



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/05742/2015
HU/05745/2015
HU/05750/2015
HU/05756/2015
HU/05763/2015

THE IMMIGRATION ACTS

Heard at Field House
On 17th January 2018

Decision & Reasons Promulgated
On 22nd February 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NOOR [A] (FIRST APPELLANT)
SHAMIMA [S] (SECOND APPELLANT)
ALIF [M] (THIRD APPELLANT)
SALMON [M] (FOURTH APPELLANT)
[I T] (FIFTH APPELLANT)
(NO ANONYMITY DIRECTION)

Respondents

Representation:

For the Appellant: Ms N Willocks-Briscoe
For the Respondents: Mr Taj Shah, instructed by Taj Solicitors

DECISION AND REASONS

1. The application for permission to appeal was made by the Secretary of State but for the purposes of this appeal I shall refer to the parties as they were described before the First-tier Tribunal, that is Mr [A] and his family as the appellants and the Secretary of State as the respondent. The Secretary of State challenges the decision of First-tier Tribunal Judge Metzger who on 10th April 2017 allowed the appeals of the appellants under Article 8 save for the fifth appellant whose appeal was allowed under the Immigration Rules.
2. The appellants are citizens of Bangladesh. The first two appellants are husband and wife born on [] 1961 and [] 1970 and the third, fourth and fifth appellants are the children of the first two appellants. Those children were born on [] 1992 and [] 1994 and [] 2005 respectively. They appealed under Article 8 of the European Convention on Human Rights. It should be noted that the third and fourth appellants are the adult sons of the first appellant and yet their claim was considered and has been considered together. The decision under challenge by the first, second and fifth appellant was a composite decision for all three appellants dated 2nd September 2015 and there was two separate decisions made with respect to the third and fourth appellants also dated 2nd September 2015.
3. The Secretary of State appealed on the following grounds
 - (1) the judge had failed to give adequate reasons. He failed to give consideration to the possibility of the appellants returning to Bangladesh as a family unit and allowed the appeal primarily on the basis of the fifth appellant's "Section 55 rights". There was inadequate reasoning; the fifth appellant was still in primary school and was unlikely to have developed a strong private life outside her immediate family structure. It was submitted it would not be unreasonable or unduly harsh for her to return to Bangladesh where she speaks Bengali, as found at paragraph 10 of the First-tier Tribunal decision and she would benefit from the emotional and financial support provided by the wider family. The children's interests were not a trump card. The judge had erred in his approach by failing to look at the evidence holistically and giving adequate weight to the public interest in maintaining a fair and effective immigration system;
 - (2) There was a material misdirection of law. The judge considered the two adult sons as dependants. They were aged 21 and 23 years respectively and therefore should be treated as adults and had not shown any element of enhanced dependency upon their father over and above normal emotional ties. The judge had not appeared to have considered that as adults there was no reason why they could not return to Bangladesh independently. They were educated and have good prospects of finding work. In the alternative they could assist and contribute financially to the wider family if they were removed as a unit. There was no reason why family members in the UK who support the appellants financially could not continue to do so and the judge had failed to examine this as an option thus rendering the proportionality assessment flawed. Four of the five appellants as adults would be eligible to work and provide for themselves more independently.

- (3) It is submitted that a balancing exercise had not been properly performed and the judge had failed to address Section 117B and the public interest in maintaining immigration control. The judge found that the family had not been a burden on the taxpayers while in the UK unlawfully and yet already noted at paragraph 10 they have all registered with the NHS, GPs and dentists and access in care to which they were not entitled.
- (4) The judge failed to consider that Section 117B provided that little weight should be given to a private life established whilst in the UK. It was submitted that aside from their first year together in the UK from 2008 to 2009 the whole of their stay in the UK had been unlawful. Any private life had been developed in the full knowledge of this. Further the appellants gave evidence via a Sylheti interpreter and the first appellant spoke little English despite having resided in the UK for thirteen years. Had the judge undertaken a proper balancing exercise he would not have arrived at the conclusion that he did.

