



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

Appeal Numbers: IA/05574/2015
IA/05329/2015

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke on Trent
On 30th June 2016**

**Decision & Reasons
Promulgated
On 14th July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**M.K.A.
S.B.
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Khan of Anwar Law Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellants appeal against the decision of Judge S J Pacey of the First-tier Tribunal (the FTT) promulgated on 1st October 2015.

2. The Appellants are citizens of Bangladesh born [] 1997 and [] 2002 respectively. They are brother and sister. Because the second Appellant is a minor I have made an anonymity direction.
3. On 30th September 2014 the Appellants applied for indefinite leave to remain in the United Kingdom. The Appellants had arrived in the United Kingdom with their mother on 17th June 2012 with visas valid until 17th August 2014.
4. The Appellants applied for indefinite leave on the basis that their father is settled in the United Kingdom.
5. The applications were refused on 20th January 2015 with reference to paragraph 298(1) on the basis that both of the Appellants' parents were not present and settled in the United Kingdom. Although their mother was present in the United Kingdom, she did not have settled status and was not a British citizen.
6. The Respondent went on to consider the family and private lives of the Appellants but concluded that their applications could not succeed either within or outside the Immigration Rules.
7. The Appellants appealed to the FTT. It was accepted that their mother did not have settled status but it was contended that their father, who did have settled status, had had sole responsibility for the Appellants' upbringing. Reliance was also placed upon Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention).
8. The FTT found that the Appellants' mother was not settled in the United Kingdom. It was also found that the Appellants had lived with their mother in Bangladesh and travelled with her to the United Kingdom, and it was not accepted that their father had had sole responsibility for their upbringing. The FTT found that there was no evidence whatsoever that the Appellants' mother had abandoned or abdicated responsibility for them.
9. The FTT also found that there were no serious and compelling family or other considerations which made exclusion of the Appellants from the United Kingdom undesirable. The FTT considered the best interests of the children, and also found that the appeals could not succeed with reference to Article 8 of the 1950 Convention.
10. Following dismissal of their appeals the Appellants applied for permission to appeal to the Upper Tribunal. It was contended that the FTT had been wrong to dismiss the appeal of their mother, the FTT had heard the appeals together, but issued a separate decision and reasons for the Appellants' mother under reference IA/20566/2015. It was contended that because their mother's appeal had been wrongly dismissed, this meant that she should be given leave to remain, and therefore so should the Appellants as her children.

11. It was further contended that the FTT had failed to consider all relevant evidence when finding that the Appellants' father did not have sole responsibility for them. It was also contended that the FTT had erred in failing to allow the appeals under Article 8 of the 1950 Convention, as an alternative to allowing them under the Immigration Rules.
12. Permission to appeal was granted by Judge Davidge of the FTT on the basis that the FTT may have erred in dismissing the appeal of the Appellants' mother. Judge Davidge refused permission to appeal on Article 8 grounds.
13. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FTT decision contained an error of law such that it should be set aside.

Oral Submissions

14. Mr Khan relied upon the grounds contained within the application for permission to appeal. The main argument was that the Appellants' mother's appeal should not have been dismissed, therefore the Appellants' appeal should also be allowed. In relation to sole responsibility Mr Khan contended that the FTT had not taken into account relevant evidence, and had not properly taken into account the guidance given in TD (Yemen) [2006] UKAIT 00049.
15. Mr McVeety contended that there was no error of law disclosed in the FTT decision, and relied upon the written response dated 13th April 2006, which had been made pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
16. It was submitted that there was no merit in the suggestion that the Appellants' mother's appeal should have been allowed. As to sole responsibility, the grounds simply disclosed a disagreement with findings made by the FTT and disclosed no error of law.
17. It was evident from the Appellants' evidence that their mother was actively involved with the children, and it was open to the FTT to find that she had not abdicated responsibility.
18. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

19. I will deal, as a preliminary point, with the comment made in the grant of permission that the application for permission to appeal was made late. Both representatives indicated that they believed that the application had been made in time. I have considered rule 33(2) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, and conclude that the application was made in time, and therefore there is no necessity for an application to extend time.

20. Permission to appeal was refused on Article 8 grounds. Permission was granted on the ground that the FTT may have erred in dismissing the appeal of the Appellants' mother. I have issued a separate decision in relation to the Appellants' mother, and found that the FTT did not err in dismissing her appeal.
21. I do not find that the FTT erred in dismissing the appeals of the Appellants. It is clear that the FTT considered all the evidence placed before it, and correctly applied the guidance in TD (Yemen) [2006] UKAIT 00049.
22. The conclusion of the FTT that the Appellants' mother was not settled in the United Kingdom cannot be faulted. The FTT was entitled to find that the Appellants' father did not have sole responsibility for them. The FTT, in my view, examined the evidence with care, and was entitled to reject the assertion that the mother was no more than a housekeeper for the children. The FTT was entitled to find that there was no evidence that the Appellants' mother had abandoned or abdicated responsibility for the children.
23. The FTT was also entitled to find no serious and compelling family or other considerations which made exclusion of the Appellants undesirable.
24. The grounds contained within the application for permission to appeal, amount to no more than a disagreement with findings made by the FTT, and do not disclose any error of law.

Notice of Decision

The decision of the FTT did not involve the making of an error on a point of law such that the decision must be set aside. The appeals are dismissed.

Anonymity

I have made an anonymity direction pursuant to rule 14 of the 2008 Tribunal Procedure Rules because the second Appellant is a minor. Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them. 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 5th July 2016

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

Because the decision of the FTT stands, so does the decision not to make a fee award.

Signed

Date 5th July 2016

Deputy Upper Tribunal Judge M A Hall