Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: IA/33059/2015**

IA/33060/2015

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 28 September 2017	**On 04 October 2017**

Before

UPPER TRIBUNAL JUDGE LANE

Between

S A
S S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Not present or represented
For the Respondent: Ms Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, S A and S S, were born in 1995 and 1999 respectively and are female citizens of Bangladesh. They appeal against decisions dated

30 September 2015 to refuse them leave to remain in the United Kingdom on human rights grounds (Article 8 ECHR). The First-tier Tribunal (Judge Broe) in a decision promulgated on 10 January 2017, dismissed the appeals. The appellants now appeal, with permission, to the Upper Tribunal.

2. At the Upper Tribunal hearing at Birmingham on 28 September 2017, Ms Aboni, a Senior Home Office Presenting Officer, appeared for the respondent. There was no appearance by either of the appellants nor were they represented by the immigration consultants (Samad & Co) who are recorded on the Tribunal file as acting for them. No communication had been received from either the appellants or from their representatives to excuse or explain their absence. I see from the court file that the notices of hearing were served both on the representatives and on the appellants at their last known addresses by second class post on 14 August 2017. There was nothing on the Tribunal file to indicate those notices of hearing did not reach their intended addressees. In the circumstances, I decided that the appeal may be disposed of justly in the absence of the appellants and their representatives.

3. The appellants arrived in the United Kingdom as visitors in December 2010. Although they had travelled with their parents, the parents had left the United Kingdom in June of 2011, the appellants remaining living in this country with an aunt. The appellants claimed that they had had no contact with their parents since they returned to Bangladesh. Before the First-tier Judge, the respondent had maintained that the appellants could not satisfy the requirements of paragraph 276ADE of HC 395 (as amended). The appellants had argued that they could satisfy the requirements of paragraph 276ADE on the basis that there were “very significant obstacles” to their return to Bangladesh. I note that, as at the date of the Upper Tribunal hearing, both appellants are adults. The second appellant was not an adult at the time of the First-tier Tribunal hearing.

4. The judge did not find the evidence of the appellants credible. The judge did not accept that the departure of the appellants’ parents and brother from the United Kingdom had been connected to political problems in Bangladesh. The judge did not accept that the appellants would have stopped trying to contact their parents some years prior to the First-tier Tribunal hearing. The judge found that the appellants had failed to prove that they were without family support in the United Kingdom or indeed in Bangladesh. The parents and brother of the appellants had not disappeared in Bangladesh, as the appellants claimed.

5. The first ground of appeal asserts that the judge had failed to address the test of “very significant obstacles ... to integration” as provided for under paragraph 276ADE. I find the ground has no merit. At [38], the judge found that there were no significant obstacles to the appellants reintegrating into Bangladeshi society. The judge’s finding was based primarily upon the fact that he had found that the appellants would have (contrary to their assertion) family support on return to Bangladesh. The

appellants had also failed to establish that they would be at risk in any way on return. As far as the second appellant is concerned, it is implicit in the judge's findings that there would be proper reception facilities (in the form of reintegration into the family of the appellants' parents and brother) upon return to Bangladesh.

6. The second ground of appeal complains that the judge had failed to consider the length of time that the appellants had spent respectively in Bangladesh and the United Kingdom whilst the third ground complains that the judge failed to give proper and full consideration to Article 8 ECHR outside the Immigration Rules and, in particular, failed to consider the vulnerability of the appellants on return. The fourth ground of appeal asserts that the appellants had not been involved in the decision to leave them in the United Kingdom as overstayers and should not, therefore, be punished for that decision.

7. I find that none of those grounds of appeal have merit. It is abundantly clear that the judge based his conclusions upon his firm finding that the appellants' parents and brother are living in Bangladesh and will look after the appellants upon their return to that country. I acknowledge that the judge's analysis is somewhat brief but it is apparent that the judge found that, because they would be received back into the home of their closest family members, return to Bangladesh would be in the best interests of the appellants. The argument does not appear to have been put to the judge that the appellants' best interests would be served by their remaining with a more distant relative in the United Kingdom, a country where, as overstayers, they have no right to remain. Further, the appellants would not be vulnerable because they would be living with their parents in Bangladesh. Likewise, it is difficult to see how the fact that the appellants, as children, are not responsible for the decision to leave them in the United Kingdom as overstayers should in some way "trump" their interests in returning to live with their closest family members in their country of nationality. It is arguable, following *Agyarko* [2017] UKSC 11 (a judgment which post-dated the promulgation of the First-tier Tribunal decision), that the judge should have proceeded with a full proportionality assessment of Article 8 ECHR outside the Immigration Rules. However, at [39], the judge has initially indicated that he need not consider Article 8 but then he has, in the alternative, concluded that if he were to consider Article 8, the decision to remove the appellants would be proportionate. Given the judge's findings and in particular his finding that the appellants would be received by and would then live with their parents and brother in Bangladesh, I find that the grounds of appeal have failed to establish that the judge has erred in law either for the reasons asserted or at all.

8. I note in passing that both appellants have now made claims for asylum in the United Kingdom. The making of these claims may, perhaps, explain their absence at the Upper Tribunal hearing.

Notice of Decision

These appeals are dismissed.

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 5 October 2017

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

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

Signed Date 5 October 2017

Upper Tribunal Judge Lane