Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/18662/2015
IA/18665/2015
IA/19845/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 May 2017	**On 23 May 2017**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

ANRIN HIA RUCHITA (FIRST APPELLANT)
[A A] (SECOND APPELLANT)
MD SHAHNAWAZ ROHAN (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr S Karim of Counsel, instructed by M A Consultants (London)
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Bangladesh. They are father, mother and a child aged 9. Their application to remain outside the Immigration Rules was rejected by the respondent on 30 April 2015. Their appeal against that decision was heard by First-tier Tribunal (FtT) Judge Hussain and

dismissed by him on 19 August 2016. As elaborated by Mr Karim, the grounds of appeal were essentially twofold: first that the judge failed to engage with relevant case law; and secondly that he failed to carry out a proper assessment of the issue of whether the third appellant met the requirements of paragraph 276ADE(iv) in respect of the reasonableness or not of expecting him to leave the UK.

2. The two grounds are closely interrelated but it is convenient if I deal with the second ground first. There are two discernible errors in the judge's assessment of this issue. First, the judge failed to address the appellants' circumstances holistically. Rather than assessing whether taking all matters relevant to the best interests of the child into account it was reasonable to expect the child to leave the UK, the judge treated the answer to this issue as one that could be simply deduced from his conclusions as regards the first two appellants' cases. At paragraphs 33 and 34 the judge wrote:

> "33. As will be apparent from above, this appellant has to show that he has lived in this country for seven years and it would not be reasonable to expect him to leave. The Home Office position is that he will be returning to his home country with his parents who will provide for him.
>
> 34. Current judicial authorities suggest that it is generally in the best interest of a child to be with its parents. In view of the conclusion to which I reached in relation to the first and second appellants appeals, it must follow that it is in the best interest of the third appellant that he to be removed with his parents so that he can be with them."

Whilst the judge was correct to state that there are current judicial authorities that emphasise the point that it is generally in the best interests of the child to live with his or her parents, that general proposition has never been seen to justify the removal of a child without an assessment of the child's particular circumstances. Whilst the judge went on in paragraphs 34 and 35 to consider the child's particular circumstances, he had already, erroneously, treated his conclusion on them as a simple deduction from the failure of the parents to qualify under the Immigration Rules in their own right. The judge effectively treated the case as one concerned with the first two appellants only, with the child's appeal being simply an adjunct of theirs. At paragraph 36 the judge stated "in view of the failure of his parents' appeal, the conclusion to which I have come is that it would not be unreasonable to expect [the child] to leave the UK." (See also paragraphs 34 and 37).

3. A second error concerned the failure of the judge to treat the fact that the third appellant had lived continuously in the UK for over seven years as a factor of significant weight. As stated by Elias LJ in **MA (Pakistan) [2016] EWCA Civ 705**.

> "… the fact that the child has been in the UK for seven years would need to be given significant weight in the proportionality exercise for two related reasons: first, because of its relevance to determining the nature and strength of the child's best interests; and second, because it establishes as

> a starting point that leave should be granted unless there are powerful reasons to the contrary."

This is true in respect of paragraph 276ADE(iv) and s.117B(6) of the NIAA 2002.

4. In my judgment these two errors were material because it cannot be excluded that if the judge had correctly understood "current judicial authorities" he would have reached a different conclusion.

5. My analysis above also provides the answer of the appellants' first ground of appeal. It goes too far to require a Tribunal Judge to cite leading cases setting out the legal principles to be applied; it is sufficient if the law the judge applies is the correct law. In this case however, the judge's application of the law was at odds with the guidance given in **MA (Pakistan)**.

6. At the end of the hearing I asked the representatives how they considered I should dispose of the appeal were I to find (as I have) a material error of law. Mr Karim asked that I re-make the decision myself. Mr Tufan asked that it be either remitted to the FtT or retained in the Upper Tribunal for a further hearing. I have concluded that there is no need for a further hearing either before the FtT or UT. Mr Karim's grounds do not take issue with the judge's principal findings of fact as regards the parents' circumstances in the UK and in Bangladesh; and in relation to the circumstances of the child, Mr Tufan has disputed only the judge's evaluation of these.

My Decision

7. Considering first the issue of the best interests of the child, the third appellant's is clearly a case in which there are factors pointing for and against him being allowed to remain in the UK. On the one hand, as the judge stated in paragraph 35. there are factors indicating that his best interests lie in remaining in the UK: he is "well-established" here; he is "well-settled" in his school and appears to be excelling educationally; he is actively involved in sports that bring him into close contact with other young pupils; he is "well-integrated into British society"; he "has a bright future here". The judge does not dispute that the boy only speaks English. It was these factors that led the judge to state that "undoubtedly his life in the UK would be better than it would be in Bangladesh."

