



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

Appeal Numbers: IA/37913/2013
IA/37914/2013
IA/37915/2013

THE IMMIGRATION ACTS

Heard at Field House

On 20 May 2014

**Determination
Promulgated
On 1 July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**SHAHIDUL ISLAM KHAN
JANIYA SULTANA JESMIN
JASMIR SAMI KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr T Bin Aziz of TSA Law

For the Respondent: Mr G Jack of the Specialist Appeals Team

DETERMINATION AND REASONS

The Appellants

1. The Appellants are husband (the Appellant), wife and their minor son, born in 2010. They are all citizens of Bangladesh. The husband is the lead Appellant, whose date of birth is given as 1 January 1978.

2. On 7 October 2007 the Appellant arrived with leave to enter as a student which was subsequently extended until 28 May 2011. He was then granted further leave as a Tier 1 (Highly Skilled) Migrant, expiring on 21 July 2013. His wife arrived on 28 April 2009 with leave as the spouse of a student which leave was subsequently extended and varied in line with that of the Appellant. On 20 July 2013, in time, the Appellant applied for further leave outside the Immigration Rules with his wife and son as his dependants.

The Decisions

3. On 2 September 2013 the Respondent refused the applications and decided to remove the Appellants by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. The Respondent gave reasons for the decision in letters of 2 September 2013 and 17 January 2014. She noted the Appellant lived with his wife and child as a family unit, none of them were British citizens and they did not meet the requirements of paragraph EX.1 of Appendix FM of the Immigration Rules. The Respondent then went on to consider 276ADE of the Immigration Rules and noted the Appellant did not meet any of the residence requirements of the Rules. The Respondent separately addressed the position of the Appellant's wife and son under Paragraph 276ADE and Appendix FM. She refused his application and those of his wife and son as his dependants.
4. On 16 September 2014 each of the Appellants lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended. The grounds refer to the fact that the Appellant had completed a first degree in law and was in the process of finishing vocational training for the Bar and needed to re-sit some modules for which his college had declined to assign him a Certificate of Approval for Studies. The Appellant had a strong private and family life in the United Kingdom and took part in various community activities. The grounds assert the Respondent had not considered the best interests of their son and that the decision to refuse leave was disproportionate to the need to maintain proper immigration control.

The First-tier Tribunal's Determination

5. By a determination promulgated on 14 February 2014 Judge of the First-tier Tribunal Beach dismissed the appeals of each Appellant under the Immigration Rules and on human rights grounds. The Appellants sought permission to appeal. The grounds to a considerable extent repeat the original grounds for appeal. They go on to assert the Judge gave only an incomplete consideration of their claims under Article 8 in that at paragraph 24 of her determination the Judge had accepted the Appellants had established a private and family life but had not considered fully their relationships with friends and family and the private lives of the Appellant and his wife.

6. On 3 April 2013 Judge of the First-tier Tribunal Chambers granted the Appellants permission to appeal. The Respondent filed a response in accordance with Rule 24 of the Procedure (Upper Tribunal) Rules 2008 as amended. The response asserts the grounds for appeal are merely a disagreement with the Judge and that her decision was proportionate to the need to maintain immigration control and was sustainable because the Appellant could continue his studies in Bangladesh and seek entry clearance to re-sit his examinations, as mentioned in the Judge's determination.

The Upper Tribunal Hearing

7. The Appellant attended the hearing. Mr Jack stated the Appellant had sat two examinations in April and had a single written paper outstanding which he would sit by 29 May.
8. Mr Bin Aziz relied on the grounds for appeal. Mr Jack for the Respondent submitted that the Judge's determination was detailed and addressed all the relevant points. The Judge had recited or referred to the recent jurisprudence on claims under Article 8 of the European Convention. At paragraphs 27 and 28 of her determination she had addressed the essential issues raised in the appeal. He referred to the determination in *Azimi-Moayed [2013] UKUT 197 (IAC)*. At paragraph 12 the Upper Tribunal had found that it was not likely there would be any welfare concerns for a child if the effect of a decision was that the child would continue to live with both his parents.

Consideration

9. At the hearing I was shown a letter of 19 May 2014 from City Law School stating the Appellant had been permitted to convert from his Bar vocational studies to pursue studies leading to an LLM degree. I noted the proposed conversion to a Master's degree course was not before the Judge. Indeed, quite the contrary was clear from the Appellant's letter to the Respondent at page 53 of the Respondent's bundle.
10. The Judge made clear findings about the nature and extent of the private and family life of the Appellant and his wife at paragraphs 24-26 of her determination. At paragraph 28 she fully addressed the Appellant's wish to re-sit the outstanding elements of his Bar vocational examinations. Given the circumstances of the Appellant and his wife, the Judge's consideration of their son's position at paragraph 26 was adequate and sustainable.
11. The Judge's determination does not contain any error of law and shall stand.

Anonymity

12. There was no request for an anonymity direction and having considered the appeal do not find there is any need for one.

DECISION

The determination of the First-tier Tribunal did not contain any error of law such that it should be set aside and it shall stand.

Anonymity direction not made.

Signed/Official Crest

Date 30. vi. 2014

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal