



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00217/2018

THE IMMIGRATION ACTS

Heard at Field House
On 24 May 2018 and 13 July 2018

Decision & Reasons Promulgated
On 31 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

S S

(ANONYMITY DIRECTION MADE)

Respondent

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 his 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.

Representation:

For the Appellant: Mr S Kotas, Senior Home Office Presenting Officer

For the Respondent: Mr S Mustafa, Counsel, instructed by Pillai & Jones Solicitors

DECISION AND REASONS

1. This is the remaking of the decision in this appeal following my error of law decision promulgated on 8 June 2018 (annexed to this decision). In essence I concluded that the First-tier Tribunal had erred by failing to provide adequate reasons for conclusions reached in respect of the Appellant's daughter's medical circumstances. The decision was set aside and listed to be heard before me at a resumed hearing. Directions were issued to the parties.

The issues in this appeal

2. The issues are narrow. They all relate to the Appellant's daughter, S. She suffers from a congenital condition relating to her rectum. The core questions are her current condition and what treatment she is in fact receiving in this country and what may or may not be available to her if the family unit returned to Bangladesh.

The hearing before me

3. In respect of the evidence to be considered, I have the Respondent's original appeal bundle under cover of front sheet dated 16 January 2018. Just prior to the hearing the Appellant's representatives submitted additional evidence, which I have admitted without objection from Mr Kotas. This consists of the following:
 - (i) a letter from Barts Health NHS Trust, dated 18 June 2018, from two paediatric surgical and stoma nurse specialists;
 - (ii) various internet materials relating to child abuse in Bangladesh;
 - (iii) a letter from Dr Mohammad Serajul Haque, a doctor in Bangladesh;
 - (iv) a letter from Dr Farsheed Hasan, a doctor at a private hospital in Bangladesh;
 - (v) a letter confirming an appointment for S at The Royal London Hospital on 15 August 2018.
4. Mr Mustafa provided me with a skeleton argument and a copy of the judgment of the Court of Appeal in AM (Zimbabwe) [2018] EWCA Civ 64.
5. At the outset of the hearing, and having read the skeleton argument, I asked Mr Mustafa why he was now seeking to raise Article 3, when this had not been raised at the previous hearing or in the lead up to the resumed hearing. He suggested that it could and should now be looked at again in light of AM (Zimbabwe).
6. Mr Kotas took a pragmatic view and suggested that I could look at both Article 3 and 8 on a "belt and braces" approach. I agreed to do this.
7. Mr Mustafa relied on the skeleton argument. He accepted that Dr Haque was a cardiologist and did not have speciality in S's condition. He asked me to infer that the doctor's position meant that he would have knowledge about what treatment was or was not available in Bangladesh for S. In respect of the letter from Dr Hassan, Mr Mustafa suggested that any treatment would be very costly and difficult to maintain in the long-term. Mr Mustafa accepted that S's treatment, such as it is, amounts to monitoring/follow-ups and the taking of medication (Movicol sachets). He accepted that there was no evidence to show that further surgery would be likely. He also accepted that S's mother, the Appellant, had been trained to use a relevant

implement to assist S and that there were no difficulties with this. Mr Mustafa suggested that return to Bangladesh would be contrary to S's best interests. He submitted that the evidence in this case could meet the high threshold set out in AM (Zimbabwe). In respect of Article 8, removal would be disproportionate and S should not be punished for the conduct of her parents. There was no guarantee of treatment in Bangladesh. Mr Mustafa accepted that S was receiving treatment on the NHS, as was the Appellant (who is now pregnant).

8. Mr Kotas referred me to the medical evidence contained in the Respondent's bundle and already considered by the First-tier Tribunal. The up-to-date evidence from the Barts NHS Trust was very brief in nature. At its highest, S would need follow-up until she was sixteen years old and relevant medication in the form of the sachets. The only ongoing medical issue really was that of intermittent constipation. He noted that there was no evidence from the treating doctors in the United Kingdom as to the possible impact of S being taken away from this care and sent to Bangladesh. The letters from the two Bangladeshi doctors should be given little weight, if any. It was entirely unclear what evidence had in fact been seen by them and what treatment they were referring to as being too costly or unavailable. Mr Kotas submitted that S's case fell short of meeting the relevant Article 3 and/or Article 8 thresholds.

My remake decision

9. In light of the evidence before me as a whole, including the medical documentation in the Respondent's bundle and that produced by the Appellant, I make the following core findings of fact.
10. The Appellant came to the United Kingdom in 2009 as a student and married her husband in September 2013. They are both Bangladeshi nationals. The couple's older child, A, was born in October 2013 and S was born in October 2016. The Appellant is now pregnant and due to give birth later this year.
11. S was born with a congenital condition described as an anorectal malformation or an anterior anus. The Appellant underwent surgery soon after her birth and this proved to be successful. The Appellant was instructed in how to use a particular implement to assist with S's condition and I find that there have been no problems with this procedure. I find that the implement and procedure itself are straightforward, there being no evidence to the contrary and on the basis of the inference that anything more complicated is very likely to have been undertaken by medical professionals instead. I find that S is probably currently taking Movicol sachets which help to alleviate constipation. She may well be taking two sachets a day at present although it is not entirely clear. I accept that S's current treatment would include follow-ups until the age of sixteen. What is entailed by the follow-ups has not been set out before me. On the basis of the evidence I do have, I find that it involves basic checks of the affected area but little else. There is certainly no evidence that the condition has required any significant medical intervention after the successful surgery. All the evidence has said that there "may" be need for further surgery in the longer term, but I find that it has not been shown that this is a likely occurrence.

12. I turn to the evidence from the two Bangladeshi doctors. Starting with Dr Haque, I find that he is a cardiologist of one sort or another. He clearly has no expertise in S's particular condition. It seems as though he was provided with some medical evidence prior to writing his letter, although he has not made it clear what this was. He has not set out what he considers to be the relevant "treatment". He has not explained in any way how, as a cardiologist, he is able to say that any follow-ups should be with the consultant in the United Kingdom rather than any relevant doctor in Bangladesh, or why he believes that there will not be "proper facility" for S in her home country. With all due respect, I place very little weight at all on this item of evidence.
13. I regret to say that the same applies to the letter from Dr Hasan. I have no information whatsoever about his speciality, if any. It is of significance that the author accepts that he did not have sight of relevant medical documents. As with Dr Haque, he does not state what "treatment" he understands S to be receiving and gives no idea whatsoever about what the cost of any such equivalent treatment might be. It is therefore next to impossible to glean any value from his assertion that any treatment would be very costly and difficult to maintain in the longer term.
14. Both letter from the Bangladeshi doctors suffer from multiple weaknesses.
15. I find that there is no evidence from those with care of S in this country as to the possible effects of her having to leave the United Kingdom. There is no evidence about the general health provision in Bangladesh or, importantly, any facilities capable of providing adequate care for S's particular condition. There is no evidence about the availability of Movicol. There is no evidence about the cost of any treatment whatsoever.
16. Taking the evidence as a whole, I do not accept that appropriate for S's condition is unavailable in Bangladesh. Further, I do not accept that appropriate treatment in that country would be prohibitively expensive.
17. I find that the Appellant and her husband have significant ties to Bangladesh, including close family.

Conclusions

18. In respect of Article 3, and on the evidence before me and my findings thereon, S's circumstances fall very far short of reaching the high threshold required, even in view of AM (Zimbabwe) and Paposhvili v Belgium [2016] ECHR 1113. S's condition is in no way life threatening, her mother is providing some of the relevant treatment, and there is absolutely no reliable indication that her removal from the United Kingdom would lead to a rapid deterioration in her health leading to intense suffering or the shortening of her life. There is no evidence that adequate treatment in the form of follow-up and the provision of the medication is either not available in Bangladesh or would be beyond the reach of the Appellant and her family. There is no suggestion that the Appellant's husband could not find work in Bangladesh. The Appellant has failed to show by some margin that the Article 3 claim could possibly succeed.

