



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00674/2018

THE IMMIGRATION ACTS

Heard at Field House
On 19th June 2018

Decision & Reasons Promulgated
On 27th June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

MD MASHUK MIAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Rahman of Counsel, instructed by Edward Alam & Associates
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Swinnerton (the judge) of the First-tier Tribunal (the FtT) promulgated on 1st March 2018.
2. The Appellant, who claims to be Bihari and stateless, appealed against the Respondent's decision dated 15th December 2017 to refuse his protection and human rights claim.
3. The appeal was heard by the FtT on 12th February 2018 and dismissed on all grounds. The FtT heard evidence from the Appellant and his wife and found that they had given conflicting and inconsistent evidence, and did not find them to be credible witnesses.

The FtT found that the Appellant could return to Bangladesh with his family and he would not face very significant obstacles in so doing.

4. The Appellant applied for permission to appeal to the Upper Tribunal. The grounds are summarised below.
5. It was contended that the judge had erred in not accepting the Appellant and his wife to be credible. Complaint was made that at paragraph 21 the judge had placed far too much weight upon answers given by the Appellant at interview, rather than properly assess the consistency in evidence at the hearing. It was submitted that the judge had identified one discrepancy in relation to the Appellant's claim.
6. At paragraph 22 it was contended that the judge had erred by simply relying upon the Respondent's refusal letter, and had not assessed the oral evidence given at the hearing.
7. It was submitted that the judge had failed to properly consider the best interests of the Appellant's two sons born 1st October 2014 and 12th August 2017. Evidence had been given that the eldest son had "significant developmental difficulties". It was submitted that the judge had failed to refer to the schooling of the children, their welfare, and their social network in the UK.
8. It was contended that the judge had erred by failing to consider paragraph 276ADE(1)(vi) of the Immigration Rules, and failed to take into account that the Appellant had resided in the UK for almost seventeen years.
9. Permission to appeal was given by Judge Osborne of the FtT in the following terms;
 - "2. The grounds assert that the judge materially erred in law. He failed to properly assess the Article 8 appeal. Paragraph 276ADE Immigration Rules is clearly engaged. The judge failed to properly consider the best interests of the child. Proper findings on credibility were not reached and were inadequately reasoned. The judge failed to assess the Appellant's oral evidence that he is a Bihari. The judge failed to consider the issue of private life.
 3. In an otherwise careful and focused decision, it is nonetheless arguable that the judge made no finding as to what was in the best interests of the children. It is at least arguable that the judge should have made a specific finding upon this issue before finding that the best interests of the children were outweighed by other more compelling factors. It is arguable that the judge adopted the wrong approach to this issue.
 4. This arguably material error of law having been identified, all the issues raised in the grounds are arguable."
10. Following the grant of permission the Respondent did not lodge a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

The Upper Tribunal Hearing

11. Mr Kotas advised that although there was no rule 24 response, the Respondent's position was that the decision of the FtT disclosed no material error of law.
12. Mr Rahman in making oral submissions advised that he had no oral submissions to make in relation to the credibility points in the grounds seeking permission to appeal. Neither representative was able to provide me with the Grounds of Appeal that had been submitted to the FtT.
13. Mr Rahman submitted that the judge had erred in law by failing to adequately consider the best interests of the Appellant's two sons. There was no finding as to what the best interests of the children would be.
14. Within the Appellant's bundle before the FtT was a letter from the pre school attended by the eldest son which confirmed he had learning difficulties, but there had been no investigation by the judge of the effect of removal of the child. The judge noted the letter from Dr Adeoye, a consultant paediatrician, typed on 5th February 2018, which indicates significant developmental difficulties, but does not make any diagnosis. Mr Rahman submitted that it was an error to assess the best interests of a child, when there was no diagnosis of his condition, and it was the duty of the judge to investigate the best interests of the children even if this was not referred to by the representative at the hearing (although it was not accepted that there had been no such reference by the representative at the hearing before the judge).
15. Mr Kotas pointed out that the witness statements made by the Appellant and his wife made no reference to the children. The judge had noted and taken into account that the children were aged three years and six months respectively at the time of the FtT hearing. I was asked to find that the judge had in fact found that the best interests of the children would be to return to Bangladesh with their parents. Mr Kotas submitted that even if the best interests of the eldest child would be to remain in the UK, on the facts of this case, it would still be proportionate for the family to return to Bangladesh, and the FtT decision disclosed no material error of law.

