



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/03240/2018**

Appeal Numbers:

**HU/03241/2018
HU/03243/2018
HU/03247/2018
HU/03252/2018**

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On 12 December 2018

On 20 December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MANUELL

Between

- (1) Mrs SHARMAN AZAD**
- (2) Mr ALI JABER JOY**
- (3) Master E M**
- (4) Miss Z A**
- (5) Master Y A**

(NO ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondents

Representation:

For the Appellants: Mr T Shah, Solicitor (Taj Solicitors)

For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellants appealed with limited permission granted by First-tier Tribunal Judge Andrew on 19 October 2018 against the determination of First-tier Tribunal Judge Freer who had dismissed their linked Article 8 ECHR appeals. His decision and reasons was promulgated on 20 September 2018.
2. The Appellants are a family, all nationals of Bangladesh with no leave to enter or remain in the United Kingdom. The First Appellant is a long term overstayer from 2007 onwards, having entered as a visitor. The child Appellants were all born in the United Kingdom. None has been in the United Kingdom for 7 years. Their father, the Second Appellant, is also a long term overstayer from 2009 onwards, also having entered as a visitor.
3. It was accepted that the Appellants did not meet the Immigration Rules at the date of the decisions or appeal hearing. The judge found that the various reasons advanced as to why the family could not go to Bangladesh had no substance. He found that the children would have access to education and were young enough to adapt. The parents retained their cultural ties to Bangladesh and could guide their children as necessary. The children speak Bengali as well as English, to their advantage. The children's best interests required them to remain with their parents. Better living accommodation was available in Bangladesh than was currently available to the family in the United Kingdom. The family had access to the local police and religious authorities in Bangladesh where by implication they could practise their Muslim religion freely. The family's private and family life could continue unimpeded in Bangladesh. Thus the judge dismissed the human rights appeals.
4. Various allegations were made concerning procedural unfairness at the hearing in the permission to appeal application, but they were unsupported by any evidence and were roundly refused by First-tier Tribunal Judge Andrew. Permission to appeal was granted on the sole

ground that it was arguable that the judge had failed to make proper findings about the children's best interests.

Submissions

5. Mr Shah for the Appellants submitted that the judge had failed to apply section 55 of the Borders Act 2007, and had neglected to consider the best interests of the three minor children. There was no analysis of their position. A dialogue with the tribunal followed, examining the judge's decision and reasons. Mr Shah submitted that the decision should be set aside and the appeals reheard.
6. Mr Lindsay for the Respondents submitted that KO (Nigeria) [2018] UKSC 53 and MT and ET (child's best interest; ex tempore pilot) Nigeria [2018] UKUT 88 (IAC) applied and showed that the judge's determination was correct in substance. The onwards appeal must fail.

No material error of law finding

7. The tribunal considers that the grant of permission to appeal was excessively generous. The linked appeals had little obvious merit. Both parents were long term overstayers who had failed to leave in the face of refusal decisions. There was no evidence of compelling circumstances, very significant obstacles or any similar consideration. Indeed, adverse credibility findings had been made on the matters advanced by the Appellants, against which no onwards challenge has been permitted.
8. The grant might perhaps have been avoided if the judge had taken a more structured approach towards the children, setting out a specific section dealing with their best interests. Instead, the whole determination has to be read to see that this essential question was in fact fully considered, discussed and addressed, in substantial detail with reference to the evidence. At [9] the judge noted the section 55 issue, which was a thread carried through the determination, ultimately summarised in part at [93] and also at [97].

9. During the submissions dialogue the tribunal invited Mr Shah to identify any relevant matter which the judge had left out of account in his consideration of the children's position. Mr Shah was unable to do so.
10. Importantly, the judge did not fall into the error of holding the parent's conduct as overstayers against the blameless children. His analysis and findings sit comfortably with the reasonableness test set out in KO (Nigeria) (above). In effect he found that it was both reasonable and in the children's best interests for them to go to Bangladesh with their loving and competent parents, where the parents would be able to work and had access to accommodation, and where the children had access to education.
11. Thus there was nothing in the onwards appeals, which are dismissed. The original decision and reasons stands unchanged.

DECISION

The appeal to the Upper Tribunal is dismissed

Signed
2018

Dated 12 December

Deputy Upper Tribunal Judge Manuell