19. I turn to Article 8. The Appellant cannot satisfy any of the relevant Article 8-related Rules, and this has been accepted throughout. I therefore consider the issue outside the context of the Rules, but with their significance well in mind.
20. There is clearly family life between the members of the nuclear unit. There is no such life outside of that unit. I accept that the Appellant herself has a private life in this country, as does S.
21. Removal in consequence of the Respondent's decision would not interfere with the family life because the unit would leave together. There would be a sufficiently serious interference with the relevant private lives such as to engage Article 8.
22. The Respondent's decision was in accordance with the law and it pursues a legitimate aim.
23. I turn to the issue of proportionality.
24. For present purposes I certainly accept that S's best interests lie in remaining with her parents and sibling.
25. In the first instance, I do not conclude that those interests also lie in remaining in the United Kingdom. I of course take into account the fact that she is receiving treatment of sorts in this country. However, in light of the evidence before and my findings thereon, this is not a case in which a departure would lead to the absence of appropriate care. Nor is it a case in which the child has resided in this country for a significant period of time and/or is at an important educational stage. Therefore, whilst I acknowledge that any threshold for establishing that best interests lie in a child remaining in the host country may not be especially high, it is simply not met in this case.
26. Continuing the "belt and braces" approach, I state an alternative conclusion, namely that the best interests do lie in S remaining in the United Kingdom. However, on any view those best interests are not strong at all. Aside from her very young age, S's condition is not very significant and it has not been shown that relevant treatment would be unavailable to her in Bangladesh. She has no ties outside of the immediate family unit, she is not in education, there is no evidence from medical professionals in this country that her removal would jeopardise her health and wellbeing to any significant extent.
27. In respect of the Appellant's second child, A, I conclude that her best interests lie in remaining with her parents and S. It has at no stage been argued that they also lie in remaining in this country and I conclude that they do not, taking into account her age, the length of her residence here, her stage of education, and the absence of any additional factors of note.
28. On the other side of the scales I take into account the following significant matters (incorporating a consideration of section 117B of the 2002 Act). It is a fact that the whole family have no status in this country, they cannot meet any of the relevant Rules, there are significant links to Bangladesh, the family are not financially independent, and both S and the Appellant have had recourse to NHS treatment.

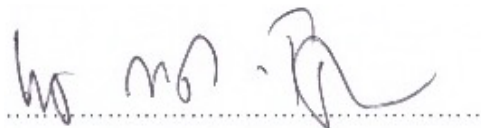
The public interest in ensuring effective immigration control is a powerful stand-alone factor.

29. The Appellant's ability to speak English is questionable, but I am prepared to accept it as a neutral factor for the purposes of this appeal.
30. Having considered all relevant matters and weighed them to answer the question of whether a fair balance has been struck in this case, I conclude that the Respondent's decision is proportionate and not unlawful under section 6 of the Human Rights Act 1998. This is so for the following reasons.
31. First, on my primary conclusion, S's best interests do not lie in remaining in the United Kingdom, and this factor therefore adds nothing to the Appellant's case.
32. Second, on the alternative conclusion (that S's best interests do lie in her remaining in this country), S's best interests are a primary consideration, but in substance they are not very significant, given my previous assessment.
33. Third, there are no significant factors in favour of any other of the family members, and no such suggestion has ever been made by Mr Mustafa: the focus has been and is clearly on S, and S alone. I make it clear that it has not been argued that the Appellant's current pregnancy represents a compelling circumstance, and I conclude that it does not.
34. Fourth, the threshold in Article 8 medical claims is a high one, although not as significant as under Article 3. As a stand-alone claim, it clearly does not succeed.
35. Fifth, the factors weighing the Respondent's favour are, in combination, very powerful. Even if S's best interests lie in remaining here, they are outweighed by some margin by the competing matters.
36. The Appellant's appeal is accordingly dismissed.

Notice of Decision

The decision of the First-tier Tribunal contained material errors of law and I have set it aside.

