



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/04049/2016**

Appeal Number:

HU/04055/2016

HU/04053/2016

HU/04057/2016

THE IMMIGRATION ACTS

Heard at FIELD HOUSE

On 28th March 2018

**Decision &
Promulgated
On 11th April 2018**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MRS SALIMA KHATUN AND THREE DEPENDENTS
(NO ANONYMITY ORDER MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Murphy (Counsel)

For the Respondent: Mr Bramble (Home Office Presenting Officer)

ERROR OF LAW DECISION AND REASONS

1. The appellants appeal against the decision of the First-tier Tribunal (Judge NMK Lawrence) ("FtT") promulgated on 10th January 2017 in which he dismissed the appellants human rights appeals against the refusal of their

applications for further leave to remain made by the respondent on 3rd February 2016.

Background

2. The appellants who are citizens of Bangladesh are the parents and two children who have resided in the UK for over 7 years (since 2007). The children were qualifying children under section 117B(6) Nationality Immigration & Asylum Act 2002 (as amended) at the date of the hearing.

First-tier decision

3. In its decision and reasons the FtT considered the applications with reference to the Immigration Rules family/private life (Appendix FM & paragraph 276ADE) and cited large extracts of case law relevant to the best interests of children. It was accepted that the two adult appellants could not meet the Rules under the partner route [17]. The FtT considered the children in particular with reference to the desires of the children in mind [22] and found that none of the children were at any critical stage in their lives. The FtT concluded that it would not be unreasonable for them to return to Bangladesh [25]. The FtT found no compelling circumstances to justify consideration outside of the rules [36].

Grounds of appeal

4. In grounds of appeal the appellants argued that the FtT erred by failing to consider the appeal with reference to human rights outside of the rules and under section 117B(6) and/or with reference to **MA(Pakistan) & others 2016 EWCA Civ 705**. The length of residence of the children, over 7 years, was a significant factor to be considered under the “reasonableness” issue where it applied to qualified children and where it was necessary to find powerful reasons to justify removal. The youngest child had lived in the UK for almost 13 years since the age of two years. The FtT failed to properly assess where the best interests of the children lay. The eldest child met the requirements of paragraph 276ADE at the date of the hearing (ground 4). This was not a deportation appeal and *Kamara* did not apply. The FtT appeared to hold against the children the poor immigration history of their parents, contrary to caselaw (ground 7). The decision showed a lack of scrutiny and care, for example repetition of identical paragraphs at [22][26][31].

Permission to appeal

5. Permission to appeal to the Upper Tribunal (UT) was granted by UTJ C Lane on 20th December 2017. In granting permission the UT Judge found arguable grounds that there was an error of law by failure to consider **MA** and section 117B(6).

Submissions

6. At the hearing before me Mr Murphy relied on the grounds of appeal. Mr Bramble agreed that all grounds (save ground 7) were made out. As the eldest daughter had now been given leave to remain ground 4 was otiose. No submissions were made by Mr Bramble on the applicability of section 117B(6) or reasonableness.

Discussion and conclusion

7. I find that there were material errors of law in the decision and reason of the FtT and that the grounds are made out by the appellants. The FtT erred in law by failing to consider **MA(Pakistan)(paragraphs 46 & 49)** and to apply section 117B(6) 2002 Act as amended. I further find that the assessment of where the best interests of the children lie was inadequately considered and expressed by the FtT in the light of the fact that there were weighty factors in addition to the desires of the children that were not taken in to account. I set aside the decision.

Re making the decision

8. At the date of the hearing before the FtT, the two children lived in the UK for well over the 7 year qualifying period. The length of residence amounts to compelling circumstances for consideration outside of the Rules and there is private/family life in the UK. I apply section 117B(6) and am satisfied that it would be unreasonable for the youngest child to return to Bangladesh given the length of residence in the UK where his sister has now been granted leave to remain. I am satisfied that there are no powerful reasons to outweigh why the children should not remain in the UK and be returned to Bangladesh given their significant length of residence in the UK. There was no evidence of any criminal activity by the parents or very poor immigration history. The eldest child born in 1998 was now nearly 20 years old and has been granted leave to remain. On the facts the best interests of the younger child born in 2004, and who has lived in the UK since 2007 and for most of his life, lie in remaining in the UK. Accordingly the appeals of the parents are also allowed, as it would not be reasonable for the child to live in the UK without his parents (**PD & others (Article 8- conjoined family claim) Sri Lanka [2016] UKUT 00108**).

Decision

9. All appeals allowed on human rights grounds.

Signed

Date 6.4.2018

GA Black

Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

No Fee award.

Signed

Date 6.4.2018

GA Black

Deputy Judge of the Upper Tribunal