Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/33440/2015
IA/33463/2015
IA/33466/2015
IA/33477/2015
IA/34038/2015

THE IMMIGRATION ACTS

Heard at Civil and Family Court, Liverpool	**Decision & Reasons Promulgated**
On 16th March 2018	**On 17th May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) MR MOHAMMAD RAHMAN
(2) MRS QUAZI MAHBUBA
(3) MISS SAYEEDA RAHMAN NID
(4) MASTER NILOY MOHAMMAD MAHIN RAHIN
(5) MASTER MOHAMMAD MAHIR RAHMAN NIBIR
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Lorraine Barton (Counsel)
For the Respondent: Mr A McVeety (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge N M K Lawrence, promulgated on 12th July 2017, following a hearing at Stoke-on-Trent on 3rd

July 2017. In the determination, the judge dismissed the appeals of the Appellants, whereupon the Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant's

2. The Appellants are a family of Bangladeshi nationals. The first and second Appellants are the biological parents of the other three children. The first Appellant (hereafter "the Appellant") entered the UK as a student on 24th April 2007. The second, third and fourth Appellants entered as his dependants on 19th February 2008. The last Appellant was actually born in the UK, but remains a Bangladeshi national, just as the others. The Appellants subsequently enjoyed extensions of leave until 6th October 2011 when further leave to remain was refused. On 3rd April 2012 they were granted discretionary leave to remain in order for the Appellant to complete his studies. This appeal arises following a further application on 2nd April 2015 to remain in the UK, which was refused, bearing in mind that there had been an earlier refusal on 20th August 2014, and the application was certified under Section 94 of the NIAA 2002.

The Judge's Findings

3. The matter came before Judge N M K Lawrence in Stoke-on-Trent on 3rd July 2017 who considered the Appellants' claim to remain in the UK on the basis of family and private life rights. He observed how the first Appellant came to the UK as a student on 24th April 2007, and that the remaining Appellants came as his dependants on 19th February 2008, with the exception of the last Appellant, who was actually born in the UK, but all of whom still remain Bangladeshi nationals. The Appellants enjoyed extensions of leave until 6th October 2011, and their primary claim now was that the Appellants cannot return back to Bangladesh on account of there being "very significant obstacles" to their reintegrating into Bangladeshi society.

4. The judge went on to say that the first Appellant had achieved his declared purpose of entering the UK, and the second Appellant had assisted him in doing so, and it was not arguable that he could not now return back to the country of his nationality, given that there was no specific vulnerability identified in relation to any of the family members. There was no evidence that the Appellant could not return to secure employment, set up home, and meet with relatives there (paragraphs 29 to 21). The adult Appellants all spoke the same language as was spoken in Bangladesh and had not lost cultural ties or an inability to reintegrate into life in Bangladesh (paragraph 22). The existence of there being two teenagers, one of whom is a daughter, and a boy of 4 also did not amount to there being "very significant obstacles" (paragraph 23).

5. The judge went on to give specific consideration to the "best interests of children" (paragraphs 26 to 31) and applied the case law (paragraphs 32 to 36) and concluded that,

> "There is evidence that the minor Appellants have established themselves in the UK. The various educational certificates demonstrate this. Miss Nid [the third Appellant] participates in the NCS and other social activities. The album of photographs attests to her social skills. She wishes to continue with her education in the UK. I am sure all of her siblings do. However there are provisions in the Immigration Rules to accommodate that wish" (paragraph 33).

6. The judge went on to conclude that the remainder of the Appellants are young enough to pick up skills, especially language, and they will be returning to a country where the language spoken is Bengali (paragraph 35). The third and fourth Appellants entered the UK when they were young and had to adapt to life in the UK at a young age but there was no evidence that they would be adversely affected now (paragraph 37).

7. All things considered, the judge went on to conclude that "the Appellants have not demonstrated that there are 'very significant obstacles' in integrating into life in Bangladesh" (paragraph 47).

8. The appeal was dismissed.

Submissions

9. At the hearing before me on 16th March 2018, Mr McVeety, the Senior Presenting Officer, conceded that the judge had fallen into error. This was because, as the grant of permission stated on 12th January 2018, the central proposition here was that the judge arguably acted irrationally when finding at paragraph 14 that Miss Nid and Master Niloy [the fourth Appellant], had not lived continuously for at least seven years in the United Kingdom, at the date when the applications, which led to the decisions under appeal, were made. However, it was not in dispute, that Miss Nid was born on 11th September 1998 and Master Niloy was born on 6th June 2001, and were each under the age of 18 years when the applications were made on 2nd April 2015, but had accordingly each lived continuously for at least seven years in the United Kingdom, so that arguably Section EX.1 of Appendix FM stood to be applied. In these circumstances the judge ought to have considered whether it would unreasonable to expect either Miss Nid or Master Niloy to leave the United Kingdom, and these findings in turn, would have borne a bearing on the outcome of all the other appeals.

10. Given this concession made by Mr McVeety, Ms Lorraine Barton, appearing as Counsel for the Appellants, applied for her costs, which I immediately declined to award, as this is a matter that will need to be considered after the final decision, upon remittal back to the First-tier Tribunal, which is the order I propose to make in this case, given the concession by Mr McVeety and this I now do.

Error of Law

11. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are those that have already been put forward in argument by Mr McVeety, namely, that the judge has proceeded on a wrong factual basis, failing to take into account that two of the children have indeed spent seven years in the UK, and are "qualifying" children, in the context of which, consideration is to be given as to whether it is reasonable to expect them to return with their parents back to Bangladesh. The fact that the determination has been made on the wrong factual basis means that there has been a material error of law.

Notice of Decision

12. The decision of the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision of the original judge. I re-make the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge N M K Lawrence at the first available opportunity.

13. No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 14th May 2018

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have made a fee award of any fee which has been paid or may be payable.

Signed Date
Deputy Upper Tribunal Judge Juss 14th May 2018