Error of Law

4. The circumstances are that the first appellant entered the United Kingdom on 13th September 2003 on a visit visa and was then granted permission to take employment and had lawful leave to remain until August 2009. On 20th January 2008 his wife and three children joined him as his dependants and had lawful leave to remain until August 2009. The appellant sought an extension for leave in August 2009 as a work permit holder but was refused and has made further applications which were refused but he accepted he has had no further leave to remain. None of these appellants have had leave to remain. The fifth appellant the first appellant's daughter arrived in the United Kingdom, she was 2 years old and by the time of the appeal was 8 years and 9 months. The two sons entered the United Kingdom when they were 15 and 13 years respectively.
5. Despite Mr Shah's valiant attempts at the hearing to persuade me that the decision was sound, in that the judge had applied MA Pakistan v SSSHD [2016] EWCA Civ 705, I conclude that the objections to the decision raised by the Secretary of State have force. A further Robinson obvious point is that the fifth appellant cannot appeal under the immigration grounds and her appeal was on human rights grounds only. Her appeal was allowed under the Immigration Rules. That avenue of appeal has been amended and appeal under the Immigration Rules was not open to the appellant. That the fifth appellant may succeed under the Immigration Rules would have an impact of the assessment under Article 8 but depends on whether as at the date of application under paragraph 276ADE(iv) she had lived continuously in the UK for at least seven years **and** it would not be reasonable to expect her to leave the UK. Both those provisions needed to be satisfied and the question of whether it was reasonable to expect the applicant to leave the UK was not adequately reasoned by the judge. Despite the ability of the fifth appellant to be able to satisfy on the face of it paragraph 276ADE (iv), (apart from the lack of reasoning regarding reasonability of removal) the judge made no attempt to apply Section 117B as a whole and that in my view is a material error of law. It is clear that Section 117B(1) to (5) applies to

adults and children equally. I have highlighted the above where in the section that is made plain. The statutory provision clearly makes no exception for children. Further, the judge failed to address the fact that the third and fourth appellants were adults and has merely treated them as dependants of the first appellant. I thus find errors of law which were material to the decision.

Conclusions

6. I advised the parties that I concluded that the Secretary of State's assertion that there was an error of law was indeed made out because the judge had failed to apply Section 117 in its entirety as he was obliged to do and failed to give adequate reasoning as to why there were no countervailing reasons that the family could not return. The judge also indicated that the fifth appellant succeeded within the Immigration Rules and the other appellants succeeded outside the Immigration Rules. It was clear that as the decisions were made in September 2015 the only appeal to be considered was on human rights grounds. Whether the applicant can succeed within the Immigration Rules may have an effect on the proportionality and the balancing exercise to be undertaken with respect to Article 8 but it is not determinative of the appeal.
7. In conclusion I invited any further evidence and received only a document in relation to the transfer of the youngest child to secondary school. I preserved the evidence recorded by the First-tier Tribunal Judge and will draw on that in my consideration of this appeal.
8. I incorporate the previous findings of the judge into my decision
 2. *The first Appellant gave evidence with the assistance of a Bengali (Sylheti dialect) interpreter. He confirmed the contents of his witness statement dated 27 March 2017 were true.*
 3. *In summary, he confirmed he entered the United Kingdom on 13 September 2003 on a visit visa. He was then granted permission to take employment and had lawful leave to remain until August 2009. On 20 January 2008, his wife and three children joined him as his dependants and had lawful leave to remain until the same time.*
 4. *The Appellant sought an extension for leave in August 2009 as a work permit holder but was refused and has made further applications but accepted he had no further leave to remain. The fifth Appellant, the first Appellant's daughter, arrived in the United Kingdom when she was two years old and has now lived in the United Kingdom for eight years, nine months. His two sons are now aged twenty-three and twenty-one years old. The Appellant's daughter is in full-time education at Crowland Primary School and has made many friends and classmates. She is progressing well. She has very little recollection of her time and life in Bangladesh. She speaks English and does not speak Bengali fluently.*
 5. *The first Appellant has no network of support in Bangladesh and has been in the United Kingdom for thirteen years. Before that he worked in a medicine factory in Bangladesh and lived in rented accommodation. His parents are now deceased. He has one sister who is a British citizen who provides for the family financially.*

