



**UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

THE IMMIGRATION ACTS

Heard at: Field House
On: 8 May 2014

Decision Promulgated:
On: 9 May

2014

Before

Upper Tribunal Judge Pitt

Between

**Mohammed Hossain Ahmed
Musammat Sabina Begum
Musammat Faija Begum
Md Faiyaz Ahmed**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Islam of The First Law Partnership

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

DETERMINATION AND REASONS

1. The appellants are nationals of Bangladesh. They are husband and wife and two of their children.
2. This is an appeal by the appellants against the determination promulgated on 19 March 2014 of First-tier Tribunal Judge N M Paul which refused the appellants' appeal against the respondent's decision of 3 July 2013 to refuse leave to remain as family members and under Article 8 of the ECHR.
3. The facts of the case are that the appellants came to the UK with entry clearance as visitors on 16 November 2011. On 15 May 2012 they applied for an extension of leave in order to spend more time with the first appellant's father who was very ill. Sadly, his father died on 31 December 2012. The family pursued the application in order to be able to remain and care for the first appellant's mother.
4. There is no dispute that the substantive Immigration Rules cannot be met.
5. The sole ground of appeal here is that Judge Paul erred in failing to allow the appeal under Article 8. It was argued that he incorrectly assessed whether the appellants had a family life with the first appellant's mother and that her medical needs could be met by other family members. It was also maintained that the First-tier Tribunal also failed to assess the best interests of the children.
6. To my mind, the grounds were wholly without merit. The first appellant's parents came to the UK around 15 years ago. They lived independently from the first appellant and his family for many years. They lived in the same country as two other children rather than the first appellant. The appellants have only been in the UK since November 2011, at most half of the lives of the children. It was clearly open to the First-tier Tribunal to find that it had not been shown that the appellants had a family life for the purposes of Article 8 with the first appellant's mother. The clear import of the findings at [28] to [31] is that the appellants had not shown a family life with the first appellant's mother, there being no more than the usual emotional ties.
7. The grounds state that the usual test for family life should be distinguished where a child is involved, here the third and fourth appellants. That argument is misconceived. The third and fourth

appellants can be assumed to have their primary family life with their parents and not with a grandmother with whom they have spent less than half their lives. There was no evidence showing more than the usual emotional ties to be expected between a grandmother and her grandchildren.

8. Judge Paul's findings did not include overt consideration of the best interests of the children which is regrettable. It remains the case that their best interests were manifestly to be with their parents wherever they were, the children having spent at least half of their life if not more in Bangladesh in any event. This was simply not a factor which could have made a material difference to the outcome of the appeal.
9. Judge Paul was equally entitled to find that any needs of the first appellant's mother, on which it was conceded before me there was limited evidence, could be met by other family members. Two other children had cared for the grandmother. One of them, a son, still lived in the same home. As family life had not been shown, the grandmother's rights could arise only in the context of a private life claim and it was simply wrong to assert that where others could care for her and she had lived apart from the appellants for so long that this was a matter that could lead to the Article 8 appeal being allowed.
10. There was nothing here which could allow a second stage Article 8 assessment to succeed. There were no arguably good grounds for proceeding to a second stage Article 8 assessment. There were no compelling or exceptional circumstances that could have founded such a claim; Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00460 (IAC) applied. Rather, the reliance on the illness of the mother after the death of the father appeared to me to be an opportunistic attempt to circumvent immigration control.
11. The grounds also argue that the First-tier Tribunal failed to assess the first appellant's claim that he would face violence on return as a result of political differences.
12. I had no hesitation in finding that claim and the material submitted in support of it had no merit whatsoever.
13. The events that the first appellant seeks to rely on occurred before he came to the UK. No mention was made of a protection claim, however, until the first appellant's witness statement dated 24 February 2014, just three days before the First-tier Tribunal hearing. It was not a ground of appeal to the First-tier Tribunal. It was not

raised in response to the s.120 notice. Permission to vary the grounds of appeal was not sought at any time.

14. It was maintained before me that the protection claim could not have been raised earlier as the first appellant did not know any earlier of the change of circumstances that had led to increase risk. There was absolutely nothing to show when he did find out that he might be at risk that could possibly substantiate such an assertion.
15. The documents provided are very poorly translated, to the point of unintelligibility. The translations are not certified. No originals or even copies of the original documents were provided.
16. As a result, the protection claim put forward before Judge Paul was devoid of any merit whatsoever, even had it been raised as a formal ground of appeal at any time, which it was not. The manner in which it has been approached by the first appellant and his legal advisers appeared to me to be at best entirely inappropriate and at worst cynical and opportunistic. No material error arose.

DECISION

17. The decision of the First-tier Tribunal does not contain an error on a point of law such that it should be set aside. The decision of the First-tier Tribunal shall stand.

Signed: 
Upper Tribunal Judge Pitt

Date: 8 May 2014