Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/34733/2014
IA/34736/2014
IA/34737/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 16 February 2018	**On 06 March 2018**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

MS
JA
SA
(ANONYMITY DIRECTION MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Eaton, Counsel, instructed by JRK Solicitors
For the Respondents: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. These appeals come by way of a Consent Order, sealed by the Court of Appeal on 25 November 2017, limited to requiring the Upper Tribunal to consider the appellants' article 8 appeals. It was agreed by the Secretary of State in the Statement of Reasons accompanying the Consent Order that the Upper Tribunal

was required to remake the earlier decision of Deputy Upper Tribunal Judge Mailer, promulgated on 15 April 2016, in respect of the appellants' article 8 claims. This was confirmed by way of Directions issued by Upper Tribunal Judge Jordan on 2 January 2018. Judge Jordan directed that further evidence from the parties be filed and served to enable the Upper Tribunal to determine the article 8 appeals at the resumed hearing. The parameters of the remitted appeals were confirmed by both representatives at the hearing on 16 February 2018. It was agreed by both representatives that the appeals are governed by the appeals regime in force prior to the amendments wrought by the Immigration Act 2014.

2. The underlying decisions giving rise to these proceedings are those refusing to vary the appellants' leave to remain in the UK, dated 19 August 2014. The appellants appealed the decisions of 19 August 2014 to the First-tier Tribunal. In a decision promulgated on 13 April 2015 the First-tier Tribunal allowed the appeals under the immigration rules. The respondent successfully sought permission to appeal the First-tier Tribunal's decision. Deputy Upper Tribunal Judge Mailer found that the First-tier Tribunal materially erred in law in allowing the appeals under the immigration rules as the 2nd and 3rd appellants could not meet the requirements set out in paragraph 276ADE(iv) as neither had resided in the UK for a continuous period of 7 years prior to making their applications to vary their leave. The Deputy Judge proceeded to dismiss the appeals without any satisfactory consideration of the article 8 claims outside of the immigration rules. This itself constituted a material legal error, a matter recognised by both parties, and the matter was remitted back to the Upper Tribunal from the Court of Appeal by way of the Consent Order.

Background and Agreed Facts

3. The appellants are all nationals of Bangladesh. The 1st appellant was born on 1 January 1973 and is the mother of the 2nd and 3rd appellants. The 2nd appellant is female and was born on 31 January 1999 and the 3rd appellant, who is also female, was born on 24 August 2000. At the date of the resumed hearing before the Upper Tribunal the 2nd appellant had just turned 19 and the 3rd appellant was 17 years old. Both Mr Clarke and Mr Eaton agreed that the factual summary contained in the Deputy Judge's decision, from paragraphs 7 to 29 and 31 to 33, was accurate. These paragraphs were presented by both representatives as agreed facts. I now summarise the facts as agreed by the parties.

4. Prior to entering the UK, the appellants had lived in Bangladesh for 2 years. They previously lived in Saudi Arabia and Abu Dhabi. The appellants entered the UK on 19 July 2007 as exempt diplomatic dependants of Mr Alam, the 1st appellant's husband and the father of the other appellants. He worked as an Administrative Officer at the Bangladesh High Commission. On 30 May 2012 the appellants were granted further leave to remain until 30 May 2014 in line

with that of Mr Alam. The appellants have always remained lawfully resident in the UK. The family only visited Bangladesh once since coming to the UK, for a period of about 3 to 4 weeks. Mr Alam left for Bangladesh in 2013 as a result of his work but the appellants remained living in the UK. Mr Alam has been in Spain since December 2014 because of his employment with the Bangladesh government. Although in contact with the appellants he has only provided limited financial support to his family. The 1st appellant was previously responsible for the financial maintenance of her daughters through her lawful employment.

5. On 29 May 2014 the appellants applied to vary their leave to remain on the basis of article 8 considerations. The 2nd appellant is profoundly deaf. She suffers from bilateral profound congenital sensorineural deafness. She has lawfully accessed education in the UK since the age of 8 using British Sign Language (BSL) and has learnt to lip read in English. The 2nd appellant sat her GCSE exams using BSL. The 2nd appellant cannot speak, read or write in Bengali. It was accepted that the 2nd appellant would have significant linguistic difficulty in adapting to life in Bangladesh where she would be unable to communicate effectively. If required to leave the UK there would be a significant adverse impact on her ability to communicate with others and on her overall well-being. The 2nd appellant had become distant from Bangladesh and would experience difficulties adapting to life in that country.