I remake the decision by dismissing the Appellant's appeal. The Respondent's refusal of the human rights claim was not unlawful under section 6 of the Human Rights Act 1998.



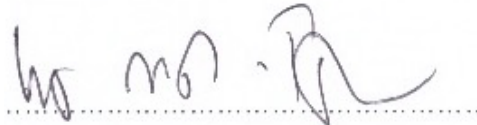
Signed

Date: 21 July 2018

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

A handwritten signature in black ink, appearing to read 'Norton-Taylor', is written over a horizontal dotted line.

Signed

Date: 21 July 2018

Deputy Upper Tribunal Judge Norton-Taylor

ANNEX: ERROR OF LAW DECISION



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

Appeal Number: PA/00217/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 24 May 2018**

Decision & Reasons Promulgated

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Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

S S

(ANONYMITY DIRECTION MADE)

Respondent

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. This direction has been made in order to protect the Appellant from serious harm, having regard to the interests of justice and the principle of proportionality.

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: Mr S Mustafa, Solicitor from Pillai and Jones Solicitors

DECISION AND REASONS

1. For ease of reference, I shall refer to the parties as they were before the First-tier Tribunal. The Secretary of State is once more the Respondent, and S S is the Appellant.
2. This is a challenge by the Respondent against the decision of First-tier Tribunal Judge Hanley (the judge), promulgated on 23 February 2018, in which he allowed the Appellant's appeal. That appeal was against the Respondent's decision of 15 December 2017, refusing her protection and human rights claims.
3. The Appellant is a national of Bangladesh. She came to the United Kingdom in 2009 as a student. In 2013 she married her husband, also a Bangladeshi national. The couple have two children: A, born in 2013, and S, born in 2016. They too are nationals of Bangladesh. The husband and two children have been and remain dependents upon the Appellant's claims.
4. The Appellant protection claim was essentially based on a fear of her own family because of the marriage to her husband. The article 8 claim focused on S, who was born with a condition affecting her rectum. Corrective surgery was carried out soon after S was born, and she has been undergoing monitoring since.
5. The Appellant is pregnant and due to give birth to her third child in August 2018.

The judge's decision in summary

6. The judge's decision is detailed and very well structured. Having set out procedural matters, the evidence before him, the representatives' submissions, and the relevant legal framework, he sets his findings of fact and conclusions out at [82] onwards.
7. On the basis of what is said in [82]-[92], the judge rejects the Appellant's protection claim. Adverse credibility findings are made and it is concluded that there would be no risk to the Appellant or her family members on return to Bangladesh.
8. Judge then moves on to article 8. In summary, he concludes that there was nothing in the particular circumstances of the Appellant, husband, and A to warrant a successful outcome. However, he regarded S's situation as being very different, having regard to her medical condition and the evidence in support thereof. Amongst other points made, the judge says the following:

"The evidence before me is that the surgery was successful and she receives regular monitoring. There is some suggestion that she may need further surgery

at some later stage in life, possibly when she is 6 or 10, but it is unclear and uncertain. I have a number of letters before me, but there is a lack of clear prognosis as to the need for future treatment. The tenor of much of this correspondence is that the surgery and treatment has been successful." ([98])

"There is a lack of evidence before me, save for the Appellant's assertion, as to what may be available in Bangladesh. I have been provided with limited information in connection with [S's] medical needs, but on the basis of what is available, I conclude that she appears to be stable." ([99])

"She [S] has regular check-ups. There is the possibility, and it cannot be put any higher than that, of the need for further surgery. The medical correspondence that appears in the Respondent's bundle indicates that the child is stable and, indeed, doing well, but she is clearly receiving ongoing treatment. I found this balancing exercise to be extremely borderline. I give virtually no weight to the views of the parents because they have a vested interest in seeking to remain in the UK for the entire families' benefit. I remind myself that I do not have any expert evidence as such nor a report from the treating doctor specifically prepared for the appeal. However she is clearly receiving ongoing monitoring, assessment and treatment. The mother is also being provided with specialist guidance as to the care of the infant." ([111])

