



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/17223/2017  
HU/17224/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 23 November 2018

Decision & Reasons Promulgated  
On 6 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

SHALMA [S] (FIRST APPELLANT)  
ABDUL [K] (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr Muquit of Counsel

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

**DECISION AND REASONS**

1. The appellants are citizens of Bangladesh. They appealed against the respondent's decision dated 24 November 2017 to refuse them leave to remain as the partner and child of a British citizen on the grounds that the decision breached their Article 8 rights to a family and private life.
2. Judge Young-Harry dismissed the appeals in a decision promulgated on 10 August 2018. The judge found that the public interest in maintaining a firm and fair

immigration policy outweighed the appellants' family and private life and that the respondent's decision was proportionate.

3. The grounds claim the judge failed to have regard to s.117B(6) of the 2002 Act. At [28] the judge purported to have regard to the same but did not consider whether it would be reasonable to expect the qualifying British child to leave the UK.
4. Judge Mailer granted permission on 1 October 2018 as follows:

*"2. The judge found that the appellant committed deceit in obtaining her TOEIC certificate. She has two minor British children, aged 10 and 15. They are free to remain in the UK with their father if the family so chooses, or can return to Bangladesh with their mother at a later date if they choose. Their best interests will be served in either country with either parent as has been the case over the years. The public interest in maintaining a firm and fair immigration policy outweighs the appellants' family and private life. The use of a proxy taker carries significant weight such that it outweighs any other consideration [29].*

*3. The grounds assert that the judge failed to have regard to s.117B(6) of the 2002 Act and has not considered whether it would be reasonable to expect her qualifying British children to leave the UK. Section 117B(6) was a route available to her by which any public interest in refusing her leave was to be eliminated. The finding that it was reasonable for the qualifying children to leave the UK was deficient and failed to consider their interests as British citizens or the need to have proximity to both parents. The respondent also failed to have regard to her own policy – **SF and others (Guidance post-2014) [2017] UKUT 000120**.*

*It is arguable that the judge did not conduct a proper Article 8 inquiry for the reasons set out in the grounds ... ..".*

### **Submissions on Error of Law**

5. Mr Muquit relied upon the grounds.
6. Mr Jarvis conceded a material error of law on the part of the judge. The judge failed to engage with S.117B(6) notwithstanding his reference to the same at [26]–[28].

### **Notice of Decision**

7. Although not raised in the grounds, both **KO (Nigeria) [2018] UKSC 53** and **Rhuppiah [2018] UKSC 58** are potentially relevant in these particular circumstances.
8. The decision of the First-tier Tribunal contains a material error of law, is set aside and will be re-made in the First-tier following a de novo hearing.

No anonymity direction is made.

Signed

Date 23 November 2018

Deputy Upper Tribunal Judge Peart