6. The 3rd appellant also suffers from a disability. She is not profoundly deaf but has bilateral moderate hearing impairment. The 3rd appellant spoke very little when she was in Bangladesh. At school in the UK she is required to use a head microphone and hearing aid, was in a support group at school, and required intervention from a specialist speech and language therapist and from a teacher of the deaf to develop her listening, learning and communication skills. She was on the school Special Educational Needs (SEN) register. It was accepted that if she went back to Bangladesh she would have difficulty in adjusting. Her studies had all been in English. The 3rd appellant only spoke a little bit of Bengali at home but could not write it.

7. It was agreed by both parties that the 2nd and 3rd appellant had lived in the UK during the formative years of their development, in the case of the 2nd appellant from the age of 8, and in the case of the 3rd appellant from the age of 6. Neither child would be able to access the support for their deafness that they enjoy in the UK. The 1st appellant however would be able to work in Bangladesh and be in a position to financially support and provide for the 2nd and 3rd appellants. The appellants also had extended family members still living in Bangladesh.

Evidence at the resumed hearing

8. The appellants provided a further bundle of documents running to 261 pages. This included statements from all the appellants and a statement from MA, the

oldest daughter of the 1st appellant and sister to the 2nd and 3rd appellants. MA was granted Indefinite Leave to Remain in the UK on 3 August 2017 having lived in the UK for a continuous lawful period of 10 years.

9. I summarise the statements. The 1st appellant felt compelled to stay in the UK in 2013 due to the well-being and best interests of her children. She remained responsible for their daily-to-day care and upbringing. The 2nd appellant accessed her education through BSL. In the last 10 years she learned to write and read in English while the medium of instruction in Bangladesh is Bengali. BSL is not an international language and people from different regions use different sign languages. In Bangladesh they use Inda-Pakistani Sign Language (IPSL). Although there were some common features with BSL, it was substantially different. The appellants had been informed that it could take around 6 years to learn a new sign language. Prior to learning BSL the 2nd appellant could not communicate and felt secluded and lost.

10. The 2nd appellant is currently studying a BTEC Advanced Diploma in Design for Fashion and Textiles at Level 3 and has full-time support from educational communicators and teachers of the deaf. She hopes, if possible, to go up to university level. Owing to her disability the 2nd appellant remains heavily dependent on the 1st appellant for everyday support. The 1st appellant accompanies the 2nd appellant to GP and hospital appointments and when she goes shopping and travelling. The 2nd appellant's family involves her 2 sisters and her mother. She is very attached to them and cannot live life without them. The 3rd appellant is very close to her sister and has learned sign language and helps the 2nd appellant to communicate with others. The 2nd appellant has developed many friends, both hearing and deaf, with whom she socialises and with whom she communicates using BSL. A few of her classmates at college are also deaf and they share support from communicators and specialised teachers. The 2nd appellant is very close with her classmates and enjoys their company.

11. The 3rd appellant remains partially deaf and wears 2 hearing aids which need regular adjustment. Since the age of 10 the 3rd appellant has been trying to work on her own so she could be more independent. However, she remains on the SEN register. She receives some additional support from school and has a specific support plan in place. There is no teacher support available in Bangladesh for children with hearing impairments. The 3rd appellant completed her GCSE exams and will be completing her A-levels this summer. She has received offers from universities. She has had more than 10 years of schooling in the UK and is totally integrated into the British education system. She regularly socialises with her friends and classmates with whom she goes out for lunch or dinner, and is fully integrated into British society. The 2nd and 3rd appellants have little idea of what life is like in Bangladesh and they would struggle to adapt to Bangladeshi society, especially with their disabilities. The 1st appellant believed that returning them to Bangladesh would be an ultimately damaging experience for them. The 2nd and 3rd appellants themselves

were very distraught at the possibility that they may have to return to Bangladesh.

