



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

Appeal Numbers: IA257282015
IA257292015
IA257302015

THE IMMIGRATION ACTS

**Heard at Field House
On 12th July 2017**

**Decision & Reasons
Promulgated
On 7th August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

**MOHAMMAD [R]
SHANAZ [H]
[R R]
(ANONYMITY ORDER NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr B Singh, Counsel, instructed by Malik Law Chambers
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are all citizens of Bangladesh. Their appeals were dismissed by First-tier Tribunal Judge Baldwin in a decision promulgated on 27th October 2016. Grounds of application were lodged. It was said that

the judge erred in law (Ground a) in failing to have proper regard to the seven year residency of the child, (b) that his approach to the question of proportionality under Article 8 was legally flawed and (c) that the judge failed to have regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. Details are given.

2. Permission to appeal was initially refused by First-tier Tribunal Judge Ford, who found that Ground (a) was merely argumentative, (b) all of the issues relevant to proportionality were fully assessed and (c) was not arguable as the child's best interests were fully considered as a primary consideration.
3. Renewal of the grounds to the Upper Tribunal was successful in that Upper Tribunal Judge Plimmer found that it was arguable that the judge had failed to attach weight to the child's residence of over seven years – and that this approach was arguably not in accordance with **MA (Pakistan) v SSHD [2016] EWCA Civ 705**. A Rule 24 notice was lodged essentially saying that the judge directed himself appropriately and it was clear from paragraph 20 that the judge had very carefully considered the position of the minor in this case including their length of residence and level of integration. The Secretary of State considered that the grounds were no more than a disagreement with the findings of the judge.
4. Before me Mr Singh appeared for the Appellant and focused on paragraph 20 of the judge's decision. The judge had set out a number of factors which went to the proposition that it would be a breach of [RR]'s rights if she was returned to Bangladesh. Moreover, the Home Office IDI at paragraph 11.2.4 said that "strong reasons" would be required in order to refuse a case with continuous UK residence of more than seven years. The judge had not applied the terms of the IDI and the findings in paragraph 20 were inconclusive. In response to submissions from the Home Office I was referred to **MA** and to paragraph 46 where it was said that in cases of this type there must be a very strong expectation that a child's best interests would be to remain in the UK with his parents as part of a family unit, and that must rank as a primary consideration in the proportionality assessment. I was invited to set the decision aside and remake the decision in favour of the Appellants.
5. For the Home Office Ms Isherwood referred to **MA** and to paragraph 47. It was notable that the court rejected the submission that the best interests assessment automatically resolved the reasonableness question. If Parliament had wanted the child's best interests to dictate the outcome of the leave application it would have said so. Even where the child's best interests are to stay here it may still be not unreasonable to require the child to leave. Although the judge had not been referred to the IDI he had, in fact, considered the relevant considerations referred to therein, in particular under (a) there was no significant risk to the child's health. Under (b) the child would be leaving the UK with their parents. Under (c) the child was not dependent on wider family members who were here and under (d) the child was likely to be able to reintegrate readily into life in another country for reasons given by the judge. The judge's conclusions

were clearly set out in paragraphs 21 and 22 of the decision. There was no error of law in the decision, which should stand.

6. I reserved my decision.

Conclusions

7. As was said in **MA**, the fact that a child has been resident for seven years would be a factor which must be given significant weight in the balancing exercise but it does not otherwise modify or distort the usual Article 8 proportionality assessment. That test requires that where the parents have no right to be in the UK that is the basis on which the Article 8 proportionality assessment must be made. Before me both parties were happy to refer to the IDI referred to above albeit it was not put before Judge Baldwin. Mr Singh criticised the judge for making a number of findings in favour of the Appellant [RR] in paragraph 20 but not coming to any conclusion about those findings. It seems to me that the judge commenced making conclusions at the end of paragraph 20 and went on to give further reasons in paragraphs 21 and 22. He recognised that her best interests would probably lie in her being allowed to remain here with her parents but this was not a trump card. He said the question was whether it would be unreasonable to expect her to move to Bangladesh now and whether it would be disproportionate or unreasonable to expect all of them to do so. He used the word “now” having acknowledged in paragraph 20 that the child was 8.5 years of age and had always lived here and was doing very well educationally.
8. It seems to me that the judge did acknowledge the strength of [RR]’s case at paragraph 20 and he said that her position could not be equated with children who came to the UK when 5 to 8 years old and were now 13 to 16 years old – by inference referring in approximate terms to what is said in **Azimi-Moayed and others (Decisions Affecting Children; Onward Appeals) [2013] UKUT 197 (IAC)**.
9. Ms Isherwood did not shrink from the proposition that the judge had to show that strong reasons would be required in order to refuse an appeal for someone who enjoyed a UK residence of more than seven years. Going through the relevant considerations set out in the IDI it is clear that the judge had taken into account the relevant considerations. Specifically there is no significant risk to the child’s health if returned to Bangladesh. She would be leaving with her parents. There is no issue on the extent of wider family ties here and the judge did consider whether [RR] was likely to be able to integrate readily into life in another country. In terms of paragraph 22 the judge specifically noted that it would not be unreasonable to expect [RR] to move with her parents to Bangladesh where she would, for the first time, have the pleasure of meeting and forming family relationships with her many relatives there.
10. The judge clearly appreciated that the longer [RR] had been in the United Kingdom the more the balance would go in her favour in expecting a child

to leave the UK. It was not suggested to me that the judge had missed out any factor in his decision-making. It seems to me that the judge cannot be faulted for not considering the terms of an IDI which were not put to him by either party. Nevertheless, at least by implication, it can be inferred that he did attach significant weight to the fact that [RR] had been here for eight and a half years and was integrated here. He considered that [RR] had some knowledge of Bengali. There was no suggestion that the family will be split up. He accepted that she was now well-established at her school. It was not disputed that the judge asked himself the correct question as to whether it would be unreasonable to expect her now to move to Bangladesh and whether it would be disproportionate and unreasonable to expect all of them to do so. The judge explained the background as to what had led to the passage of time, noting there was little evidence to show that this had allowed the family to become more fully integrated here (paragraph 21).

11. The essence of Mr Singh's submission was that, standing the agreed facts, the appeal of [RR] should have been successful. What can be said is that in any similar case where a child has been here for around eight and a half years there is an argument that the appeal should be successful because of what is set out in the well-known case law and the IDI. However, that is a long way from saying that the judge in this appeal erred in law. In terms of the specific Grounds of Appeal the judge did consider whether it would be reasonable to expect the Appellant [RR] to leave the United Kingdom. He did take account of the best interests of [RR] (paragraph 20) and it was not an error in law (it was not argued that it was) not to mention Section 55 of the 2009 Act. In particular, the judge acknowledged that her best interests probably did lie in her being allowed to remain here but correctly said that that was not a trump card and went on to consider the other relevant factors.
12. For these reasons there is therefore no material error of law in the judge's decision, which must stand.

Notice of Decision

13. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
14. I do not set aside the decision.

No anonymity order is made.

Signed *JG Macdonald*

Date 4th August 2017

Appeal Numbers: IA257282015
IA257292015
IA257302015

Deputy Upper Tribunal Judge J G Macdonald