



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01962/2015
AA/01963/2015
AA/01964/2015

THE IMMIGRATION ACTS

Heard at Field House
On 29 September 2015

Decision & Reasons Promulgated
On 18 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

(1) RZ
(2) AJ
(3) MJ

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss. S. Iqal, Counsel instructed by Bespoke Solicitors
For the Respondent: Mr. C. Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Appellants are a family unit comprising of a mother and her two children. They are nationals of Bangladesh born respectively on [] 1982; [] 2004 and [] 2009. They appealed against the decision of the Secretary of State dated 23 January 2015 to remove them from the UK following a refusal to grant them asylum, humanitarian

protection and protection under the European Convention on Human Rights (ECHR).

2. The Appellants entered the UK on 22 December 2013 with entry clearance conferring leave to enter as visitors until 21 May 2014. They claimed asylum on 11 October 2014 on the basis that the First Appellant suffered domestic abuse at the hands of her husband in Bangladesh.
3. The Appellants appeal was heard before First-tier Tribunal Judge C Chapman on 20 April 2015. He dismissed the appeal on 5 May 2015 on all grounds. The Judge heard evidence from the Appellant and a witness and made a number of findings in respect of uncontested background facts at [29]. In respect of the First Appellant's claim to be at risk from her husband, the Judge did not find certain aspects of the account credible and gave detailed reasons for so finding. He did not accept that the First Appellant had an intention to return to Bangladesh so that her children could return to school. The Judge did not accept that the First Appellant had formed a relationship with another man and rejected her evidence that she intended to remain in the UK on account of this relationship. He did not accept that the First Appellant's husband in Bangladesh discovered that she was having such a relationship and, as a consequence, made a threatening telephone call to the First Appellant. The judge rejected her account that she had disappeared for three months with this man noting that she knew very little about him. The Judge did accept however that, "*there is a real risk that the First Appellant has suffered domestic abuse at the hands of her husband, and that, if she were to return to him, here is a real risk that it would continue*" [47]. Nevertheless, the Judge was satisfied with reference to applicable country guidance that the First Appellant on return would either be able to seek support from her family or internally relocate with their support [52].
4. The Judge considered Article 8 of the ECHR. Reference was made to Family Court proceedings concerning the Second and Third Appellants who were made subject of a Supervision Order under the care of the Local Authority for a period of one year on 3 March 2015. Whilst the Judge was satisfied that there would be an interference with family and private life, he concluded in-line with the findings made by the Family Court that, it remained in the best interests of the Appellant children to remain with their mother. He noted that the Supervision Order was designed to give effect to the best interests of the children which the Family Court had concluded laid with them remaining with their mother. Whilst, the Judge acknowledged that removal would mean that the Supervision Orders could not be enforced, he found that there was no real risk of harm to the children [57]. The Judge thus concluded that removal of the Appellants was proportionate contrary to Article 8 of the ECHR. Accordingly, he dismissed the appeals.
5. The Appellants sought permission to appeal. The grounds of application contend, first, that there had been procedural unfairness, in that, the Judge made adverse credibility findings in respect of an issue that had up until the date of hearing been accepted and, second, the judge failed to apply a "two stage test" in relation to Article 8. The Appellants relied on paragraph 276ADE(1)(vi) of the Rules but the Judge

made no findings there under and moved straight to an assessment of Article 8 outside of the Rules. Thirdly, the Judge made a perverse assessment of the best interests of the children in light of the supervision order made by the Family Court.

6. Permission to appeal was granted by Designated Judge of the First-tier Tribunal R C Campbell on 1 June 2015 on all three grounds, but observed that the first and third ground was finely balanced.
7. In amplifying the grounds Miss Iqbal submitted that the Judge misunderstood the nature of the Supervision Order at [57]. She submitted that the order required there to be supervision of the mother's role in the Appellants lives and to ensure no real risk of harm whilst the children remained with the mother. She referred to the Skeleton Argument and to paragraph 13 of the grounds. She submitted that the Family Court found that there was something that warranted the supervision of the children whilst under the mother's care. This she submitted was relevant to the consideration of paragraph 276ADE in relation to the significant obstacles test. She referred to paragraph 27 and 32 of the Skeleton Argument and submitted that if the First Appellant returned as a single mother there would be a cause for stigma, which in turn would cause difficulties with integration. This she submitted was material to the decision.
8. Mr Avery reminded the Tribunal that the Judge disbelieved the First Appellant's account. He referred to the findings at [52] and submitted that it was not surprising that the Judge did not address paragraph 276ADE of the Rules, as the First Appellant had family in Bangladesh. He referred to paragraphs [51 to 53] and submitted that there was no material error. He submitted that the Family Court was considering a different context and that the First Appellant would have family support in Bangladesh. He submitted that the Judge was aware of the best interests of the children.
9. Miss Iqbal in reply submitted that it was important to consider the background of domestic violence against whether there would be any significant obstacles even with family support.

