



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

Appeal Numbers: IA/08237/2014
IA/07802/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29 August 2017**

**Decision & Reasons
Promulgated
On 15 September 2017**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

**Between
RAQUIBA [S]
[W H]
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: In person

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born in July 2011. His mother, also a citizen of Bangladesh had entered the UK as a student in 2007. In June 2012 his mother applied for leave to remain for her and him. This was refused in January 2014 and a decision was made to remove. The

appellant and his mother appealed. In a decision sent on 22 March 2016 First-tier Tribunal Judge (FtT) Lawrence dismissed their appeals on asylum, humanitarian protection and human rights grounds.

2. This decision was in fact a re-promulgation of his decision of 3 November 2014. He stated he had re-promulgated because his previous decision had contained a clerical error (omission of the word “not” in paragraph 44). The appellant does not take issue with this history.
3. The appellant’s mother had not made an asylum claim but before the judge she claimed that if she was removed to Bangladesh she would face persecution and serious harm as a member of a particular social group, namely a divorced woman returning to Bangladesh with a child born out of wedlock. She claimed that her former husband and family would seek revenge against her for having him deported from the UK. The judge rejected her account. He found that there was no cogent evidence that there had been any threats of any sorts made by her former husband or family in Bangladesh and in any event the appellant had a viable option of internal relocation as it was open to the mother to live in an urban area. The judge considered such an assessment was in line with **SA (Divorced Women - illegitimate child) Bangladesh CG [2011] UKUT 00254 (IAC)**. The judge then turned to consider the Article 8 circumstances of the appellant and his mother both under the Immigration Rules and outside them. The judge noted that he had been presented with a report recommending that it was in the appellant’s best interests to access treatment in the UK and not in Bangladesh. This report highlighted the fact that the appellant suffers from autism. At the same time, the judge observed, there was background information in the form of a “National Autism Network” stating that the Bangladesh government had put in place measures to deal with autism in Bangladesh. The judge concluded that “care is available for [the appellant] in Bangladesh. There are issues of funding and how widespread such care is Nonetheless it is available”.
4. In assessing the appellant’s best interests the judge made reference to a number of cases including **EV (Philippines) [2014] EWCA Civ 874**. Having assessed the appellant’s age, the fact he had lived in the UK since birth, had only just begun his education in the UK, the judge concluded he was young enough to establish himself in Bangladesh with his parents’ assistance (by parents here the judge clearly meant the appellant’s mother and the child’s biological father, [MH]). As regards the appellant’s family life with [MH], the judge stated:

“40. It is a fact that the appellants have a ‘family life’ with [MH]. [MH] is the father of the second appellant. He told me that he wishes to settle in the UK and not return to Bangladesh. He accepted that the respondent has never given him any grounds for legitimate expectation that because he has been granted student leave in the UK that he will be allowed to settle in the UK.

41. [MH] has limited leave to remain in the UK on a BA programme. He completes his studies at the end of 2015. He wishes to go onto a MBA programme. He has a choice. He could accompany his son and partner back to Bangladesh and pursue a MBA programme in Bangladesh or he can join them at the conclusion of his MBA programme here.”

5. In written grounds of appeal it was submitted:
- (1) that the judge had erred by failing to adequately consider the issue of the child’s best interests under s.55 of the Borders, Citizenship and Immigration Act 2009 while considering the issue of proportionality;
 - (2) that the judge failed to consider the appellant’s medical history of Global Development delay in light of the various articles that had been submitted concerning autism and lack of treatment facilities in Bangladesh;
 - (3) the judge’s reasoning with regard to **SA** was inadequate;
 - (4) that the judge failed to address the consequences to the family life as a result of the removal of the appellant and his mother since it would separate them from [MH], the child’s father, who was lawfully present in the UK; and
 - (6) the judge applied too high a standard of proof.
6. The appeal of the appellant and his mother as set out in the renewed written grounds of appeal submitted a further ground, which concerned the judge’s alleged failure to deal with the issue that the appellant’s mother was the victim of domestic violence from her former husband.
7. The decision of FtT Judge Hollingworth granting permission to appeal concluded that the grounds relating to Article 8 and s.55 were arguable.
8. Subsequently the appellant’s mother wrote to the Upper Tribunal stating that her immigration circumstances had changed as she was making a fresh claim to the respondent for ILR (based on ten years lawful residency) and therefore wished to withdraw her appeal. On 10 August 2017 UTJ Finch consented to her application to withdraw her appeal. UTJ Finch directed that the mother clarify within seven days whether she also wishes to withdraw the appellant’s appeal on the basis that she had parental responsibility. The appellant’s mother then sent a further “Skeleton Argument” confirming that the withdrawal of appeal related only to herself and that the appellant’s appeal was maintained. This document attached documents detailing the treatment he was currently receiving in the UK, including specialist help from autism key workers and speech and language therapists; and evidence of the state of provision for autistic children in Bangladesh. This document added that the lack of Bengali

language would pose another barrier to the first appellant given his learning difficulties and that to remove the appellant and his mother from the UK would have significant consequences to family life and separate mother from son.