12. The 1st appellant emphasised that neither she nor her daughters have ever overstayed and that they have lawfully resided in the UK for an unbroken period of over 10 years. MA, who is employed full-time, and the 1st appellant's brother, who is also settled in the UK, financially support the family.

13. The documentary evidence in the appellants' bundle, which included medical reports and correspondence relating to both the 2nd and 3rd appellants and educational documents relating to the 2nd and 3rd appellants, corroborated the essential elements in the statements. This included, *inter alia*, the medical condition of both the 2nd and 3rd appellants, that the 3rd appellant remains on the SEN register and that she is due to undertake her A-levels in the summer of 2018, that the 2nd appellant is studying a BTEC and receive support from her college, that the 3rd appellant has offers of undergraduate places at universities, that the 3rd appellant has been volunteering at the Manor Park Library over the summer, and photographic evidence of the 2nd appellant with her friends and classmates. The appellants' bundle additionally contained articles downloaded from the Internet identifying the differences between different types of sign language, including IPSL and BSL. The bundle also contained evidence that the 1st appellant had passed the 'Life in the UK Test' on 28 October 2017 and that she had attained an English-language test at CEFR Level B1.1.

14. At the outset of the hearing, and in response to questions from me, Mr Clarke conceded that there was no discernible reason why the 2nd appellant would not meet the requirements of paragraph 276ADE(v) of the immigration rules if she were to now make an application for leave to remain. In response to further questions from me, Mr Clarke accepted that the 3rd appellant was at a critical stage of her education. It was further accepted that all three appellants had resided lawfully in the UK for a period of over 10 years and that the 1st appellant had passed her 'Life in the UK Test'.

15. In oral evidence, under cross examination, the 1st appellant confirmed that she continued to have a relationship with her husband and that she did not accompany her husband when he left the UK in 2013 because of her daughters' stages of education and because the 2nd appellant had learned sign language in the UK. The 1st appellant spoke of the lack of educational support for deaf children in Bangladesh. Her husband contributed very little financial support and she was mainly dependent on her oldest daughter and her brother. The 1st appellant had lawfully worked in the UK but stopped due to a change in her immigration position. In her oral evidence MA confirmed that her uncle provided most of the financial support to the appellants, that the family continued to communicate with Mr Alam, and that he wanted the 2nd and 3rd appellants to be happy and to finish their education. In her oral evidence the 3rd appellant confirmed that she communicated with the 2nd appellant via sign

language, that they had a very close relationship, that they spent a lot of time together, that she was studying for her A-levels and that she had not yet decided where to go to University. Her friends were willing to help her with her hearing difficulties and they liked to talk about their hobbies. She only needed a special needs teacher once a month.

16. Both representatives made their submissions, Mr Clarke emphasising the importance attached to the maintenance of effective immigration control and the financial burden placed on scarce public resources due to the particular needs of the 2nd and 3rd appellants. Neither the 2nd nor 3rd appellants met the requirements of the immigration rules at the date of their applications.

17. Having carefully considered the substantial number of documents before me and having considered the submissions from the parties I indicated that I would allow the appeals and that I would shortly issue a fully reasoned decision.

Findings and assessment

18. I will first consider the appeal of the 3rd appellant. She cannot meet the requirements of paragraph 276ADE(iv) because, at the date of her application (29 May 2014), she had not lived in the UK for a continuous period of at least 7 years. There is no suggestion that the 3rd appellant falls foul of any of the Suitability requirements in Appendix FM. The 3rd appellant can only succeed in her appeal outside the immigration rules. It is not in dispute that the 3rd appellant has lawfully lived in the UK since 19 July 2007, some 10 years and 6 months, having entered the UK as a 6-year-old child. The 3rd appellant remains a minor aged 17.

19. I must ascertain the 3rd appellant's best interests pursuant to s.55 of the Borders, Citizenship and Immigration Act 2009. I remind myself that, while her best interests are a primary consideration, they are not a paramount consideration and that even though it may be in her best interests to remain in the UK this can be outweighed by opposing public interest factors.

