



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/17328/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 6 July 2018

Decision & Reasons Promulgated  
On 1 August 2018

Before

DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M A A  
(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mr S Walker, Home Office Presenting Officer  
For the Respondent: Mr M Hassan, Kalam Solicitors

**DECISION AND DIRECTIONS**

1. The respondent (hereafter the claimant), a citizen of Bangladesh, was born in the UK in March 2009. He has been an overstayer since March 2009. In March 2016 he applied for leave to remain. On 29 June 2016 the respondent decided to refuse his application. The claimant's appeal came before Judge Lingam of the First-tier Tribunal who, in a decision sent on 8 December 2017, allowed it on human rights grounds.

2. The appellant's (hereafter the Secretary of State's or SSHD's) grounds assert that the judge allowed the case under paragraph 276ADE(1)(iv) on the basis that inadequate reasons had been given as to why it was unreasonable for the claimant to return to Bangladesh. It was submitted that the judge relied unduly on speculation that made it arguable the claimant had not in fact discharged the burden of proof.
3. I heard succinct submissions from the representatives for which I express my gratitude.
4. I consider the SSHD's grounds are made out. The judge was entitled, in applying the guidance set out in **MA (Pakistan)** [2016] EWCA Civ 705 to require strong reasons to be shown by the SSHD to require a child who has resided in the UK continuously for over seven years to leave the UK, but it remains under both the Immigration Rules and Article 8 ECHR that it is for the appellant to show that he meets the requirements of the Rules or that the decision would be contrary to his human rights.
5. The great difficulty with the judge's reasoning in this case is that he repeatedly relies on an absence of evidence in favour of the client, filling the evidential gap by speculation. Despite stating at paragraph 11 that the burden of proof rested on the claimant the judge accepted that the claimant's parents had no social or family ties in Bangladesh because "the [SSHD] has not provided any counter evidence to disprove the claim" (paragraph 30) and because "[t]he [SSHD] has not provided probable evidence that his parents in Bangladesh, have a home (either family or their own) and or other vital connections which they can rely upon to re-establish themselves in Bangladesh and that which would preserve the [claimant's] best interests" (paragraph 35). At paragraphs 36-37 the judge stated:

"36. Mohammed would be returning to a country or an environment he has no experience. There is no evidence Mohammed's parents are educated professionals or that they have the ability to find good employment on return to Bangladesh. There is no evidence that on return to Bangladesh Mohammed's father would have ready job. There is no indication how long it would take for his father to find employment in Bangladesh. No doubt, Mohammed's father may have working experience gained in the UK but the question is whether on return his father would be able to find employment. Even so, it is unclear if his parents would remain in Dhaka or return to their home area. If they remain in Dhaka, finding employment may be a possibility but cost of living may be high in the city. There is no evidence his parents have savings. I am satisfied that securing accommodation for the family would require the appellant's father to first find employment that would pay enough to meet their over head cost of accommodation and daily needs. Without funds or for a lack of funds, it is probable the appellant's father may not have sufficient fund to rent a home for his family. As there is no information that emergency housing or assistance is available in Bangladesh, it is probable the family may eventually be forced to live rough. The family that includes Mohammed

would in time fall upon hard times and may be forced to live below the poverty line. Whilst I accept Mohammed will have his parents who would do their best to protect his best interests; however such involuntary descent to deprived living conditions may have a negative impact on Mohammed's mental well being for being forced to cope with situations he has no previous experience.

37. Further, there is no information regarding the start of an academic school year in Bangladesh. Even so, I have judiciary notice that government schools teach in standard Bangladeshi and private schools teach in English. Given his father may struggle to find a job that might give a reasonable income; it is probable his parents would be unable to place him in a private education. The alternative would require the appellant to have sound basic grasp of standard Bangladeshi language, which the appellant lacks. Any notion of him receiving tuition to improve upon the Bangladeshi language would depend upon family finances, which thus far may only be enough to meet the family's bare essential needs. In the event, Mohammed is registered at school without the required language classes, he would probably struggle with his education and that may have a negative impact on his development at a very early stage of his education (unlike in the UK). The school reports show that it was following three years at school and with encouragement from his teachers Mohammed eventually settled into his primary education. In reverse, it is probable that with the added language barrier Mohammed may lack the confidence to follow his lessons, complete school tasks and achieve class results that will influence his progress at school. I am satisfied that having benefited an encouraging school environment created by his current teachers that Mohammed, in comparison to the envisaged environment that a school in Bangladesh, may suffer different consequences that would have a negative impact on his best interests and overall well being."

6. In these latter two paragraphs the judge repeatedly relies in favour of the claimant on there being "no evidence" that the claimant's parents could find employment or accommodation and, in relation to the claimant's likely educational situation, simply assumes that he would face a language barrier, even though earlier at paragraph 30 he acknowledged that there was no evidence regarding whether or not the claimant speaks or understands Bengali/Sylheti. A similar difficulty afflicts the judge's findings at paragraph 48 that the claimant "speaks mainly English". If one asks "How does the judge know that?" the only answer discernible from the judge's decision - and indeed the evidence before the judge - is that there was insufficient to justify such conclusion. At paragraph 56 the judge launches a most hypothetical analysis predicated on what would happen if the claimant's parents were expected to leave the UK - the judge concludes that "the probability is that [the claimant would be taken into care by social services and which would not be in his best interest". Quite why the judge did not consider that, as there was no evidence to suggest that the family, if returned, would be returned other than as a family unit, is unexplained.

7. Indeed the judge's predilection for speculation permeates not just his findings in favour of the claimant but also those against (e.g. he assumes that the claimant has an awareness of his parents' culture and religion (paragraph 31).
8. Mr Hasan sought to argue that the judge was entitled to reach the findings he did in light of the witness statement of the father, but as the judge himself noted he did not hear oral evidence from either of the parents and he nowhere states that he considers this statement as reliable or accurate. I would also observe that the witness statement is extremely vague and unparticularised in relation to the client's likely situation in Bangladesh, simply stating at paragraph 7 "[w]e have nowhere to go in Bangladesh and we do not have any communication with anyone in Bangladesh". There was also a lack of evidence about the claimant's circumstances in the UK: even according to the judge "[t]here is no information of when they arrived in the UK and their activities since" (paragraph 34).
9. Mr Hassan has emphasised the importance in this case of the principle of the best interests of the child, but one aspect of this principle is that decision-makers including judge must be vigilant to ensure that the child's welfare is being secured by their parents. Yet on the judge's own account there was very scant evidence to establish this.
10. For the above reasons the judge's decision is vitiated by material errors of law necessitating that I set it aside.
11. I see no alternative to a remittal of this case to the First-tier Tribunal.

#### **DIRECTION**

12. It is directed that within six weeks from this decision being sent the claimant's representatives furnish (with copies to the SSHD) detailed witness statements from the parents setting out how long they resided in Bangladesh, where they lived in Bangladesh, how long they have lived in the UK and what they have been doing since arrival in the UK.
13. It is further directed within eight weeks from this decision being sent that the claimant's representatives obtain an independent social worker report on the welfare situation of the claimant, with particular reference to his aptitude in Bengali and Sylheti and his familiarity with the traditions and customs of his parents.
14. To conclude:

The decision of the FtT judge is set aside for material error of law.

The case is remitted to the FtT along with directions to the claimant's representatives.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Handwritten signature of H H Storey in black ink.

Date 26 July 2018

Dr H H Storey  
Judge of the Upper Tribunal