



IAC-AH-SAR-V1

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

Appeal Number: AA/11440/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 24th November 2015**

**Decision and Reasons
Promulgated
On 18th December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**GUL BAHAR BEGUM
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Timson of Counsel instructed by SEB Solicitors

For the Respondent: Miss C Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Heynes of the First-tier Tribunal (the FtT) promulgated on 12th May 2015.
2. The Appellant is a female citizen of Bangladesh born 12th February 1962 who arrived in the United Kingdom as a visitor on 8th September 2012, and claimed asylum on 19th October 2012. The Appellant had arrived in the UK with two of her children, her daughter born 10th April 1997, and her son

born 7th September 2003, and the children were accepted to be the Appellant's dependants when her claim was considered.

3. The application was refused on 8th December 2014. The Respondent did not accept that the Appellant would be at risk if returned to Bangladesh, and therefore did not accept that she was entitled to a grant of asylum or humanitarian protection, and it was not accepted that there would be a breach of any of her human rights if she returned to Bangladesh.
4. The appeal was heard by the FtT on 28th April 2015. The FtT found that the Appellant had fabricated her account. The FtT heard evidence from the Appellant, her daughter, who by the time of the FtT hearing was 18 years of age, and the Appellant's sister. The FtT described the Appellant and both witnesses as unreliable and untruthful. The FtT found that the Appellant and her daughter came to the UK, not as genuine visitors, "but in the knowledge that they intended to seek to remain on the basis of a fabricated asylum claim". The FtT found that the Appellant was not at risk prior to coming to the United Kingdom, and that she would not be at risk on return. The FtT found that the Appellant's husband still lived in the family home. The appeal was dismissed on all grounds.
5. The Appellant applied for permission to appeal to the Upper Tribunal. I set out below the grant of permission by Judge Grant-Hutchison, which summarises the application;
 - "2. It is submitted that the judge erred in law (a) by failing to find facts (i) the judge failed to find that Mr Shakur (who is accused of murdering the Appellant's sister and two children) was arrested after the Appellant's arrival in the UK; (ii) the threat to the Appellant was not only from Mr Shakur but from his family members who are powerful members of the Awami League and (b) by failing to consider the Appellant's children's best interests.
 3. In terms of part (a) it is immaterial where Mr Shakur was when the Appellant came to the UK as he is presently detained and awaiting extradition to the UK. The judge has given adequate reasons why he does not accept that Mr Shakur's relatives have any influence. However in terms of part (b) it is arguable that the judge has misdirected himself by not considering the best interests of the Appellant's two children who came to the United Kingdom with her. On this basis only I would grant a limited permission to appeal".
6. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 contending, in summary, that the FtT had directed itself appropriately. It was noted that the Appellant's two children were 18 and 11 at the date of hearing and both had spent the great majority of their lives in Bangladesh, and would be returned with their mother, and therefore there would be no breach of family life. It was therefore contended that any error was immaterial, and no Tribunal properly directing itself would have found that the best interests of the children were not served by returning to Bangladesh as part of the family unit. Even if the best interests of the children were to remain in the UK, which the Respondent did not accept,

given the facts as found the needs of immigration control would inevitably outweigh this consideration.

7. Directions were subsequently issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FtT decision should be set aside.

The Appellant's Submissions

8. Mr Timson relied upon the grounds contained within the application for permission to appeal, insofar as they related to the best interests of a child. Mr Timson accepted that only the Appellant's son was a child when the FtT heard the appeal.
9. Mr Timson submitted that the FtT had not considered the best interests of the Appellant's son, and therefore the decision should be set aside and remitted to the FtT for this issue to be considered. Mr Timson submitted that in addition, there had been no consideration of paragraph 276ADE(vi) as the FtT had failed to consider whether there would be very significant obstacles to the Appellant's integration into Bangladesh if she had to return with a child.

The Respondent's Submissions

10. Miss Johnstone relied upon the rule 24 response, and submitted that paragraph 276ADE had not been relied upon in the skeleton argument presented to the FtT. I was asked to note the lack of evidence presented to the FtT, in relation to the child's best interests. The evidence appeared to be that the child attended school, but there was nothing to prevent him from attending school in Bangladesh.

The Appellant's Response

11. Mr Timson argued that paragraph 276ADE was before the FtT and should have been considered. Mr Timson accepted that the only evidence before the FtT in relation to the child, was that he attended school.

My Conclusions and Reasons

12. The Grounds of Appeal to the FtT are unnecessarily long, comprising nineteen pages, and supplemented by eighteen pages of additional grounds. However it is clear that the issue of the best interests of the child was raised in those grounds, and therefore should have been considered by the FtT. The Respondent in giving reasons for refusal did consider the best interests of the Appellant's son at page 15 of the decision, contending that it would be in his best interests to return with the Appellant to Bangladesh where family life as a complete family unit could be enjoyed. The failure of the FtT to consider the best interests of the child is an error of law. The issue that I have to decide is whether it is material. Mr Timson has argued that it is, and Miss Johnstone that it is not.
13. It was accepted by Mr Timson that it was only the Appellant's son who was a child when the FtT heard the appeal, as by then the Appellant's daughter was an adult. The evidence before the FtT was that the child arrived in the

UK with his mother and elder sister on 8th September 2012. He had been in the UK for approximately two years and seven months by the date of the FtT hearing. He had therefore lived by far the majority of his life in Bangladesh.

14. I have carefully considered what evidence was raised before the FtT in relation to the Appellant's son and his best interests. It is contended in the Grounds of Appeal and skeleton argument that his best interests would be served by remaining in the UK with his mother.
15. The reasons given for that contention were that the Appellant would be at risk if returned to Bangladesh, and that he now attended school in the UK.
16. It was not suggested that there were any relevant medical issues in relation to the child. It was not suggested that the child would have any language or cultural difficulties if returned to Bangladesh, the country of which he was a citizen.
17. The FtT dealt with the issue of risk, finding unequivocally that the asylum claim had been fabricated, the Appellant and her two witnesses had been untruthful, and that there would be no risk if the family were returned to Bangladesh.
18. It was said that the Appellant's son attended school, but it appears that no relevant evidence was submitted from the school, and no independent evidence, to indicate that leaving school and returning to Bangladesh would have any adverse effect upon the Appellant's son. It was suggested in paragraph 22 of the grounds seeking permission to appeal, that the Respondent should have prepared a report as to whether or not removing the Appellant from the UK would affect her children. It is not for the Respondent to prepare such a report. The Respondent has a duty to consider the best interests of a child, and did so. If such a report was to be prepared, then it should have been prepared on behalf of the Appellant.
19. I conclude that this is one of a minority of cases, where the error in not considering the best interests of a child is not material. That is because, taking into account the evidence that was presented to the FtT, the FtT could only have come to one conclusion in relation to the best interests of the Appellant's son. That conclusion would have to have been that it was in his best interests to return to Bangladesh with his mother.
20. As I find no material error of law, the decision of the FtT must stand. Permission to appeal was not applied for or granted in relation to paragraph 276 ADE (vi).

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I do not set aside the decision. The appeal is dismissed.

Anonymity

No order for anonymity was made by the First-tier Tribunal. There has been no request for anonymity to the Upper Tribunal, and I see no need to make an anonymity order.

Signed

Date 1st December 2015

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 1st December 2015

Deputy Upper Tribunal Judge M A Hall