20. In *EV (Philippines) & Ors v Secretary of State for the Home Department* [2014] EWCA Civ 874 (at [35]) the Court of Appeal explained that a decision as to what is in the best interests of children will depend on a number of factors such as (a) their age; (b) the length of time that they have been here; (c) how long they have been in education; (c) what stage their education has reached; (d) to what extent they have become distanced from the country to which it is proposed that they return; (e) how renewable their connection with it may be; (f) to what extent they will have linguistic, medical or other difficulties in adapting to life in that country; and (g) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens.

21. The first head note of *Azimi-Moayed and others (decisions affecting children; onward appeals)* [2013] UKUT 00197 reads, "*As a starting point it is in the best interests of children to be with both their parents and if both parents are being removed from the United Kingdom then the starting point suggests that so should dependent children who form part of their household unless there are reasons to the contrary*." Headnote (ii) reads, "*Lengthy residence in a country other than the state of origin can lead to development of social cultural and educational ties that it would be inappropriate to disrupt, in the absence of compelling reason to the contrary. What amounts to lengthy residence is not clear cut but past and present policies have identified seven years as a relevant period.*" Headnote (iv) of the same case indicates, "*Apart from the terms of published policies and rules, the Tribunal notes that seven years from age four is likely to be more significant to a child that the first seven years of life.*"

22. I consider and apply the principles enunciated in the above decisions in assessing the 3rd appellant's best interests. The medical evidence indicates that the 3rd appellant suffers from partial deafness and that her hearing loss is slowly progressive on the right side. Her language was delayed in the past and she sometimes misses both the linguistic structure and vocabulary when conversing with other people. The 3rd appellant has lived in the UK since she was 6 years old and is now 17 years old. She has spent the formative years of her life in the UK. She has studied in the UK as a minor for over 10 years. She is currently in the middle of her A-Level studies and will be sitting her examinations in the summer. It was conceded by Mr Clarke that she is at a critical stage of her education. It is clear from the school documents that she has overcome a number of difficulties caused by her partial deafness and that she has made very good progress at school and in her sixth form. It is also apparent from those documents that she is well integrated within the school community. The documentary and oral evidence indicates that the 3rd appellant has established good friendships with classmates outside her family at a time when she had no control over her immigration status. I accept the evidence that the 3rd appellant has many friends and classmates with whom she regularly socialises. Having resided in the UK for over 10 years and having spent the formative years of her life in this country it is readily apparent that she has fully integrated into British society. This is apparent both from her school reports, her oral evidence, and other evidence of her integration such as her volunteering for over 50 hours at the Manor Park Library.

23. The 3rd appellant has never gone to school in Bangladesh. The jointly accepted facts include a finding that the 3rd appellant spoke very little when she was in Bangladesh. I accept the evidence that the 3rd appellant has very limited ties with Bangladesh, a point not challenged by Mr Clarke. Nor was there any challenge to the assertion that in Bangladesh the 3rd appellant would not benefit from the educational support that she currently enjoys. Given her lack of proficiency in Bengali and her hearing difficulties I find she would encounter linguistic difficulties in adapting to life in Bangladesh. I note however that she

would continue to have the support of her mother and that she has other extended family members in Bangladesh and therefore a network of support.

24. The 3rd appellant is neither independent nor self-sufficient, and remains reliant on her family, with whom she lives. There was no suggestion by Mr Clarke that she did not have strong bonds of love and affection with her mother and the 2nd appellant. Although the starting point in considering the 3rd appellant's best interest is that she should remain with her mother and that she should be removed if her mother is removed, given her age and length of residence, her establishment of relationships outside her immediate family, the extent of her integration and the critical stage of her education I find, pursuant to my duty under s.55, that her best interests are to remain in the UK with her family.

25. Having identified the 3rd appellant's best interests, I must now consider whether it is proportionate to require her to leave the UK. In undertaking the proportionality assessment I am obliged to consider the factors identified in s.117B of the 2002 Act, and in particular, s.117B(6). I must therefore determine whether it would be reasonable for her to leave the UK. I proceed on the basis that she would be accompanied by her mother and older sister and that this family unit will remain intact. In assessing the issue of reasonableness I have to take into account all relevant public interest considerations, including her conduct and the conduct of her family (*MA (Pakistan*).