6. *In oral evidence, the Appellant confirmed that his family are close and loving and all live together. His sister and her husband live with one child. She looks after the whole family. The Appellant when he was able to work was a chef and believes he could continue to do so and also potentially obtain retain jobs.*
7. *In cross-examination, the first Appellant stated he reached intermediate level at college in basic subjects and speaks little English. When he worked in Bangladesh in the medicine factory he was packaging products in a production department. He has no previous retail experience.*
8. *The Appellant confirmed that he had been in the United Kingdom since 2003 and has no one in Bangladesh. There is a job crisis in Bangladesh and he does not believe he would be able to get work given his age were he to return. Whereas in the United Kingdom, he considered the opportunities would be available particularly in Indian restaurants. His sister cooks for the family and he does not know how much she spends on them as she would pay for the shopping and groceries from her own money.*
9. *The Appellant also has a sister-in-law in the United Kingdom who they visit once every one to two years and when they do so she would give gifts and some money to help them and for the Eid festival.*
10. *The first Appellant confirmed nobody would be able to help in Bangladesh. He has a brother-in-law and mother-in-law there but they live in a rented very small flat and his brother-in-law has a very low income. The fifth Appellant, the first Appellant's daughter has spoken English since the age of two and talks to them in both English and Bengali. She does not receive free meals. The family are now registered on the NHS with a GP and a dentist.*
11. *Witness statements from the second, third and fourths Appellants all dated 27 March 2017 were adopted and largely repeated what was contained within the first Appellant's statement and oral evidence.*
12. *There was also a supporting letter from Mrs Marzia Sultana, the first Appellant's sister confirming that she is a British and has looked after the Appellants who live with her in her accommodation and she provides them with financial support and has formed close relationships with the whole family.*
13. *There were also supporting letters from the second Appellant's sister who is also a British citizen and evidence in respect of the fifth Appellant's attendance at school showing good school reports as well as evidence concerning the third and fourth Appellants showing their qualifications and examinations passed which include some impressive results in various diplomas particularly concerning the fourth Appellant but also in regard to the third Appellant. There were also character references from various friends of the first Appellant'.*

9. I turn to consideration of the fifth appellant, the youngest daughter. I set out paragraph 276ADE for clarification

'Requirements to be met by an applicant for leave to remain on the grounds of private life

276ADE (1). *The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:*

- (i) *does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM; and*
- (ii) *has made a valid application for leave to remain on the grounds of private life in the UK; and*
- (iii) *has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or*
- (iv) *is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or*
- (v) *is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or*
- (vi) *subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK'.*

10. The application for leave to remain was made on 6th May 2015. As accepted by the decision letter the fifth appellant had entered the United Kingdom on 20th January 2008 and it was accepted that she had resided here for seven years and seven months by the date of the application. It was not accepted however that it would be unreasonable to expect her to leave the United Kingdom as she would be returning to Bangladesh within a family unit with her parents and siblings where it was concluded that she would have the necessary support available to her to assist her integrating into the Bangladesh community and assist her with any language issues. Within the policy guidance which was in force as at the date of the decision in September 2015, namely an Immigration Directorate Instruction Family Migration, at paragraph 11.2.4 it states with regards reasonability of removal of a non-British child from the UK, as follows

"The requirement that a non-British citizen child has lived in the UK for a continuous period of at least the seven years immediately preceding the date of application, recognises that over time children start to put down roots and integrate into life in the UK, to the extent that being required to leave the UK may be unreasonable. The longer the child has resided in the UK, the more the balance will begin to swing in terms of it being unreasonable to expect the child to leave the UK, and strong reasons will be required in order to refuse a case with continuous UK residence of more than seven years.

The decision maker must consider whether, in the specific circumstances of the case, it would be reasonable to expect the child to live in another country.

