend the grounds of appeal to include the matter of which the principal claimant now qualified on grounds of long residence.
3. I am grateful to both representatives for their succinct submissions. It is entirely clear in my judgment that the judge fell into legal error. At the date of the refusal decision the principal claimant had just short of nine years' continuous residence in the UK and the SSHD was not required to consider whether he had achieved ten years. By the time of the hearing the principal claimant had accrued ten years but the judge was not permitted to accept amendment of the grounds so as to include a new matter unless the SSHD had consented to that. That is the clear purpose of s.85(6)(a) of the NIAA: see Mahmud [2017] UKUT 00488 (IAC). It is entirely clear that the claim based on ten years' long residence was a new matter.
4. There was discussion at the hearing as to whether, if I found the judge erred in relation to the treatment of the new matter (as I have), the case should be remitted to the FtT to address the other grounds relied upon by the claimants at the hearing. I have decided that would be inappropriate. At paragraph 14 Judge Oliver stated:

"14. For the avoidance of doubt, the position was clearly very different at the time of application and refusal. The respondent gave cogent reasons, contained in the refusal letter, why the appellants did not satisfy the requirements for leave to remain at that stage. Had there not been the significant supervening development under the rules, their appropriate course would have been to have returned to Bangladesh and applied for leave to enter under paragraph 51."
5. This amounts to a clear and unequivocal rejection of the principal claimant's grounds of appeal challenging the SSHD's assessment that he did not meet the requirements of the Immigration Rules. There has been no reply/cross-appeal taking issue with this rejection.
6. In such circumstances I conclude that:
  - (1) the decision of the FtT must be set aside for material error of law;
  - (2) the decision I re-make can only be to dismiss the claimants' appeals. The only remaining grounds on which the claimants are able to raise has been the subject of unchallenged rejection by the FtT.
7. As discussed with the parties, the claimants' obvious course of action now is to make a fresh application for leave to remain based on ten years' continuous residence. Their failure in this appeal should have no prejudicial effect on the SSHD's assessment of that application.

No anonymity direction is made.

A handwritten signature in black ink that reads "H H Storey". The letters are cursive and connected, with a long tail on the final 'y'.

Signed:

Date: 19 August 2018

Dr H H Storey  
Judge of the Upper Tribunal