"I have reached the conclusion that it is in [S's] best interest to remain in the UK where she can continue to access and be provided with a highly skilled specialist medical treatment and follow-up. She is receiving specialist paediatric care and I am not persuaded that the Respondent's general evidence in connection with the availability of paediatric care in Bangladesh is sufficient to dissuade me from finding that it is in [S's] best interests to remain in the UK for continued monitoring and follow-up." ([112])

9. The judge then quite correctly states that S could not succeed with reference to paragraph 276ADE of the rules by virtue of her age and time spent in the United Kingdom. He goes on to conclude that S had a private life in the United Kingdom, that life consisting of the medical treatment being received here ([117]). Specific references then made to the "balance sheet" approach, as recommended by both the Court of Appeal and Supreme Court in respect of article 8 assessments. [119] sets out a number of factors weighing against the Appellant and her dependents. At [120], the judge says this:

"On the other side of the "balance sheet" weighing against removal is the best interests of [S] as identified above at [111-112], namely, to continue with the medical treatment that she has received following the operation carried out to correct a congenital defect 3 days after her birth. That medical treatment includes regular monitoring and manipulation of the anus."

10. Finally, the judge brings all matters together, and in [122] states:

"In my judgement, [S's] best interests outweigh the public interest in the maintenance of immigration control, because of her specific medical history and medical needs because she received life-saving medical intervention at birth and she need specialist follow-up and monitoring. The child is under 18 months old and she will need ongoing medical monitoring at least until the age of six. The prospect of receiving that treatment in Bangladesh is uncertain. In my judgement

the best interests of this infant tip this finely poised balancing exercise in the Appellant's favour and are sufficient to outweigh the public interest in maintaining immigration control. In reaching this assessment I have held at the forefront of my mind that the best interests of the child are a primary consideration, not paramount nor determinative."

11. The Appellant's appeal is then formally dismissed on asylum, humanitarian protection, and article 3 grounds, but is allowed under article 8.

The grounds of appeal and grant of permission

12. In essence, the grounds take issue with the judge's reasoning and, in the alternative, suggest that the ultimate conclusion reached was not reasonably open to him on the available evidence. There is a particular focus on the absence of evidence to show that any relevant treatment would not be available in Bangladesh.
13. Permission to appeal was granted by first-tier Tribunal Judge Alis on 23 March 2018. He observes that the judge had not made any reference to country information on medical treatment in Bangladesh. In addition, he notes that the judge had appeared to have accepted the Appellant's oral evidence that she had found hospital that could provide relevant treatment to S, but had then seemingly not taken this into account when reaching his overall conclusions under article 8.

The hearing before me

14. At the outset of the hearing I confirmed with representatives that there had not been any cross-appeal by the Appellant in relation to her protection claim. Therefore, I am concerned only with the Respondent's challenge to the judge's decision on article 8.
15. Mr Melvin relied on the grounds of appeal. He indicated that paragraph 3 of the grounds did indeed raise a rationality challenge, although it had not been stated as clearly as it perhaps ought to have been. In my view it was permissible to read a rationality point into the grounds, and I made this clear to the representatives. Mr Mustafa did not object to this.
16. Mr Melvin submitted that there had been no evidence from the Appellant that relevant treatment would not be available in Bangladesh. Indeed, he referred to [52] of the judge's decision, where the Appellant herself had confirmed that she had researched matters and found an institution that could provide assistance. The judge had not explained why this evidence was insignificant. The judge had failed to explain what, if any, actual treatment was required: the evidence indicated that S was subject of monitoring and little else. Finally, Mr Melvin submitted that in light of the evidence as a whole, and even if the judge directed himself properly law and had given reasons, the conclusions reached were irrational.
17. Mr Mustafa asked me to read the whole [52]. There was a reference to second-hand information from a doctor in Bangladesh who believed that relevant treatment would not be available there. It was submitted that the judge had in fact discounted the Appellant's evidence about the availability of treatment later on in his decision at

[99]. Mr Mustafa submitted that the burden rested with the Respondent to show that relevant treatment was available. Even if treatment were available, it would have been too expensive for the Appellant, and this was relevant. In conclusion, Mr Mustafa submitted that although this case was borderline, the judge have done enough.

