Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/07366/2015
HU/07368/2015
HU/07369/2015
HU/07371/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 17 July 2017	**On 31 July 2017**

Before

Deputy Upper Tribunal Judge Pickup

Between

MR
RB
KRF
MR
[Anonymity direction made]

Appellants

and

Secretary of State for the Home Department

Respondent

Representation:
For the appellants: Mr J Butterworth, instructed by Zhara & Co Solicitors
For the respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellants' appeal against the decision of First-tier Tribunal Judge Cooper promulgated 16.11.16, dismissing on all grounds their linked appeals against the decisions of the Secretary of State, dated 28.9.15, to refuse LTR on human rights grounds.

2. The Judge heard the appeal on 5.10.16.

3. First-tier Tribunal Judge Lambert granted permission to appeal on 10.5.17.

4. Thus the matter came before me on 17.7.17 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision of of the First-tier Tribunal should be set aside.

6. In granting permission to appeal, Judge Lambert considered it arguable that, "the judge's reasoning was contradictory and/or inadequate both in terms of analysis of the Secretary of State's approach to and the appellant's own argument under paragraph 276ADE."

7. There is no merit in the first ground of appeal, that the pre-July 2012 Immigration Rules relating to length of residence should apply to the application made on 25.11.00. That situation only applied to a narrow window of a few months before the Rules were amended to require all applications to be decided on the basis of the current Rules. The fact that the appeal was previously remitted by Judge Smith to the Secretary of State for reconsideration of the application on pre-2012 Rules is no relevant. Ultimately, Mr Butterworth accepted this ground of appeal could not succeed.

Assessment of dependency

8. The next ground of appeal is that the judge's assessment of the article 8 family life claim was inadequate. In particular, it is submitted that the judge misapplied the Kugathas definition of dependency in relation to the support the appellants provide to their relatives in the UK.

9. At [54] the judge accepted the evidence that the help provided by Ms B is of very considerable help to the family and they would struggle without it. However, the judge gave cogent reasons for concluding that the evidence did not demonstrate "further elements of dependency involving more than normal emotional ties," between these adult relatives. Mr Butterworth directed me to the evidence in the appellants' bundle dealing with this issue, comprising medical, consultant and social work assessments of the support provided for the child relative. One of these reports suggests that if it were not for Ms B being on hand to provide practical support, the family would not have coped with the immense stress due to the relapse of the child's acute myeloid leukaemia. She was described as very much needed to keep the household and the family going. Another child of the family has autism. Ms B provides care for the children in the home, cooking and cleaning, making the school run and transporting to hospital appointments.

10. It is not the case that the judge has ignored this evidence. To the contrary, it is clear that it has been fully considered and taken into account. The challenge is not as to reasons or omission to take into account relevant evidence. In essence, the submission of the grounds as advanced by Mr Butterworth is that the decision is perverse. I cannot accept this submission. It was open to the judge to assess the evidence and reach the conclusion that if Ms B and her family were removed from the UK, other assistance would be available to the relatives, who in the judge's view would "rally round." The child in question and the family would also be entitled to state support. In the circumstances, I am not satisfied that this ground has been made out.

Failure to address the Immigration Rules

11. The remaining ground of appeal is to the effect that the judge was in error at [50] in stating that the appellants' representative conceded that none of the appellants could meet the requirements of either Appendix FM or paragraph 276ADE. The grounds argue that it was and remains the adult appellants' case that there are very significant obstacles to their integration in Bangladesh. The claim that a concession was not made would normally have required evidence from the representative at the hearing. However, the judge's typed record of proceedings records that in submissions the appellants' representative asserted, "the appellants rely both on the Immigration Rules and Article 8." In the circumstances, I accept that the appellants did pursue their claim under 276ADE and the statement to the contrary at [50] must be in factual error.

12. The import of that error is that the judge gave no consideration to paragraph 276ADE and the issue of very significant obstacles to integration, proceeding immediately at [51] to consider the claim under article 8 ECHR. There was no adequate consideration of the Rules and no consideration of very significant obstacles, relied on by the adult appellants in their witness statements.

13. I have carefully examined the decision to see whether there has been anything that could amount to an assessment of obstacles to integration on return to Bangladesh. Whilst the judge has cited extensively from the refusal decision, which does deal with this issue, the actual findings in the decision are relatively brief and do not address the difficulties which the appellants claim they would face on return to Bangladesh. I cannot say that the outcome of the appeal would necessarily have been the same had this issue been addressed adequately. I am driven to conclude that for this reason an otherwise carefully drafted decision is inadequate and thus in error of law.

14. The decision is also devoid of public interest considerations under s117B of the 2002 Act, which would itself be an error of law, though not one relied by the Secretary of State in any cross appeal.

15. Mr Butterworth also sought to rely on the delay of some 5 years between

application and refusal, but that was not a ground of application for permission to appeal and I decline to address it further. It may be a matter that will be developed further on a rehearing of the appeal.

Remittal

16. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The error of law vitiates all all findings of fact and the conclusions from those facts, so that there has not been a valid determination of the issues in the appeal.
17. In all the circumstances, at the invitation and request of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the parties of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

Conclusions:

18. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the attached directions.

Signed
Deputy Upper Tribunal Judge Pickup

Dated

Consequential Directions

19. The appeal is remitted to the First-tier Tribunal sitting at Taylor House;
20. The appeal is to be decided afresh with no findings of fact preserved;
21. The ELH is 3 hours;
22. An interpreter in Bengali (Sylheti) will be required;
23. The appeal may be listed before any First-tier Tribunal Judge, with the exception of Cooper;

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal made an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014. Given the circumstances, I continue the anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The outcome of the appeal remains to be decided.

Signed

Deputy Upper Tribunal Judge Pickup

Dated