



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/05402/2017

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**THE IMMIGRATION ACTS**

**Heard at North Shields**

**Decision & Reasons  
Promulgated**

**On 7 December 2018**

**On 10 January 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**[A B]  
HALIMA [B]  
(ANONYMITY DIRECTION -NOT MADE)**

Appellants

**And**

**ENTRY CLEARANCE OFFICER - BANGLADESH**

Respondent

**Representation:**

For the Appellants: Mr Read, Counsel instructed by David Gray Solicitors

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellants are citizens of Bangladesh whose dates of birth respectively are recorded at 10 April 2002 and 25 February 1999. They made application to come to the United Kingdom in order that they might join their mother who has indefinite leave to remain. The basis of the original application was that she, the Sponsor, had sole responsibility of the Appellants.

2. Adverse decisions were made by the Respondent. The Appellants appealed. Their appeals were heard on 9 January 2018 by Judge of the First-tier Tribunal S P J Buchanan sitting at North Shields.
3. There had been an earlier application and appeal which had been dismissed by Judge Fisher. Judge Buchanan had regard to the guidance in **Devaseelan** but considered himself bound by the earlier findings.
4. At the hearing, now under consideration, evidence was also received in addition to that of the Sponsor from Mr Habibur Rahman whose evidence was to the effect that the Sponsor lived with him; that he had occasions visited Bangladesh; and that on those occasions had taken clothing and money for the benefit of the Sponsor's children. Further his evidence was that the Sponsor's eldest son acted on the Sponsor's instructions vis a vis the Appellants. Judge Buchanan then went at some length to explain why he was dismissing the appeals.
5. Not content with that decision, by Notice dated 29 March 2018 the Appellants made application for permission to appeal to the Upper Tribunal which on 21 June 2018 was refused by Judge of the First-tier Tribunal O'Keefe. A further application was renewed to the Upper Tribunal, Notice being given on 12 July 2018. The grounds are adequately summarised within the permission of Upper Tribunal Judge Chalkley who on 6 August 2018 granted permission in these terms:
  1. *The First-tier Tribunal Judge has failed to make any findings on the evidence of Mr Habibur Rahman recorded at paragraphs 5.14 to 5.17 of the determination. I believe that he has misapplied Devaseelan (Second Appeals - ECHR - Extra - Territorial Effect) Sri Lanka \* UKIAT 00702 in that he was not bound by the findings of an earlier First-tier Tribunal Judge in relation to evidence which he himself had heard although he appears to believe that he was.*
  2. *It appears to me that the appellants have been denied a fair hearing by the First-tier Tribunal".*
6. The grant of permission is unusual because the Judge considering whether or not permission should be granted is concerned only with whether there is an arguable case. In this case the Upper Tribunal Judge has firmly "pinned his colours to the mast".
7. At the outset however, Mr Read and Mr Diwnycz agreed that in fact his function, that is to say Upper Tribunal Judge Chalkley's function, was to identify only that which was arguable. That said, after discussion with both representatives, by consent it was agreed that Judge Buchanan had erred for the very reasons identified by Judge Chalkley so that it is not necessary for me to say more.

8. Having agreed that there is an error of law which I, for the avoidance of doubt agree exists for the reasons stated, the decision of the First-tier Tribunal is set aside.
9. It is for me then to decide whether I should remake the decision or remit it to the First-tier Tribunal.
10. I agree with Judge Chalkley that the Appellant's have been denied a fair hearing it follows that the proper course is to start again, that is in any event the course that was urged upon me by Mr Diwnycz. There are observations properly made by Judge Buchanan concerning evidence that might more readily have been adduced on an earlier occasion but the extent to which that is relevant, or material will be a matter for the First-tier Tribunal at the remitted hearing. For the avoidance of doubt, I am not pointing the First-tier Tribunal in any direction, the reason for the observations is only to explain why I did not feel that it was appropriate for me to remake the case here in the Upper Tribunal.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside for error of law. The appeals are remitted to the First-tier Tribunal to be heard (with no findings of fact preserved) before any Judge of the First-tier Tribunal other than Judges Fisher or S P J Buchanan or O'Keefe.

A Sylheti interpreter will be required. The time estimate for the appeals will be 4 hours.

No anonymity direction is made.

**Signed**

**Date 20 December 2018**

**D G Zucker**



**Deputy Upper Tribunal Judge Zucker**