The decision maker must consider the facts relating to each child in the UK and the family individually, and also consider all the facts relating to the family as a whole. The decision maker should also engage with any specific issues explicitly raised by the family, by each child on behalf of each child.

Relevant considerations are likely to include

- (a) *whether there would be significant risk to the child's health ...*
- (b) *whether the child would be leaving the UK with their parents ...*
- (c) *the extent of wider family ties in the UK ...*
- (d) *whether the child is likely to be able to reintegrate readily into life in another country. Relevant factors include:*
 - *whether the parents and/or child are a citizen of the country and so are able to enjoy the full rights of being a citizen in that country;*
 - *whether the parents and/or child have lived in or visited the country before for periods of more than a few weeks. The question here is whether, having visited or lived in the country, before, the child would be better able to adapt, and/or the parents would be able to support the child in adapting, to life in the country;*
 - *whether the parents and/or child have existing family or social ties with the country. A person who has extended family or a network of friends in the country should be able to rely on them for support to help reintegrate there;*
 - *whether the parents and/or child have relevant cultural ties with the country. The caseworker must consider any evidence of exposure to, and a level of understanding of, the cultural norms of the country. For example, a period of time spent living mainly amongst a diaspora from the country may give a child an awareness of the culture of the country;*
 - *whether the parents and/or child can speak, read and write in a language of that country, or are likely to achieve this within a reasonable time period. Fluency is not required – an ability to communicate competently with sympathetic interlocutors would normally suffice;*
 - *whether the child has attended school in that country*
- (e) *any country specific information, including as contained in relevant country guidance*
- (f) *other specific factors raised by or on behalf of the child.*

Parents or children may highlight the differences in the quality of education, health and the wider public services or in economic or social opportunities between the UK and the country of return and argue that these would work against the best interests of the child if they do leave the UK and live in that country. Other than in exceptional circumstances, this will not normally be a relevant consideration, particularly if the parents or wider family have the means or resources to support the child on return or the skills, education or training to provide for their family on return or if assisted voluntary return support is available”.

11. With the above evidence in mind I note that the youngest child and fifth appellant has now lived in the UK for nine years. Following **Azimi-Moayed and others decision affecting children onward appeals [2013] UKUT**, I accept that with regards children seven years from the age of 4 is likely to be more significant to a child than

the first seven years of their life but in the circumstances of the family as a whole I am not persuaded that the fifth appellant cannot reasonably relocate to Bangladesh. There would appear to be no significant risk to her health, she would be leaving the UK with her parents and brothers whose applications, for the reasons given below, cannot comply with the Immigration Rules. The parents and child and her brothers are all citizens of Bangladesh and able to enjoy the full rights of being citizens in that country and have access to that culture and education. The parents are clearly familiar with the culture and language of Bangladesh and indeed evidence was given that the fifth appellant talks in both English and Bengali. I am not persuaded the parents and child have no relevant cultural ties with Bangladesh (or indeed family) and certainly conclude that as the language of Bengali has been spoken at home and it is clear that the parents are familiar with the language and culture in Bangladesh, there is exposure to and an awareness of the culture of Bangladesh by the fifth appellant.

12. I appreciate that the fifth appellant has not attended school in Bangladesh and has now transferred into secondary school but the information from the school indicated that she is obviously a child without any special needs and indeed showed good school reports which suggested that she would be adaptable on return to Bangladesh to the education system which is clearly available there. Although she has been in full-time education at Crowland Primary School and has now transferred to secondary school and has made friends and classmates and may recall little of her time and life spent in Bangladesh, she will be returning with her family unit of parents and two brothers. It was confirmed in the oral evidence that the family are close and all live together.
13. I appreciate that the standard of education and the standard of the health facilities may not be of a similar standard in Bangladesh as in the United Kingdom but I do find that the best interests of the child would be to return to Bangladesh with her whole family even if her educational best interests are to remain in the UK with her family. I find that the third and fourth appellant cannot comply with the Immigration Rules and are assessed as independent adults and the fifth appellant would be deprived of their close family relationship should she remain here without them.
14. As such I am not persuaded that the fifth appellant can comply with paragraph 276ADE(iv). Even if the fifth appellants best interests are to remain in the United Kingdom for the reasoning given above I am not persuaded that it is not reasonable to expect the child to relocate to Bangladesh.
15. I turn to consideration of the fourth appellant, he is now 23 years old and entered the United Kingdom when he was 17 years old. Although like his brother who was subject to a separate decision he cannot comply with paragraph 276ADE(1)(v) because although he is under the age of 25 years he has not spent half his life living continuously in the United Kingdom and nor has he lived in the UK for twenty years. Similarly his brother entered the United Kingdom in January 2008. He entered the United Kingdom when he was 13, some nine years ago (less than half his