Decision on Error of Law

10. Turning to deal with the first ground, it is contended in the grounds of application that there has been procedural unfairness. The Judge made adverse credibility findings in respect of issues that had, up until the date of the substantive hearing, been accepted by the Respondent in relation to a claim that the First Appellant suffered domestic abuse in Bangladesh. It was argued that the Presenting Officer had introduced credibility into his submissions in respect of these matters and had the Appellants been given notice, an adjournment would have been sought to obtain further evidence of the First Appellant's vulnerability and other matters. Miss Iqbal made no oral submissions in respect of this ground. She was right not to do so as there is no merit in this ground whatsoever. The Presenting Officer was entitled to develop his case in light of the evidence which emerged at the hearing. The Appellants' Skeleton Argument acknowledged that the position may indeed change

and contrary submissions were pleaded should that be the case. In any event, those contrary submissions were not relevant in light of the fact that the Judge found that the First Appellant suffered domestic violence at the hands of her husband. I find that there was no procedural unfairness and thus no error in the Judge's approach. I find that the first ground fails.

11. I am satisfied, however, that the Judge erred in failing to apply a "two stage test" in relation to Article 8. It is apparent that the Appellants sought to rely on paragraph 276ADE(1)(vi) as this is expressly referred to in the Skeleton Argument at paragraphs 26 to 32. The Judge does not refer to paragraph 276ADE and makes no relevant findings that the requirements have either been met or not met. I do not accept the submission of Mr Avery that the error was not material in light of the Judge's findings that the First Appellant had family in Bangladesh and could relocate with their support [52]. Those findings were made in the context of determining the Appellants' asylum appeal, which required consideration of different matters to that required under the Rules. The fact that the First Appellant has family in Bangladesh, whilst relevant to the issues under the Rules, is by no means determinative of it. As Miss Iqbal pointed out, there are other factors such as the First Appellant's profile as a former victim of domestic abuse and as a single mother that are of relevance in any enquiry under the applicable Rule. It is abundantly clear that the Judge failed to conduct an assessment under the Rules which he was required to do. I find that the second ground is made out.
12. As for ground three, whilst I agree with the Judge granting permission that this ground is finely balanced, I am just persuaded that the Judge erred in his assessment of proportionality by failing to adequately consider the terms and effect of the Supervision Orders, the existence of which is material to the best interests assessment in respect of the children. I am satisfied that the Judge's findings that the Supervision Orders were designed to give effect to the conclusion of the Family Court that the best interests of the children lie with them being with their mother at [57], is not adequately justified by reference to the evidence before the Judge, which indicated that the appointed guardian acting for the children recommended that the Local Authority continue to remain involved in order to support the family and, in particular, to monitor the children's wellbeing. The evidence indicates that the Supervision Orders were not solely made in order to secure the children's placement with the mother, but were designed to put in place a form of protection for the children. Whilst I acknowledge that the Judge was clearly aware of the Supervision Orders, I am not satisfied that their existence and purpose was adequately considered in the context of the evidence from various relevant agencies identifying the vulnerability of the family. I am thus satisfied that the Judge's finding that there would be no real risk of harm to the children notwithstanding that removal would mean that the Supervision Orders could not be enforced is not sustainable. I find that ground three is made out.
13. I am thus satisfied that the Judge materially erred in law and that his decision on human rights grounds must be set aside. Having found that the judge materially erred in law the parties were invited to address the Tribunal as to their respective

position on disposal. Miss Iqbal invited the Tribunal to remit the matter to the First-Tier Tribunal for a rehearing, whilst Mr Avery was of the view that the matter could remain before the Upper Tribunal. As the First-tier Tribunal failed to consider the appeal under the Rules, I am persuaded to remit the matter so that further evidence can be filed and heard in respect of outstanding issues, whilst preserving the findings of fact. I set aside the decision of the First-tier Tribunal and remit the appeal for consideration under paragraph 276ADE(1)(vi) of the Rules and Article 8 of the ECHR.

Notice of Decision

The decision of the First-tier Tribunal contains errors of law, is set aside and shall be remitted to the First-tier Tribunal for rehearing by a judge other than Judge C M Chapman.

Anonymity

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

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity in order to preserve the anonymity of the minor Appellants. No report of these proceedings shall directly or indirectly identify them or any member of their family. 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

Date

Deputy Upper Tribunal Judge Bagral