



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

Appeal Numbers: HU/07799/2017
HU/07801/2017
HU/07803/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 16 January 2018**

**Decision and
Promulgated
On 22 February 2019**

Reasons

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**WUK
SK
WK
(ANONYMITY ORDERS MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Malik of Counsel

For the Respondent: Ms Cunha, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Bangladesh born in 1980, 1992 and 2012. They are husband, wife and their child.

2. They appealed against a decision of the respondent made on 29 June 2017 to refuse their application for leave to remain on human rights grounds (family and private life).
3. The reasons for refusal, in summary, were that the first appellant (WUK) did not meet the suitability requirements of the Immigration Rules because he had used deception in an ETS English language test. He and his wife, the second appellant, also did not meet the eligibility requirements. In addition, section EX.1. was not satisfied.
4. The applications were also refused under paragraph 276 ADE(1). Also, it was considered that there were no exceptional circumstances which merited the grant of leave outside the Rules.
5. They appealed.

First-tier Hearing

6. Following a hearing at Taylor House on 7 June 2018, Judge of the First-tier Tribunal Andonian dismissed the appeals.
7. They sought permission to appeal which was granted on 1 November 2018.

Error of Law Hearing

8. At the error of law hearing before me the thrust of Mr Malik's submissions in line with the grounds was that the decision was not adequately reasoned. Some of it, not helped by numerous typographical errors was incoherent and overall it showed a lack of clarity with the result that the judge failed coherently to explain how he reached his conclusions on the key matters in dispute.
9. Ms Cunha's response was that while the decision was, indeed, disjointed and hard to follow such was not fatal. For reasons which were discernible he had concluded that it was reasonable for the family, all Bangladeshi citizens, to return to their home country. In particular he had dealt with the child noting that she is not a "qualifying child" and that although she is autistic there is support for autistic children in Bangladesh. His conclusions were open to him on the evidence. Further his conclusions on the ETS issue were sustainable.

Consideration

10. It is regrettable that the judge did not apply his mind to setting out his decision in a properly structured manner. As both parties agreed the result is a decision which is both disjointed and difficult to follow. The first thirty-two paragraphs narrate the immigration history, a recitation of the appellants' case as set out in the application, and the reasons for refusal

in response. However, at [33] the judge appeared to accept large parts of the respondent's case without explaining why. He stated:-

"Based on all the above matters, the evidence clearly showed to me that there was no reason for the appellants to stay in this country. However, I also had to consider the fact that the child was autistic before a final decision was made on this appeal."

11. It is notable that this passage referenced [12-32], and at [12] the judge set out the respondent's assertion that the first appellant cheated on an ETS test apparently accepting that assertion without any explanation why.
12. Following [33] the judge then set out his consideration of the child's (third appellant) welfare given that it is accepted she has autism, reaching his conclusion on this issue at [43-47].
13. The judge then went on at [48-51] to the first appellant's further evidence as to his daughter's needs and situation; to refer to his wife's evidence as to their daughter under the incoherent sub-heading "*The appellant is what the second appellant*" at [62], and then to set out further reasoning on this topic at [63-67] under the sub-heading "*Conclusions;*" then to consider evidence of the first appellant's brother relevant to this issue at [68]; then at [69] to state that he had read the grounds of appeal and to provide further reasoning at [70-73].
14. A decision is not meant to be a work of literature. Occasional typographical errors or infelicities of language are not fatal. Unfortunately, there is an excess of such errors in the decision (a small sample includes: at [60], the sub-heading at [62], also [70], [71], [73]).
15. I agree with the grounds that, overall, with respect to [34-51] and [62] and [63-73] the judge's reasoning is again dense, disjointed and difficult to follow and fails to differentiate between the parties' positions and the judge's findings and the reasons for these findings. At [44] he appeared to reach a final decision on the case but then pressed on to further consideration.
16. Further, he stated at [43] "*It was accepted that because of her young age and due to having spent the entirety of the (sic) life in the United Kingdom with her Bangladeshi parents and for the reasons stated above, there are no insurmountable obstacles to her and her parents removal from the United Kingdom. There are no very significant obstacles therefore in that regard.*"
17. Ms Cunha did not demur from the submission that there was no such concession by the appellants, and I see nothing in the record of proceedings to indicate there was such.

18. On the issue of the child's (third appellant) autism I would add that the judge failed to show that he had had any regard to a country expert report (31 May 2018) which was before him, by Dr Amundsen.
19. The grounds, in addition, made an attack on the judge's conclusions on the ETS deception claim (at [52-61]). I do not consider it necessary to decide that matter not only because the judge had apparently (at [33]) decided against the appellant earlier without giving reasons, but because the decision considered as a whole does not show that the judge considered the appeal and the evidence before him with anxious scrutiny. The way he expressed himself with a lack of clarity and at times incoherently, leads to the conclusion that the decision is fundamentally flawed.
20. Further, the expressions of conclusions and reasoning on an issue at one point in the decision, which is then the subject of further reasoning concerning evidence relevant to that issue later in the decision, and in no coherent order, leaves the reader with no confidence that the judge had considered all of the evidence relevant to a particular issue in the round and at one time, instead of forming premature conclusions having only considered some of the relevant evidence.
21. I conclude that the material error is that the decision is not adequately reasoned.
22. The result is that the case must be remitted for a fresh hearing on all matters with no findings preserved.

Decision

23. The decision of the First-tier Tribunal is set aside. The nature of the case is such that it is appropriate under section 12(2) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2 to remit to the First-tier Tribunal for an entirely fresh hearing on all issues. No findings stand. The member(s) of the First-tier Tribunal chosen to consider the case are not to include Judge Andonian.
24. An anonymity order is made. Unless and until a tribunal or court directs otherwise the appellants are granted anonymity. Failure to comply with this order could lead to contempt of court proceedings.

Signed

Date

Upper Tribunal Judge Conway

21 February 2019