18. In reply, Mr Melvin re-emphasised his submission that care would be available in Bangladesh and that S's condition was not severe.
19. I reserved my decision on error of law.

Decision on error of law

20. This has been a difficult case to decide. The judge has clearly put a good deal of thought into his decision and has made largely impeccable self-directions as to the law. I have endeavoured to read the decision as a whole and in a sensible manner.
21. Notwithstanding this, I conclude that there are material errors which require me to set the decision aside. The errors I identify below relate to the provision of reasons.
22. It is quite clear from what he says at several points in his decision (quoted above) that the judge was faced with a lack of evidence and clarity as to S's medical situation. Doing the best he could with what he had, the judge was only able to find that the original surgical intervention had been successful, that the need for future surgery was "uncertain" and at most a "possibility", that S was "stable" and "doing well", and that she required "monitoring" and "follow-up". The Appellant had received instruction on how to assist S by using certain equipment and there was no indication that this was proving to be problematic. The latest medical evidence before the judge confirmed the timetable for reviews and that the provision of sachets of what I assume to be a laxative ("Movicol") was increased from one to two a day.
23. In light of this, it is difficult to see what the "treatment" referred to by the judge actually was. If he simply meant that it constituted the monitoring/follow-ups and manipulation of the anus by the Appellant, I struggle to see that this amounted to active "treatment" by medical professionals in this country. If the judge was indicating that there was *additional* treatment, he has not said what this was, with reference to the evidence.
24. On either basis, there is a lack of clarity here. Assuming that the judge intended his reference to "treatment" to encompass the monitoring only, there is in my view a lack of reasoning as to the specialist nature of this. There is nothing to suggest that S's condition was particularly rare, or that only a medical team in the United Kingdom (or indeed the specific hospital in question) could provide the necessary care. The reference to the "highly skilled specialist medical treatment" at [112] does not of itself locate the care requirements solely in this country. This issue must have been relevant to the issues of the strength of S's best interests in remaining in the United Kingdom and what treatment might be available in Bangladesh.

25. There are then what I consider to be material gaps in the reasoning as regards S's situation in this country. I would add two comments here. First, I have sympathy for the judge because he was not provided with the sort of evidence that ought to have come from the Appellant's side, in particular a report from the treating consultant. Second, I appreciate that my conclusions on the first reasons issue may appear to result from too intrusive an examination of the judge's decision. However, S's condition and treatment was quite clearly the core issue in the appeal and thus it required particularly careful consideration (including the provision of reasons on all elements of the material factual matrix).
26. I turn to the issue of treatment available in Bangladesh. In my view, there is a lack of adequate reasoning on this important matter. The deficiencies are as follows.
27. First, as stated above, there is a lack of clarity as to what S is actually receiving and from whom it can be provided by. This had a direct bearing on the issue of possible care in Bangladesh.
28. Second, in response to Mr Mustafa's point about the burden of proof resting with the Respondent, I say this. There may be a legal burden on the Respondent to show that removal in consequence of the refusal of the human rights claim is justified and proportionate. However, before one gets to this stage, it must be recognised that the importance of maintaining effective immigration control, particularly in a case concerning an Appellant and family members with no status in this country, will almost inevitably discharge the initial evidential burden. It would then require the Appellant to adduce evidence of her own to seek to rebut the Respondent's *prima facie* case against her. This is really the point at which country information and/or expert evidence and/or other sources come into play as regards not only what type of treatment is required, but also whether this is potentially available in the country of origin. I do not see it being the Respondent's responsibility to produce highly specific evidence without the individual having to do anything. This is particularly so in cases where it is said by an appellant that specialist medical treatment is required and that it is not available in the country of origin: how can the Respondent be expected to address such claims without clear evidence of what the required treatment is being placed before him.
29. Following on from this, it is apparent that the judge had virtually no evidence before him from the Appellant as to the possible availability of treatment in Bangladesh (see for example [99]). I have read the country information at pages 12-43 of the Appellant's bundle, but this is generalised and does not deal with S's situation at all. What he did have was oral evidence from the Appellant to the effect that she had undertaken some research and found that a hospital in Bangladesh did provide the necessary care (see [52]). This was the "best" evidence available. Contrary to Mr Mustafa's submission, I do not read [99] or [111] as constituting a rejection of that evidence. In [99] the judge expressly acknowledges her evidence. In [111] he states that virtually no weight was being placed on the "views of the parents because they have a vested interest in seeking to remain in the UK...". That is not a rejection of the Appellant's evidence on treatment in Bangladesh (which of course was not an aspect

