



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/26485/2016
HU/26486/2016
HU/26488/2016
HU/26490/2016

THE IMMIGRATION ACTS

Heard at Field House
On 3rd July 2018

Decision & Reasons Promulgated
On 5th July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

MR, NA, FN, MN
(ANONYMITY DIRECTION MADE)

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Haque of Reymond Solicitors
For the Respondent : Mr Kotas Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge PJS White promulgated on the 28th March 2018 whereby the judge dismissed the appellants' appeals against the decisions of the respondent. The decisions of the respondent were to refuse each of the appellants' application for leave to remain in the United Kingdom on human rights grounds.

2. I have considered whether or not it is appropriate to make an anonymity direction. Two of the appellants are minors. As these proceedings concern and impact upon the rights and status of minors I consider it appropriate to make an anonymity direction.
3. Leave to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Chohan on 18th April 2018. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.

Factual Background

4. All the appellants are nationals of Bangladesh. The first appellant entered the United Kingdom on 13 August 2008 with leave as a student. His leave was extended at various times giving leave until 28 February 2014.
5. In or about August 2011 the remaining appellants entered the United Kingdom as the first appellant's dependants.
6. On 28 February 2014 the appellants applied for further leave but that application was refused on 27 February 2015. The appellants appealed against the decision but the appeals were dismissed as of 16 November 2015. It is suggested that by 3 January 2016 they were appeal rights were exhausted, although otherwise documentation seems to indicate that the final refusal of permission to appeal was 19 May 2016.
7. On 1 June 2016 the appellant applied for indefinite leave to remain on human rights grounds. That application was refused by the respondent on 22 November 2016. The appellants appealed against the decisions. The applications were refused amongst other grounds on the basis of paragraph 322 (1) of the Immigration Rules on the basis that leave was being sought for a purpose not covered by the immigration rules.
8. As none of the appellants had status at the time of the application the appellants could not qualify under Appendix FM or otherwise under the Immigration Rules. The appellants did not qualify for consideration under paragraph 276ADE because none satisfied the time criteria set out therein. Similarly as neither of the children had been in the United Kingdom 7 years no reliance could be placed upon paragraph 276 ADE (iv) or section 117B of the Nationality, Immigration and Asylum Act 2002.
9. Further to that it was felt that there were no very serious or insurmountable obstacles to reintegration in Bangladesh for the adults or for the children.
10. The Grounds of appeal in respect of these appellants relates to the fact that on the day of the hearing the appellants did not attend the substantive hearing. An application had been made for an adjournment prior to the hearing but that application was refused.

11. The basis for the application for an adjournment was that the mother of the second appellant had died in Bangladesh on 2 March at 12:10 PM. Because of the death the appellants claimed that they were in shock and not in a position to deal with the appeals. Before me it was conceded that the children were in school. However it was being asserted that the appellant ought to have the opportunity of advancing oral evidence before a judge and that more evidence was necessary as to the private lives of the appellants.
12. The full hearing of the appeal was due to take place on Monday, 5 March. Standard directions had gone out indicating that the appellants had to lodge the bundle of documents at least 5 days before the full hearing. As is standard procedure the statements by the appellants would be submitted together with all of the documentary evidence relied upon. A statement had been submitted from the first appellant but there was no statement from the 2nd appellant [the wife of the first appellant-the mother of 2 children]. In the normal course of events the statements would stand as the evidence in chief.
13. The point was made that there was no challenge to the facts asserted by the appellants in the statements. The judge at the hearing was therefore taking the appellant's case at its highest as advanced by the appellants.
14. The application to adjourn was made on the Friday 2nd March and was considered by a Judge and was refused. In refusing the application the judge noted that there were no disputes on the facts and that the hearing could proceed on submissions only in the absence of the appellant. Notice of that refusal and the reasons were faxed to the solicitors at 14.34 on Friday 2 March.
15. On 5 March a representative attended to renew the application for an adjournment. When the application was refused the representative withdrew. The judge determined to proceed with the hearing in the absence of the appellants.
16. In the grounds of appeal the appellants seek to argue that they wanted an oral hearing but the effect of the Judge proceeding was to deprive them of an oral hearing. They assert that the judge was dealing with the case on the papers giving the appellants a paper hearing and was therefore unfair.
17. There was an oral hearing listed. That hearing proceeded. It was the appellants' failure to attend that caused the appeal to be dealt with on the basis of the papers lodged.
18. If the reasons for refusing the adjournment were valid, an oral hearing was listed and it was proper that the hearing should proceed. The fact that the judge thereafter dealt with the matter on the basis of the papers lodged does not make the hearing a paper hearing. If the refusal of the adjournment was justified, the appellants had every opportunity to attend and to pursue their

appeal. The fact that they did not is the reason that the matter was dealt with on the papers lodged.

19. The grounds of appeal thereafter seek to argue that the judge has failed to take account of the safety and welfare of the children. This matter was listed for an oral hearing and it was for the appellants to submit evidence the basis of their claim with regard to the safety and welfare of the children. As noted by the judge in paragraph 16 of the decision the best interests of the children were a primary consideration. However the judge then noted that whilst a number of school certificates had been submitted there were no school reports to indicate their progress at school and no evidence otherwise about education in Bangladesh. It was a matter for the appellants to produce the evidence in the first instance and they had not done so. No issues had been raised relating to the protection of the children.
20. Otherwise in looking at the best interests of the children the judge had to consider whether or not they were being brought up in a stable and secure family environment. As they were, the judge considered the best interests of the children were to be with both parents. The parents did not have any right to remain in the United Kingdom. The judge noted that the claim that there were other relatives in the United Kingdom but again no details have been provided. It was for the appellant to submit the evidence. Similarly with regard to aspects of private life of the appellants had failed to adduce the evidence to substantiate such.
21. There was a lack of evidence submitted on behalf of the appellants to support the claims. Directions had been sent out requiring that the appellants submit their bundle of documents at least 5 days before the hearing. At that stage the preparation of such a bundle of documents would have taken place prior to the death of any relative and therefore would not have been impacted upon by that death. However the appellants had failed to submit documentation to substantiate those parts of their case that they were now seeking to rely upon.
22. Valid reasons have been given for refusing the adjournment in the first instance. The judge dealing with the hearing considered the application for an adjournment and again refused it. The judge was entitled to proceed with the hearing in the circumstances.
23. The judge has properly assessed that the appellants did not meet the requirements of Immigration Rules or Article 8 within the rules. Thereafter the judge has properly considered Article 8 outside the rules and concluded that the appellants as a family unit would be removed together and that therefore there would be no breach of family life by the decision. Thereafter the judge has assessed the private life of the appellants. It was for the appellants to establish that they had a private life of such quality as to warrant consideration of article 8 in the circumstances. The appellants have failed to adduce evidence

to substantiate that they had such significant aspects of private life which warranted allowing the appeal on the basis of Article 8 outside the rules.

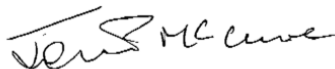
24. Further the judge thereafter even if the appellants did have such a private life the judge went on to consider whether or not the decision was in all the circumstances proportionately justified. The judge concluded in the interests of immigration control that the decision was proportionately justified. That was a finding of fact that the judge was entitled to make on the basis of the evidence presented.
25. In the circumstances there is no material error of law in the decision. The decision to dismiss the appeal stands.

Notice of Decision

26. I dismiss the appeals.

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 the appellant or any member of the appellant's family. This direction applies both to the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings



Signed

Date 3rd July 2018