My Conclusions and Reasons

16. I find no material error of law disclosed when considering the credibility findings made by the judge. In my view the judge did not fail to take into account any material evidence. At paragraph 21 the judge sets out the contradictory and inconsistent evidence provided by the Appellant and his wife and does not err in law in so doing. The judge gives adequate reasons for finding that the evidence given in relation to threats made by the wife's family is inconsistent and incredible and provides adequate reasons for those findings.
17. The claimed error of law in paragraph 22 is not particularised. No oral submissions were made on this point, and the assertion that there was no assessment of the Appellant's oral evidence is unsubstantiated. In this paragraph the judge made findings open to him on the evidence, and provided adequate reasons. No error of law is disclosed in this paragraph.

18. The best interests of the children must be a primary consideration, not a paramount consideration as stated by the judge at paragraph 23. The judge clearly took into account the very young ages of the children. There is no explicit and specific finding as to the best interests of the children, but reading the decision as a whole, my view is that the judge found that the best interests of the children would be to remain with their parents, and in view of the young ages of the children, there is no error of law in such a finding. I find little merit in the submission contained at paragraph 10 of the grounds seeking permission to appeal, which claims that the judge made no reference to the schooling of the children and their social network. The children were too young to have a social network, and neither child attended school. The judge specifically referred to the letter from [] Pre school dated 31st January 2018, at paragraph 20. The judge also considered the medical evidence in relation to the eldest child.
19. The conclusion of the judge, in my view, was that if the parents returned to Bangladesh, then the best interests of the children would be served by returning to Bangladesh with their parents. The judge clearly took into account that neither child is British, and neither was old enough to have acquired seven years' continuous residence in the UK.
20. The judge found Bangladesh has a functioning healthcare and education system. The judge also found at paragraph 23 "that no evidence has been provided that any particular medical attention required by the eldest son of the Appellant would not be available in Bangladesh".
21. The judge recognised at paragraph 23 that "it is generally in the best interests of children to have stability and continuity in their social situation and education." The judge considered the letter from Dr Adeoye which is specifically referred to at paragraph 20, and at paragraph 23 the judge comments that the eldest son has significant developmental issues, but that a clear diagnosis has not yet been made. There was no definitive indication of when a diagnosis would be made. The judge was not asked to adjourn the hearing so that a diagnosis could be made. The Appellant was legally represented.
22. I therefore conclude that the judge did consider all the evidence that was submitted in relation to the Appellant's children, and the overall conclusion is that it would be in their best interests to remain with their parents, and if the parents return to Bangladesh so should the children where there is healthcare and education.
23. The judge made no specific reference to paragraph 276ADE in his findings of fact, which are contained at paragraphs 18 - 25, but this is not a material error. The judge found at paragraph 25 that the Appellant had not "given a truthful and accurate account." The judge did not accept the Appellant's core account, and made a finding that the Appellant could return to Bangladesh with his family, and that he and his family would not face very significant obstacles in reintegrating into life in Bangladesh. The reference to very significant obstacles and reintegration is clearly a reference to paragraph 276ADE(1)(vi).

24. My conclusion is that the grounds upon which permission to appeal has been granted, display a disagreement with findings made by the judge, but do not disclose a material error of law.

Notice of Decision

The decision of the FtT does not disclose a material error of law. The decision is not set aside. The appeal is dismissed.

The FtT made no anonymity direction. There was no application for anonymity made to the Upper Tribunal and I see no need to make an anonymity order.

Signed

Date 26th June 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 26th June 2018

Deputy Upper Tribunal Judge M A Hall