life) and therefore he too cannot comply with paragraph 276ADE(v). At present both brothers live as a family unit with both the brothers hoping to go to college.

16. I turn to consideration of the parents in respect of the Immigration Rules and note that they cannot comply with paragraph 276ADE as neither has lived in the United Kingdom for twenty years and on the evidence there are no significant obstacles to their return to Bangladesh. The father has worked there previously and has had work experience in the United Kingdom. The parents have each other and can return together to live with their sons if they choose. There were no indications of significant health problems in the family.
17. I find therefore that in relation to the Immigration Rules and paragraph 276ADE it would be reasonable for the fifth appellant to return to Bangladesh with her parents and brothers (bearing in mind her two brothers will have no leave to remain in the United Kingdom and would be expected to depart to Bangladesh).
18. On consideration of the appellants' human rights outside the Immigration Rules, I apply the principles in relation to **Razgar v SSHD** [2004] UKHL 27. I conclude that the proposed removal will be an interference by a public authority with the exercise of the applicants' right to respect for their private lives and will have consequences of such gravity as to engage the operation of Article 8. The decision is, however, in accordance, on my findings, with the Immigration Rules and thus the law. The interference is necessary for the protection of rights and freedoms of others but the question is whether the interference is proportionate to the legitimate public end sought to be achieved.
19. I factor in my findings in relation to the Immigration Rules to express the position of the Secretary of State in the Article 8 balancing exercise. On consideration of the wider aspects of Article 8 the Immigration Rules are an expression of the Secretary of State's view of the public interest and none of this family can comply with the Immigration Rules.
20. I accept that the family have developed a private life in the United Kingdom but their family life is predominantly amongst themselves, (save for the sister who has established her life clearly prior to the family coming to the United Kingdom), and the family will be removed together. I have noted the youngest child's best interests and bear those in mind. The two brothers are now adults and have lived in the UK for only a limited time and can be expected to have a knowledge of the culture of Bangladesh and the advantages of having had exposure to an education system in the UK. I have had no specific independent evidence before me to suggest that there are any particular difficulties in the removal of any of the appellants to Bangladesh or that the sons are anything other than healthy. The fifth appellant is not about to take formal exams and indeed the older children are prevented from attending university which they could do if they returned to Bangladesh. I accept that the removal from the United Kingdom might cause some dislocation and discomfort but I have in mind **ZH Tanzania and the Secretary of State for the Home Department** [2011] UKSC 4 that the best interests of children is that they remain with their

parents and are not necessarily a trump card. There is no question other than the fifth appellant would remain at home with her family unit and I have no doubt that the family would wish to remain together. Her education may be of a lower standard in Bangladesh but it is not the case that she would be without her parents, a home or education or healthcare on removal to Bangladesh. To continue their lives in the United Kingdom will indeed deprive them of further knowledge of their own customs and traditions there..