of her evidence which assisted the argument in favour of remaining in the United Kingdom). Further, the judge does not find that he discounted the Appellant's evidence about her own research because he preferred what she had then said about a friend of her husband's believing that treatment would not be available. There is therefore a lack of reasoning as to why the Appellant's own material evidence was either of no significance, or, if it was being discounted, why that was the case.

30. Third, and connected to the first two points, it is insufficiently clear to the reader why, given the paucity of the evidence from the Appellant, the country information cited by the Respondent as to the general availability and level of paediatric care in Bangladesh failed to dissuade the judge from concluding that S's best interests were of such strength as to outweigh all other considerations ([112]), particularly in view of the high threshold applicable in medical cases (of which this was one, albeit involving a child).
31. Fourth, and again connected to the preceding points, the judge has failed to explain the effect of his finding that the prospect of receiving treatment in Bangladesh was "uncertain" ([122]) in the context of the evidence that was before him.
32. In light of my conclusions on the reasons challenge, I need not deal with the rationality issue.

Disposal

33. In a case such as this I would ordinarily expect to go on and remake the decision on the evidence before me. Any further evidence relied on by either party should have been submitted in advance of the error of law hearing.
34. For reasons which have not been explained to me, nothing more has come in from the Appellant. Indeed, Mr Mustafa's position was that if errors of law were found, the appeal should be remitted to the First-tier Tribunal. I informed him that this would not be appropriate. This was a case concerning the consideration of documentary evidence (subjective and country-based), together with whatever submissions the parties wished to make. There was no need at all for this to go back.
35. Mr Melvin suggested that I should remake the decision immediately and dismiss the appeal. Mr Mustafa did not actually address the issue before me.
36. Having thought about the fairest course of action, I have decided to adjourn the appeal and have it relisted for a resumed hearing before me in due course. The appeal concerns a very young child and I am conscious that the last medical evidence on her situation dates from October 2017. The Appellant should have a final opportunity to adduce updated evidence. To this effect, I issue directions, below.

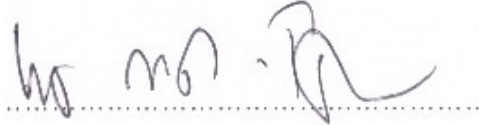
Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I adjourn the appeal for a resumed hearing before me in due course

Anonymity direction made



Signed
H B Norton-Taylor
Deputy Judge of the Upper Tribunal

Date: 5 June 2018

Directions to the parties

1. The issues in this appeal are narrow:
 - i. the current nature and extent of treatment/care for S in the United Kingdom;
 - ii. the availability of relevant treatment/care in Bangladesh;
 - iii. the significance of i and ii on the article 8 claim, in light of relevant case-law and section 117B of the 2002 Act (it is quite clear that the requirements of the rules cannot be met by any member of the family unit).
2. Any further evidence relied on by the Appellant (including medical reports and/or country information) shall be filed with the Upper Tribunal and served on the Respondent no later than 19 July 2018;
3. Any further evidence or response from the Respondent shall be filed with the Upper Tribunal and served on the Appellant no later than 10 days before the resumed hearing;
4. The resumed hearing shall proceed by way of submissions only.