26. I note the public interest in the maintenance of effective immigration controls, detailed in s.117B(1). I note, pursuant to s.117B(2) and (3) that the 3rd appellant is proficient in English (her oral evidence before me demonstrated a high level of proficiency), that she is not currently financially independent as she is still a minor in education, that the 1st appellant has attained an English-language test at CEFR Level B1.1, and that the 1st appellant has previously worked in the UK and would be able to do so again if granted the appropriate immigration status. Pursuant to *Rhuppiah v Secretary of State for the Home Department* [2016] EWCA Civ 803 and *AM (S 117B) Malawi* [2015] UKUT 0260 (IAC) I regard both the 1st and 3rd appellants' English language proficiency and the 1st appellant's ability to be financially independent as neutral factors. I take into account as a relevant public interest factor the fact that the appellants have always resided in the UK with lawful leave, but that their private lives have nevertheless been established when their immigration status was precarious (s.117B(5)). This is of greater relevance to the 1st and 2nd appellants as the 3rd appellant has always been a minor and would have no control or influence over her immigration status or the precarious nature of her residence. I must attach little weight to the private life established by the 1st in the UK, or the private life established by the 2nd appellant in the UK since she turned 18. In identifying and considering the relevant public interest factors I additionally take into account the appellants' use of NHS resources and the drain on the public purse of educating the 2nd and 3rd appellants. I attach particular weight to the fact that both the 2nd and 3rd appellant have required specialized education and treatment as a result of their

disabilities, although it was not suggested that they were not lawfully entitled to this specialist education and treatment as a consequence of their lawful residence.

27. In *MA (Pakistan)* Lord Justice Elias stated, at [46],

> "Even on the approach of the Secretary of State, the fact that a child has been here for seven years must be given significant weight when carrying out the proportionality exercise. Indeed, the Secretary of State published guidance in August 2015 in the form of Immigration Directorate Instructions entitled "Family Life (as a partner or parent) and Private Life: 10 Year Routes" in which it is expressly stated that once the seven years' residence requirement is satisfied, there need to be "strong reasons" for refusing leave (para. 11.2.4). These instructions were not in force when the cases now subject to appeal were determined, but in my view they merely confirm what is implicit in adopting a policy of this nature. After such a period of time the child will have put down roots and developed social, cultural and educational links in the UK such that it is likely to be highly disruptive if the child is required to leave the UK. That may be less so when the children are very young because the focus of their lives will be on their families, but the disruption becomes more serious as they get older. Moreover, in these cases there must be a very strong expectation that the child's best interests will be to remain in the UK with his parents as part of a family unit, and that must rank as a primary consideration in the proportionality assessment."

28. At [47] of *MA (Pakistan)* Lord Justice Elias stated,

> "However, 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."

29. The 3rd appellant's removal would undoubtedly have a deleterious impact on the life she has established in the UK. Although established when her immigration status was precarious she cannot be held accountable for the decisions of her parents and her private life was rooted through no fault of her own. I find that she has fully integrated into British society having lived in the UK throughout the formative years of her life. Although she still has extended family in Bangladesh she has little recollection or experience of life in that country and can only speak a little Bengali and cannot write it. Her removal would effectively severe the friendships and relationships that now form the core of her private life and which the 3rd appellant has struggled to attain despite her partial deafness, and while she may be able to retain some contact with her friends through remote means, the impact on her social integration is likely to be profound.

30. The 3rd appellant is due to undertake her A-Levels this summer and is consequently at a critical stage of her education. I find that the disruption caused to her education by her proposed removal, at a critical stage of her studies when she is undertaking important examinations that could determine her future prospects, especially when considering the language difficulties she would encounter at educational institutions in Bangladesh given her lack of proficiency in Bengali, is likely to be significant.

