



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/25840/2016**

Appeal Numbers:

HU/26

757/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 10th June 2019**

**Decision & Reasons Promulgated
On 25th June 2019**

Before

**DISTRICT JUDGE MCGINTY SITTING AS A
DEPUTY UPPER TRIBUNAL JUDGE**

Between

**MR S I
MRS A T
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss Shaw of Counsel

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

DECISION AND REASONS

1. This is the Appellants' appeal against the decision of First-tier Tribunal Judge Aujla promulgated on 22nd February 2019 in which he dismissed the two Appellants' human rights appeals.
2. Permission to appeal in this case has been granted by First-tier Tribunal Judge Hollingworth on 30th April 2019.

3. At the appeal before the Upper Tribunal today the Appellants were represented by Miss Shaw of Counsel and the Secretary of State was represented by Mr Bramble, Senior Home Office Presenting Officer. Miss Shaw relies upon both the original Grounds of Appeal and the expanded Grounds of Appeal. Mr Bramble had not, for some reason, seen the expanded Grounds of Appeal until this morning. I therefore ensured that he had sufficient time before the appeal was heard to consider those expanded Grounds of Appeal. Having done so he quite properly conceded on behalf of the Secretary of State that there is a procedural error in the First-tier Tribunal Judge's decision. In that regard he concedes that the First-tier Tribunal Judge erred in this case when considering the question as to whether or not the health of the Appellants' daughter, SS, who had just been discharged from hospital following a front orbital remodelling to her skull on 1st February 2019, just eleven days prior to the hearing on 12th February 2019 was a new matter. It was agreed by both parties that whether this issue amounted to a new matter not dealt with at the start of the hearing, but only in closing submissions.
4. The judge in his decision considered whether this was a new matter and found that it was, but in the alternative found that there was insufficient evidence before him as to how long it would be that the child required post-operative care at home and regarding whether there were any problems in respect of the child returning to Bangladesh with her parents.
5. Mr Bramble conceded that what the judge should have done was to identify this at the start of the hearing as a new matter and at that stage if the Secretary of State had not consented to the matter being dealt with, the judge should not have proceeded to hear evidence on the point and make findings. The question as to whether it is a new matter for the purposes of Section 85(5) of the Nationality, Immigration and Asylum Act 2002 is a question of jurisdiction and that if this were a new matter then the Tribunal did not have jurisdiction to consider it in the absence of consent from the Secretary of State.
6. In that regard both parties referred me to the case of **Mahmud (Section 85 NIAA 2002 - new matters) [2017] UKUT 00488** wherein at paragraph 31 of the decision it was stated:-

“Conversely, evidence that a couple had a child since the decision is likely to be a new matter as it adds an additional distinct new family relationship (with consequential requirements to consider the best interests of the child under Section 55 of the Borders, Citizenship and Immigration Act 2009) which itself could separately raise or establish a ground of appeal under Article 8 that removal would be contrary to Section 6 of the Human Rights Act”.
7. That is exactly the same situation as in this case. At the date of the original decision, the Secretary of State had considered only the private lives and family life of the two Appellants. Since then there had been a new daughter born, SS, and the health of the daughter SS had not been considered in the original decision. The fact that there was a child with

health issues was therefore a new matter. This should have been identified at the start of the hearing rather than being identified at the end after evidence had been taken on the point.

8. Had that new issue been identified at the start then it could be clarified specifically as to whether or not the Secretary of State consented to the Tribunal dealing with it and if so to consider whether an adjournment was necessary to allow further evidence on that new issue.
9. Both legal representatives agree that the judge procedurally erred in this matter and that they both therefore agree that the decision of First-tier Tribunal Judge Aujla should be set aside and the matter remitted back to the First-tier Tribunal hearing for rehearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Aujla.
10. However, in order to progress matters today Mr Bramble quite properly on behalf of the Secretary of State has consented to the new issue being dealt with within these proceedings. However, both parties agree further up to date evidence is required regarding the health of the child, SS, and as to whether or not she still needs to be in the UK for further medical treatment. It has been agreed by both parties that the Upper Tribunal today should give directions for the filing of further medical evidence before the First-tier Tribunal in respect of the health of SS and as to whether or not she requires ongoing treatment in the UK; whether she is still being cared for at home; what problems there may be in terms if she were to be removed from Bangladesh both in terms of the effect of permanent removal upon her and in terms of any inability/difficulty in obtaining healthcare in Bangladesh.

Notice of Decision

The decision of First-tier Tribunal Judge Aujla does contain a procedural error of law and is set aside.

The matter is to be remitted to the First-tier Tribunal for rehearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Aujla.

The Appellants do have until 4.00 p.m. on 12th August 2019 to file and serve any further evidence relating to the health or treatment of their daughter, SS.

The matter then be relisted for a case management conference before the First-tier Tribunal on the first available date after 23rd September 2019.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity is granted as the Appellants do have a minor daughter in the UK.

Unless and until the Tribunal or Court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify the Appellants or their daughter. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed District Judge McGinty
2019

Date 23rd June

District Judge McGinty sitting as a
Deputy Upper Tribunal Judge