21. I must in the balancing exercise specifically apply Section 117 of the Nationality, Immigration and Asylum Act.

PART 5A

Article 8 of the ECHR: public interest considerations

117A Application of this Part

- (1) *This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts –*
 - (a) *breaches a person's right to respect for private and family life under Article 8, and*
 - (b) *as a result would be unlawful under section 6 of the Human Rights Act 1998.*
- (2) *In considering the public interest question, the court or tribunal must (in particular) have regard –*
 - (a) ***in all cases**, to the considerations listed in section 117B, and*
 - (b) *in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.*
- (3) *In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).*

117B Article 8: public interest considerations applicable in all cases

- (1) *The maintenance of effective immigration controls is in the public interest.*
- (2) *It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –*
 - (a) *are less of a burden on taxpayers, and*
 - (b) *are better able to integrate into society.*
- (3) *It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –*
 - (a) *are not a burden on taxpayers, and*
 - (b) *are better able to integrate into society.*

- (4) *Little weight should be given to –*
 - (a) *a private life, or*
 - (b) *a relationship formed with a qualifying partner,*
that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) *Little weight should be given to a private life established by a person at a time when the person’s immigration status is precarious.*
- (6) *In the case of a person who is not liable to deportation, the public interest does not require the person’s removal where –*
 - (a) *the person has a genuine and subsisting parental relationship with a qualifying child, and*
 - (b) *it would not be reasonable to expect the child to leave the United Kingdom.*

...

117D Interpretation of this Part

- (1) *In this Part –*
 - “Article 8” means Article 8 of the European Convention on Human Rights;*
 - “qualifying child” means a person who is under the age of 18 and who –*
 - (a) *is a British citizen, or*
 - (b) *has lived in the United Kingdom for a continuous period of seven years or more; ...*

- 22. Specifically it is in the public interest and the economic wellbeing of the United Kingdom that persons who seek to enter or remain in the United Kingdom are financially independent because they are not a burden on the taxpayers.
- 23. At present the family is not contributing to the tax coffers of the United Kingdom as none of the adults is in the position of working. I note that the sister provides accommodation but the family have accessed education and indeed the fifth appellant is at school. The family are also clearly registered on the NHS with a GP and a dentist and are accessing free medical care. There was no indication of any payment for the care. I am not persuaded that this family is not a burden on the public purse.
- 24. I am also cognisant of Section 117(5) which states “little weight should be given to a private life established by a person at a time when the person’s immigration status is precarious”. Not only is the maintenance of immigration control in the public interest and those who seek to remain in the United Kingdom should not be a burden on taxpayers but further none of these appellants have had lawful leave to remain since August of 2009. The further human rights application was made on 3rd June 2010 and was outside the validity of the then extant leave and the family were notified in May 2011 that the refusal of the human rights application was maintained.

Indeed in 2013 the family were served their notice of liability to detention and removal. The two older children were brought here as minors (as indeed the youngest child) but have had some years since their majority to address their immigration status. Caselaw has confirmed that not only the *establishment* of private life but also the *development* of private life should be given little weight when the immigration status is precarious. I have already set out my findings in relation to the child's best interests and the reasonableness of relocation from the United Kingdom under the Immigration Rules but I turn to Section 117B(6) and whether it would be reasonable to expect the fifth appellant to leave the United Kingdom as she has lived continuously in the UK for at least seven years having arrived at the age of 2 and having attended school on a full-time basis. In this instance the fact is that the child has been in the UK for seven years both at the time of the application and at the date of the hearing before me. I have found that it is reasonable for the child to remove from the United Kingdom.

25. In **MA Pakistan [2016] EWCA Civ 705** Elias LJ held at paragraph 17 that in relation to Section 117(6)

'once those conditions [Section 117 (6) (a) and (b)] are satisfied, the public interest will not require the applicant's removal. Since the interference with the right to private or family life under article 8(1) can only be justified where there is a sufficiently strong countervailing public interest falling within article 8(2), if the public interest does not require removal, there is no other basis on which removal could be justified'.

The question hangs on the reasonableness test. At paragraph 45 Elias LJ reasoned

"that wider public interest considerations must be taken into account when applying the 'unduly harsh' criterion. It seems to me that it must be equally so with respect to the reasonableness criterion in 117B(6)."

In other words the focus is not on the child alone. However it was recognised that where a child has been in the UK for seven years it must be given significant weight in the proportionality exercise.

