



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/22788/2016
HU/22791/2016
HU/22792/2016

THE IMMIGRATION ACTS

Heard at Field House
On 16th August 2018

Decision & Reasons Promulgated
On 4th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SN (FIRST APPELLANT)
MRH (SECOND APPELLANT)
FR (THIRD APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr S Gill of Counsel, instructed by Liberty Legal Solicitors

For the Respondent: Mr S Walker, HOPO

DECISION AND REASONS

1. These are the appellants' appeals against the decision of Judge of the First-tier Tribunal Goodrich made following a hearing at Taylor House on 25th January 2018.

Background

2. The appellants are citizens of Bangladesh. The first and second appellants are married and parents of the third appellant. They also have a son who is present in the UK with leave to remain granted following his successful appeal.
3. There is a complex history to this case. The first appellant came to the UK on 17th May 2007 with leave to enter as a Tier 4 Migrant until 31st July 2010. She made a number of further applications and leave was extended until 13th January 2014.
4. On 23rd December 2013 she applied for leave to remain as a Tier 1 Entrepreneur which was refused on 30th May 2014. The appeals by all four members of the family against that decision were dismissed on 1st September 2015 but in the interim, the appellants' son applied for leave to remain on the grounds that he had been in the UK for over seven years. That application was refused but allowed on appeal on 3rd January 2017.
5. The remaining members of the family became appeal rights exhausted on 15th February 2016.
6. On 8th March 2016 the appellants applied for further leave to remain by reference to Appendix FM and paragraph 276ADE and it was the refusal of this decision which was the subject of the appeal before Judge of the First-tier Tribunal Goodrich.
7. In a lengthy and detailed determination the judge recorded the extensive oral evidence and the submissions, set out the applicable law and her assessment and findings of fact and concluded that the appeals ought to be dismissed on human rights grounds.

The Grounds of Application

8. The appellants sought permission to appeal on the grounds that the judge erred in law in the following ways.
 - (a) She failed to take into account that the first appellant was in the process of submitting an application on the basis of her ten years' long residence in accordance with the Immigration Rules.
 - (b) She had failed to fully consider the third appellant's circumstances, in particular that she is suffering from depression, anxiety, eating disorders and has been unable to complete her studies. She failed to grasp that there would be very significant difficulties to her integration into Bangladesh and dismissed the real concern that she would be at risk of a forced marriage.
 - (c) She had failed to consider that the first appellant's son has been granted thirteen months' leave and any return of the remaining members of the family would clearly result in an interference with their life together. The judge had wrongly dismissed the submission that there was no public interest in the removal of the parents in these circumstances.

9. Permission to appeal was granted by Judge of the First-tier Tribunal Boyes on 15th June 2018.

Submissions

10. Mr Gill helpfully provided a skeleton argument setting out why, in his submission, the judge had erred.
11. First, he said that the judge had erred in paragraph 28 when she said that she ought to consider the human rights appeal through the prism of the Immigration Rules. The Rules are simply statements of executive policy and distort the true light of the Article 8 jurisprudence. The proper approach is for the Tribunal to apply Article 8 for itself in accordance with the jurisprudence of the European Court of Human Rights.
12. Second, the judge had misunderstood the concept of precariousness when she said that, for example, the third appellant embarked upon her degree programme at a time when her mother's status was precarious. In the present case the family life and private life of each member of the family had not been precarious from the outset of their time in the UK. A student is entitled under the Immigration Rules to have her dependants live with her, and whilst there is no legitimate expectation to a later grant of indefinite leave to remain, that does not mean it is not reasonable for a person to think, that providing they continue to abide by the Rules the legitimacy and strength of their private and family life as rooted in the UK will not be recognised. On the contrary there is a reasonable expectation to that effect.
13. Third, the judge erred in not assessing the daughter's Article 8 rights on an individual basis failing to recognise that, whilst she has a continuing and strong family life within her family, she has to be treated as an autonomous individual with her own aspirations and own developments. She should have considered her as being not significantly different to a young person who had been in the UK with leave from childhood. She failed to properly take into account the fact that it was not reasonable to place significant weight on the fact of presence without leave when the child is a young adult because the situation in which she found herself was not of her own making. The judge accepted that weight was to be attached to the daughter's private life when she was a child but did not explain whether this was little or high weight and wrongly stated that less weight was to be attached when the child was an adult because she should not be expected to suffer as a consequence of the choices of her parents.
14. Fourth, the judge failed to recognise that a person such as the third appellant, who came as a child with leave and who has continued to remain in the UK whilst her parents have pursued their entitlements to an appeal and who has been in the UK for ten years by the time that the appeal is heard, ought not to be required to leave.
15. Fifth, the judge failed to properly apply Section 117B(6). It was a highly material consideration that her younger brother had acquired seven years' residence by 29th

January 2015 and was entitled therefore to succeed within the Rules. The public interest did not require removal of the parents at that stage. If the parents would inevitably have succeeded under Section 117B(6) then leave would also have been granted to the third appellant.