8. On the other hand, the appellant is only 9 years of age and whilst he is active in school life and sporting activities (and recently participated in children's television), it is not suggested he had found significant social ties outside his own family. As stated by the judge in paragraph 36, "he is still of an age where his life revolves around his parents". Whilst the child does not speak Bengali or other languages spoken in Bangladesh, it was not suggested that he was being brought up in ignorance of the culture and traditions of his country of nationality and his religion was also the

same as his parents. Therefore the only factor that was likely to cause the child difficulties in adapting to life in Bangladesh (other than the inevitable disruption of his current life in the UK) was linguistic.

9. Focusing primarily on the best interests of the child, therefore, my assessment is that on balance they lie with him remaining in the UK.

10. However as emphasised by the Court of Appeal in **MA** the fact that the child's best interests are for him or her to stay is not determinative of the issue of whether it is unreasonable to expect him or her to go or of the outcome of the wider proportionality assessment.

11. In considering the issue of reasonableness of expecting the third appellant to leave the UK I remind myself that his continuous residence in the UK for nine years is a significant factor to be weighed in the balance in his favour and that the child's best interests are a primary consideration. However, I also remind myself that on the facts of his case the assessment of his best interests is not one-way. The fact that he was being brought up by his parents with an understanding of the culture and traditions of Bangladesh and also shared their religion (Islam) which is the main religion in Bangladesh means that his difficulties in adapting to life in Bangladesh will essentially be limited to lack of a shared language. He has no significant health difficulties.

12. Against this background I next weigh in the balance the general family circumstances likely to affect the third appellant in relation to Bangladesh. Here it is important to take note that the FtT clearly rejected the claims of the first two appellants that they would be socially isolated. At paragraph 31 when considering whether there would be very significant obstacles to the couple (re) integrating into society in Bangladesh, the judge found:

> "31. I accept that in the time the first and second appellants have been in this country they will have established ties here and their ties with their home country will be much weaker than it had been when they left. However both the appellants have the benefits of family members. I note that the two appellants both maintained that they will have nowhere to live and no means of financial support. That position is unlikely given that they all have family members. In the long run both the appellants will have to and no doubt will find their own place in their societies where they have spent their adulthood. I appreciate that with a young child life will not be initially easy for them. However what the rule requires is for them to demonstrate that there would be 'very significant obstacles'. The word 'very' is not superfluous and is intended to raise the bar high."

13. Another factor I must weigh in the balance when assessing both reasonableness and proportionality is the immigration history of the first two appellants. The first appellant entered the UK as a student in 2003 and his leave was extended in that capacity until July 2007, but he received no further extension as he failed to provide evidence that he had completed his previous course, the second appellant entered the UK in March 2007 on a visitor's visa. Both were served notices that they were

overstayers in June 2011. Their immigration status has been precarious throughout and they now seek to rely on the ties with the UK that have been strengthened by their own decision not to leave the UK as required. In my view, although the third appellant's nine years of residence is a significant factor there are strong reasons making it reasonable to require the child to leave the UK. Removal to Bangladesh, his country of nationality, will be together with his parents, so the family unit will be maintained. The parents have not lost ties with Bangladesh, even though they are weaker than when they both left. It is not unreasonable to expect that the third appellant will be able to adapt to Bangladesh society in a relatively short period of time. There is functioning education system in Bangladesh to which their child would have a access.

14. For the above reasons I conclude that the third appellant does not meet the requirements of paragraph 276ADE(iv). The first two appellants do not meet the requirements of the Immigration Rules relevant to them – for the reasons given by the FtT judge.

15. I have also given consideration to whether the appellants are able to establish compelling circumstances sufficient to warrant a grant of leave to remain outside the Immigration Rules. Taking into account all relevant considerations including those set out in s.117B of the 2002 Act I am not persuaded there are compelling circumstances. Even taking into account that all three appellants speak English and even assessing the first two appellants as financially independent, their private lives in the UK were formed at a time when their immigration status was precarious. For the same reasons as it is not unreasonable to expect the third appellant to leave the UK under paragraph 276ADE(iv) it is not unreasonable to expect the child to leave the UK under s.117B(6). Applying established principles of case law, including those set out in **MA (Pakistan)** I conclude that the appellants' appeals should be dismissed.

16. For the above reasons:

    The FtT Judge materially erred in law.

    The decision I re-make is to dismiss their appeals

17. No anonymity direction is made.

Signed Date: 21 May 2017

H H Storey

Dr H H Storey
Judge of the Upper Tribunal