26. Paragraph 53 of **MA Pakistan** states in effect that a child should not be blamed for matters for which he or she is not responsible such as the conduct of the parents, and emphasises that the *best interests* of the child are to be determined by reference to the child alone without reference to the immigration history or status of the parent, but the *reasonableness* of removal nevertheless must include a reference to the wider public interests and thus the conduct of the parents.
27. I have considered the full witness statements of the first four appellants who protest they cannot return to Bangladesh as they have no one to provide for their family and no support available. Those witness statements did acknowledge the fact that there was family in Bangladesh. The wife clearly has one sibling and that is one brother in Bangladesh, and some of the family there do have work. I acknowledge in relation to **Beoku-Betts v SSHD [2008] UKHL 39** that the sister of the second appellant accommodates them and it will disrupt their family life but as a core unit this family of five they will be returning to Bangladesh together. I have no doubt that the sister

set up her life in the United Kingdom separately from the appellants. The witness statement of the second appellant states “my family and I have carried out a peaceful life in the UK without recourse to public funds and maintain good characters.” I do not accept this statement. The family have indeed had recourse to public funds and it is expected that they would remain of good character whilst being in the United Kingdom.

28. I also take into account **Patel and Others and the Secretary of State for the Home Department [2013] UKSC 72** that the older sons the third and fourth appellants wished to partake of adult education but Article 8 does not encompass a right to education as such and without more. The family life of these appellants is with their parents and sister and with each other. They were brought here as minors and have had put down some roots here but they equally have had the advantage of education in the United Kingdom which they can use to their advantage on return. The first appellant had the benefit of work experience in the UK which he can put to use on return to Bangladesh and where the parents have lived most of their lives and where they will be returning to a culture and language with which they are familiar and where indeed they have family.
29. **EV Philippines [2014] EWCA Civ 874**, a prior Court of Appeal case to **MA Pakistan**, explained how a Tribunal should apply the proportionality test where the wider public interest considerations are in play and where the best interests of the child are such that he or she should remain in the UK. As noted in **EV Philippines** at paragraph 37
- “In the balance of the other side there falls to be taken into account the strong weight to be given to the need to maintain immigration control in pursuit of the economic wellbeing of the country and the fact that ex hypothesi the applicants have no entitlement to remain. The immigration history of the parents may also be relevant e.g. if they are overstayers or have acted deceitfully”.*
30. Jackson LJ also stated at paragraph 59 of **EV Philippines**
- ‘the assessment of the best interests of the children **must** be made on the basis that the facts are as they are in the real world. If one parent has no right to remain, but the other parent does, that is the background against which the assessment is conducted. If neither parent has the right to remain, then that is the background against which the assessment is conducted. Thus 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’?*
31. I cannot see that the desirability of being educated at public expense in the United Kingdom can outweigh the benefit to the fifth appellant remaining with her whole family unit, including her parents. Nor was I persuaded on the evidence before me that the removal would result in unjustifiably harsh **consequences Agyarko & Ors v SSHD [2017] UKSC 11**.
32. Further to **Huang and the Secretary of State for the Home Department [2007] UKHL 11**

“the ultimate question for the appellate immigration authority is whether the refusal of leave to enter or remain, in circumstances where the life of the family cannot reasonably be expected to be enjoyed elsewhere, taking full account of all considerations weighing in favour of the refusal, prejudices the family life of the applicant in a manner sufficiently serious to amount to a breach of the fundamental right protected by article 8’.

33. In the light of my findings above I am not persuaded that the child cannot reasonably be relocated to Bangladesh. As such Section 117(6) does not outweigh the remaining considerations in the balancing exercise. I do not find that the family and private life of any of the members of the family would be prejudiced in a manner sufficiently serious to amount to a breach of their protected rights.
34. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007) and remake the decision under section 12(2) (b) (ii) of the TCE 2007
35. No anonymity direction is made.

ORDER

I dismiss the appeal of all five appellants on human rights grounds.

Signed *Helen Rimmington*

19th February 2018

Upper Tribunal Judge Rimmington

TO THE RESPONDENT
FEE AWARD

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

Signed *Helen Rimmington*

19th February 2018

Upper Tribunal Judge Rimmington