16. Finally, the decision on proportionality in relation to the daughter was contrary to the evidence. She is almost 25 and has spent just under half of her life in the UK including her formative years. In September 2014 she commenced a four year degree course. She has completed three years on the course and paid £30,000 and will suffer very significant financial loss if she is not allowed to complete it. In the UK she has many social, educational and career possibilities open to her which are not reasonably likely to be available to her in Bangladesh where she is likely to suffer gender-based discrimination and to be constrained by the restrictions prevailing in that society. She is a thoroughly westernised young woman whose position was not adequately considered by the judge.

Findings and Conclusions

17. I am satisfied that the judge reached a decision which was open to her and that she did not err in law.
18. First, it was not an error for the judge to state, as she did, that the human rights appeal ought to be considered through the lens of the Rules and that all circumstances must be evaluated. Indeed that is precisely what the present jurisprudence states. The Rules were her starting point. The judge then, quite properly, embarked upon a wider consideration of Article 8 and the proportionality of the decision, not confining herself to the question of whether the appellants could meet the requirements of the Immigration Rules, which they plainly could not.
19. Neither is there any error in relation to her comments on precariousness. The first appellant's status was always precarious. It may be that the family hoped that the initial leave would be extended to the point where they would satisfy the requirements for a grant of indefinite leave to remain. However at all stages of her applications for Tier 4 leave the first appellant had to establish that she intended to leave the UK at the end of the period of study. Indeed when the third appellant started her course at London Metropolitan University the family had been refused leave to remain by the respondent. Whilst they were entitled to exercise their statutory right to appeal it cannot properly be said that at that stage, the third appellant was not taking a calculated risk that she would not be able to complete her course.
20. Third, it is quite wrong to say that the third appellant's Article 8 rights were not assessed on an individual basis. The judge set out her findings in relation to her in some detail, recognising that she had wasted time on a degree course which had been halted and that she may have lost money in the process. The judge was entitled to observe however that there was an option to apply for study for a degree in

Bangladesh or indeed to make an entry clearance application to finish her studies in the UK.

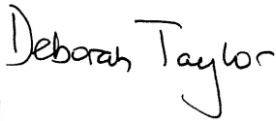
21. The judge also considered the third appellant's private life in some detail. She said that she attached weight to the private life enjoyed by her when she was a child because she was not responsible for the decisions made by her parents, but when she became 21 in September 2015 she was aware that the human rights claim of the family as a unit had been refused and therefore less weight ought to be attached to her private life from that date. Mr Gill's submissions on this point, in particular that the determination ran contrary to the UN Convention in relation to the Rights of Children, failed to acknowledge that the third appellant was born in 1994 and is now 24 years old.
22. It is true to say that the third appellant could not meet the seven year Rule because she arrived in the UK when she was 14 years old and has not yet been in the UK for half of her life. The fact that the judge did not state in terms that she was not able to meet either of the requirements set out in paragraph 276ADE is immaterial. Similarly, the first appellant's application under the 10 year rule said to be under consideration is not relevant.
23. It was argued before the judge that there was no public interest in removing the first and second appellants once their son had been granted limited leave to remain. Mr Gill submitted that, if it had been recognised at that stage that the parents ought to have been granted leave, then they should not now be deprived of the benefit of leave which they should have had. If the parents had succeeded then the daughter would have done too.
24. The judge dealt with this point by observing that the son's appeal was not based upon family life but upon his own private life. There was therefore nothing to mandate a grant of leave to his parents. In any event, by the time of the decision allowing his appeal, he was no longer a qualifying child. He is now 20 years old. It is difficult to argue that this appeal ought to succeed now under paragraph 117B(6) in a case where there are no qualifying children.
25. The remaining arguments in relation to the third appellant amount to a disagreement with the decision. Mr Gill made extensive submissions about the position of the third appellant on a return to Bangladesh but these were considered by the judge who was entitled to observe that, whilst the opportunities of her life in the UK will not be the same in Bangladesh, there was no reason why she should not be able to live a fulfilling life in her country of nationality. She took into account the separation from her brother, albeit temporary since he only has limited leave to remain. It was open to her to conclude that the maintenance of immigration control weighed more heavily in the balance than the arguments put forward by the appellants.

Notice of Decision

The judge did not err in law. Her decision stands. The appellants' 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 appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed

Date 25 August 2018

Deputy Upper Tribunal Judge Taylor