



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

Appeal Number: IA/17077/2015

THE IMMIGRATION ACTS

Heard at Field House

On 13th July 2016

**Decision & Reasons
Promulgated
On 28th July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

**S S U
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not represented

For the Respondent: Ms Holmes, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh born on [] 2006. She appealed against the decision of the Respondent dated 7th April 2015 refusing to grant her further leave to remain in the United Kingdom under the Immigration Rules and on human rights grounds. The appeal was heard by Judge of the First-tier Tribunal Morris on 13th October 2015. The appeal was dismissed in a decision promulgated on 29th October 2015.
2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Hollingworth on 17th May 2016. The permission states that the judge has not set out a sufficient analysis relating to her findings that the Appellant could not fulfil the terms of the Immigration Rules. What she did was refer to the reasons for refusal letter at paragraph 14 of her decision and she stated that she had considered the reasons and other matters set out in the remainder of the refusal,

appertaining to the Refugee Convention 1950 generally, and the question of proportionality in particular. The permission states that the reference to proportionality in particular, attaches excessive weight to one factor in her consideration of whether the Rules are fulfilled in contradistinction to the other factors put forward in the case. The permission also states that in analysing whether there would be a breach of Article 8, the judge has not adequately considered the policy and rationale reflected in the provisions of Section 117, in the context of a genuine and subsisting parental relationship with a qualifying child in circumstances where it would not be reasonable to expect the child to leave the UK. The Appellant has been in the United Kingdom for more than seven years.

3. There is a Rule 24 response from the Respondent which states that with regard to the issue of reasonableness, the First-tier Tribunal Judge did not simply defer to the Respondent's basis for refusal but arrived at the same conclusions as the Respondent, endorsing the reasoning, which is in itself not an error. In addition she also supplemented additional reasons, which were strong. The response states that ample reasons are given in the decision for finding that the decision of the Respondent is proportionate and that the judge correctly relied on the case of **EV Philippines and Others [2014] EWCA Civ 874**.
4. The Appellant did not appear for the hearing of this appeal either in person or by representative. My clerk tried to telephone Kalam Solicitors in London, the Appellant's representatives, but no one answered the phone. I discussed this with the Presenting Officer and it was decided to go ahead with submissions from the Presenting Officer and consider the Appellant's claim based on these submissions and the evidence on file. No additional evidence has been supplied by the Appellant since the date of the First-tier hearing.
5. The Appellant is a qualifying child.
6. The Presenting Officer made her submissions relying on the Rule 24 response and submitting that strong reasons are required in a case like this when both of the Appellant's parents are in the United Kingdom illegally. She submitted that the reasons in this claim are sufficiently strong and I was referred to the said case of **EV Philippines** and also the case of **Zoumbas [2013] UKSC 74**.
7. The Presenting Officer submitted that the judge not only made reference to the Respondent's findings in the refusal letter but also put in her own reasons for refusing the appeal. I was referred in particular to paragraph 14 of the decision "Suffice it to say that for similar reasons as those set out in the reasons for refusal letter and also having regard to the reasons and other matters set out below in relation to my findings regarding the 1950 Convention generally and the question of proportionality in particular I have found that it would be reasonable to expect the Appellant to leave the UK". I was referred to the other reasons and the proportionality assessment. At paragraph 30 of the decision the judge relies on the said

case of **EV Philippines** in particular at paragraph 35 and the Presenting Officer submitted that the judge has considered everything before her and has put everything into her decision. She submitted that when all the material which was before the judge is considered the judge's reasoning might well be identical to that in the refusal letter and the judge was entitled to come to the same conclusion as the Respondent in her refusal letter. She submitted that the judge did everything she required to do. Her decision is well reasoned and there is no error of law therein.

8. I was referred to paragraph 30 of the decision in which the judge refers to the Appellant's and her family's private life being mainly with other members of the Bengali community in the United Kingdom. The judge found that the Appellant understands Bengali and is very young. Because of this and because of her family mix within the United Kingdom the change on her return to Bangladesh, will not be drastic.
9. I was referred to paragraphs 58 to 60 of the said case of **EV** and the best interests of children. This states that if neither parent has the right to remain in the United Kingdom then that is the background against which the child's assessment is conducted. The ultimate question will be, is it reasonable to expect the child to follow the parent with no right to remain to the country of origin? The Presenting Officer submitted that in this case none of the family is a British citizen and the Appellant's parents and sibling have no right to be in the United Kingdom. I was then referred to paragraph 37 of the said case of **EV** which refers to the strong weight to be given to the need to maintain immigration control in pursuit of the economic wellbeing of the country and she submitted that that is the case here. The Appellant's family have no right to remain in the United Kingdom. The immigration history of her parents is relevant. She submitted that as in the case of **EV Philippines** the need for immigration control outweighs the best interests of the children. At paragraph 35 there is a list of matters which have to be considered when the best interests of children are decided and this paragraph must indicate that in a case like this, the case of **EV** should be followed.
10. I was then referred to the said case of **Zoumbas** at paragraph 24 which clearly states that it is in a child's best interests to be with his/her parents and if the parents are not British citizens the child has no right to future free education and healthcare in the United Kingdom.
11. The Presenting Officer submitted that the judge has given proper reasons for her findings, has referred to the relevant case law and has made no material error of law in her decision.
12. I have carefully considered the terms of the First-tier Tribunal Judge's decision. I find that there is no merit in the ground of application which states that the judge has merely reiterated the reasons given in the refusal letter when making the decision on whether it would be reasonable for the Appellant to be expected to leave the United Kingdom. The judge has referred to the refusal letter but has also given many other reasons for

finding that it would not be unreasonable and has referred to the relevant case law.

13. With regard to the proportionality issue, again this has been properly considered by the judge. The judge knows how long the Appellant has been in the United Kingdom and knows the history of this family. The judge refers to the duty to safeguard and promote the welfare of children in the United Kingdom in accordance with Section 55 of the Borders, Citizenship and Immigration Act 2009 and has weighed this against the Respondent's interests in maintaining immigration control. She has considered the Appellant's protected rights under Article 8 but has also examined the immigration status of her wider family. The judge at paragraph 20 states that it is difficult to see how, absent any compelling and/or exceptional circumstances the family will not be removed from the United Kingdom. The judge finds that the Appellant is not responsible for her family's unsatisfactory immigration status, but her best interests are to remain with her parents. The judge then sets out the reasons why she finds there to be no compelling reasons which take the Appellant out of the ambit of the Immigration Rules per se.
14. The relevant case law has been taken into account by the judge and when the terms of the said cases of **EV Philippines** and **Zoumbas** have been considered and relied on it is clear that there are no material errors in the First-tier Tribunal Judge's decision. The judge has found that to remove the Appellant to Bangladesh is a proportionate interference, given that she would not be removed without her parents and sister and so the family would all relocate as a family unit.

Notice of Decision

There are no material errors of law in the judge's decision promulgated on 29th October 2015 and the judge's decision dismissing the appeal must stand.

Anonymity has been directed.

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

Date **28th July 2016**

Deputy Upper Tribunal Judge I A M Murray