9. At the hearing the appellant attended with his father who said he wished to represent his child. I granted him permission to do so. Mr Whitwell was agreeable to going first so as to help [MH] understand the nature of the arguments he had to address. [MH] then made his submissions.

My Assessment

10. Whilst the delay caused by FtT Judge Lawrence's re-promulgation is very unfortunate, this is not a case which turns on the assessment of credibility. The appellant's mother has withdrawn her appeal and in my judgment that entails withdrawal of the grounds of appeal relating to her claimed fear of persecution in Bangladesh. The grounds are concerned exclusively with the judge's assessment of the evidence relating to the best interests of the appellant in light of his medical condition. As Mr Whitwell outlined, this case now comes for resolution at a time when there is an outstanding appeal before the First-tier Tribunal relating to the decision of the respondent to refuse [MH] ILR on the basis of long residency. The appellant's mother also has an outstanding application (made on 12 September 2016) as an unmarried partner. These co-existing proceedings do not, however, affect the task I have to undertake, which is solely to decide whether the (re-promulgated) decision of FtT Lawrence is vitiated by legal error.
11. I am not persuaded that the grounds, both in their written form and as developed by [MH], are made out.
12. I discern no legal error in the judge's assessment of the best interests of the appellant. The judge correctly applied the guidance set out in **EV (Philippines)**, taking into account a range of factors including the appellant's age, strength of connection within the UK and his cultural and linguistic background. It was open to the judge to conclude that the appellant would be able to access treatment for his autism in Bangladesh. That was sufficiently supported in the background information before him. The judge's assessment at paragraph 34 that "there is nothing cogent put before me to suggest he cannot adapt to life in Bangladesh" was one that was reasonably open to him.
13. It is true that the judge's assessment of the best interests of the child and also of the proportionality of the decision appealed against appears to be predicated on the assumption that there would be no separation of the appellant, his mother and his father.
14. That, however, is consistent with the analysis carried out by the judge at paragraphs 40-41 where he held that it was a matter of choice whether

[MH] accompanied the appellant and his mother back to Bangladesh. [MH] presently had no established residence in the UK, having only limited leave to remain on a BA programme. Judge Lawrence cannot be expected to address the possible outcome of [MH]'s own appeal proceedings. That in my judgment dispose of ground (4) above. I should add that of course, if the appellant's mother succeeds in her own outstanding application, then obviously the appellant's case would require review, but that again is a matter that lies in the future and cannot affect the efficacy of Judge Lawrence's assessment.

15. Essentially the appellant could only succeed in his appeal if able to show that he was entitled to succeed (either under EX.1 or outside the Rules) on the basis that it would not be reasonable to expect that he leave the UK. Although the judge failed to address this criteria directly (as Mr Whitwell conceded), what matters is substance not form and I am quite satisfied that the judge's reasons for finding that the appellant's best interests would not be jeopardised by return to Bangladesh where care for his autism was available also served to demonstrate that requiring him to leave would not be unreasonable.
16. Regarding the criticism raised as to the judge's treatment of the **SA** case (ground (3) above) and his assessment of the risks to the mother arising out of her being a victim of domestic violence at the hands of her former husband and family. I conclude that it must fall away given withdrawal by the mother of her appeal. It was her conscious choice to rely entirely on her recent application for ILR on the basis of long residence.
17. I see no substance whatsoever in the allegation that the judge applied too high a standard of proof.
18. I observe that one of the cases dealt with by the Court of Appeal in **MA (Pakistan) [2016] EWCA Civ 705** concerned a child who had autism (the sixth appellant, AZ). Significantly, however, the child in that case had resided in the UK for seven years and as such was entitled to remain in the UK unless compelling reasons could be shown to the contrary. However, the appellant in this case was not a British citizen and had not resided in the UK for seven years.
19. In the course of clarifying that only she was withdrawing her appeal, the appellant's mother has now adduced further evidence including a number that postdate Judge Lawrence's decision, in particular a letter from her GP dated 23 March 2017, a letter from the Education, Health and Care Team at London Borough of Barking and Dagenham dealing with the EHC plan for the appellant, a letter of 17 July 2017 from a Speciality Doctor in Community Paediatrics. In deciding whether Judge Lawrence erred in law I cannot have regard to evidence that was not in existence at that time. As regards the documents bearing dates before Judge Lawrence's decision, they are of the same order as those which were before him when he heard the appeal and I do not consider they add anything of significance.

20. For the above reasons, I conclude that the FtT Judge did not materially err in law and accordingly his decision to dismiss the appellant's appeal must stand. (The appellant's mother's conjoined appeal has already been accepted as withdrawn).
No anonymity direction is made.

Signed

Date: 15 September 2017

A handwritten signature in black ink that reads "H H Storey". The letters are written in a cursive, slightly slanted style.

Dr H H Storey