



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05530/2018

THE IMMIGRATION ACTS

Heard at Field House
On 29th March 2019

Decision & Reasons Promulgated
On 3rd April 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

[A A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Abdul Yusuf, Counsel, instructed by Kingswood Solicitors

For the respondent: Mr. S Walker, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a national Bangladesh, born in the United Kingdom on 20 December 2010. On his 7th birthday application was made on his behalf for leave to remain on the basis of his family life. He lives with his parents, Tahima [B] and Mohamed [A] and his younger sister, [ZA]. All are nationals of Bangladesh. His parents leave

expired in 2014 and they claimed they were being maintained by friends as they were not permitted to work

2. His application was refused on 12 February 2018. It was considered under the provisions of appendix FM but could not succeed because neither parent had the necessary immigration status. In terms of his private life the respondent considered paragraph 276 ADE(1)(iii) and concluded it would be reasonable for him to leave the United Kingdom with his parents. The respondent did not see any exceptional circumstances whereby the decision would result in unjustifiably harsh consequences for the family. Reference was made to the section 55 obligation.
3. The appeal contended that the minor appellant had only known life in the United Kingdom and had only basic Bengali.

The First tier Tribunal

4. His appeal was heard by First-tier Tribunal Judge JL Bristow at Birmingham on 17 July 2018. In a decision promulgated on 31 July 2018 it was dismissed. Both parties were represented and it was agreed the requirements of appendix FM were not met. However, it was argued that paragraph 276 ADE applied, the relevant issue being whether it would be reasonable to expect the appellant to leave.
5. His parents evidence was to the effect that his parents would not be supported by their families in Bangladesh and that they would be in parlous circumstances if returned. The judge did not accept the background was as described. The judge concluded the appellant was at an age when he could adapt to living in a different country. The judge then went on to consider freestanding article 8 factors and the provisions of section 117 B. The notably, the judge does not refer to section 117 B (6).

The Upper Tribunal

6. Permission to appeal was granted on the basis in the absence of any criminality on the part of his parents the judge had not identified powerful reasons to justify the child being required to leave the United Kingdom.
7. At hearing, the presenting officer accepted that there were errors of law in the decision as it did not refer to relevant case law and statutory provisions.
8. The grant of permission referred to the absence of reference to MA(Pakistan) on the application of MA) and others [2016] EWA Civ 705. The Court of Appeal there indicated that for a child to have resided in the United Kingdom for 7 years represented a factor of some weight leaning in favour of leave to remain being granted.

The report referred to the need for strong reasons for refusing leave in such cases. After 7 years the child will have put down roots and developed social, cultural and educational links and it was likely to be highly disruptive if they are required to leave.

9. The decision contains no reference to section 117 B (6) which was a relevant consideration in the family dynamics. Guidance has now been given in the decision of KO (Nigeria) and Others (Appellants) v Secretary of State for the Home Department (Respondent) [2018] UKSC 53. This was published after the impugned decision but nevertheless the law must be applied and it is now understood. Furthermore, there is no reference to the respondent's published guidance on this issue.
10. I indicated to the parties that this was a suitable case where the decision could be remade without the need for further evidence. Bearing in mind the accepted facts and the case law I am driven to the conclusion that it would be a disproportionate breach of article 8 to refuse the appellant and his family members leave to remain.
11. On the basis of what has been agreed between the parties no further written reasons are required. The requirements of subparagraph 40(3)(a) and (b) of the Upper Tribunal procedural rules are met. I therefore set aside the decision of the First-tier Tribunal and remake it, allowing the appeal.

Decision

12. The decision of First-tier Tribunal Judge JL Bristow materially errs in law and is set aside. I remake the decision allowing the appeal on article 8 grounds.

Francis J Farrelly
Deputy Upper Tribunal Judge.
29th March 2019