31. In assessing whether it would be reasonable to expect the 3rd appellant to leave the UK I draw together the strong public interest factors identified above, and weight them against the impact of removal on the 3rd appellant and the extent of the disruption to her private life. I note once again that her best interests are a primary but not a paramount consideration. The evidence that I have carefully considered indicates that the daily social and cultural experience and expectations of this 17-year-old girl, who has lived in the UK since she was 6 years old, have been moulded by her residence to such an extent that she would encounter considerable difficulty integrating to life in Bangladesh, despite have the support of her mother and extended family members. I find also that her removal would cause significant upheaval to her education which is at a critical stage. The extent of her integration and the solidity of the 3rd appellant's relationships established in the UK are such that to uproot her from all that she has known and grown up with over 10½ years would render her removal disproportionate. I consequently find that the 3rd appellant's removal would constitute a disproportionate interference with her article 8 rights.

32. I will now consider the position of the 2nd appellant. She has lawfully resided in the UK since she was 8 years old, albeit that her immigration status has always been precarious. She is now 19 years old and is undertaking a BTEC Advanced Diploma and aspires to go to university. Although she is profoundly deaf she communicates by lip reading in English and via BSL and has managed to establish a close group of friends. It is readily apparent that she has established a significant private life in the UK and that her removal would interference with that private life, points never challenged by the respondent at any stage of the protracted appeal proceedings. Her proposed removal is in pursuit of legitimate aims and in accordance with the law.

33. In determining whether her removal would be proportionate I take account of the public interest factors identified in s.117B. I note the strong public interest in maintaining effective immigration control. With respect to her proficiency in English, there is some difficulty in applying this to a person who is deaf. The unchallenged evidence before me however indicates that she can lip read in English and communicate via BSL. I find that she is therefore proficient in communicating in English, although this is only a neutral factor. She is currently studying and is not therefore financially independent. Despite her deafness she may very well be capable of remunerated employment in the future. She is not however employed and I therefore hold this against her in the

proportionality assessment. Her immigration status has always been lawful but precarious in the sense that she has never resided in a category leading to settlement. I must therefore attach little weight to her private life. However, each case must be approached on its own particular facts and the overall proportionality assessment must take account of matters specific to the individual person. In this regard I note that most of the private life relationships established by the 2nd appellant occurred while she was a child and without any control over her immigration status. There is no suggestion that she has ever engaged in any conduct that may lead to a rejection of leave to remain under the Suitability requirements of Appendix-FM or the general grounds for refusal in Part 9 of the immigration rules. I take into account that the 2nd appellant has drawn on NHS and educational financial resources as a result of her deafness, and that she may need to do so in the future, a point I hold against her in the proportionality assessment.

34. The evidence from the 1st appellant, supported by the downloaded articles relating to BSL and IPSL, indicates that there are substantial differences between the two forms of sign language. It may take up to six years to learn IPSL. There was no challenge to this evidence from Mr Clarke. The facts agreed at the outset of the hearing included previous findings that the 2nd appellant would encounter significant linguistic difficulty in adapting to life in Bangladesh and that there would be a significant adverse impact on her ability to communicate with others and on her overall well-being. The passage of time since the decisions of the First-tier Tribunal and the Deputy Upper Tribunal Judge have not diminished these findings. I regard this as a significant factor in the proportionality assessment.

35. Another significant factor in determining whether it is proportionate to require the 2nd appellant to leave the UK is the concession that, were she to now make an application for leave to remain under paragraph 276ADE(1)(iv), she would, in all likelihood, be granted leave to remain. Indeed it is difficult to see how she could be refused LTR if such an application were made. She has clearly resided in the UK for more than half her life. The fact that the 2nd appellant does notionally meet the requirements of the immigration rules counts very much in her favour when balancing the relevant public interest factors.

36. Having considered both the public interest factors and the facts person to the 2nd appellant, including the evidence of the extent of her private life, the length of her residence in the UK as a child, the linguistic and communicative difficulties she would encounter in Bangladesh as a result of her deafness, and the fact that she meets the requirements of paragraph 276ADE(1)(iv) were she to now make an application, I find that it would be disproportionate to require her to leave the UK.

37. I turn to the appeals of the 1st appellant. She cannot succeed under the immigration rules. I must consider the position of the 1st appellant outside the

immigration rules and determine whether there are compelling or exceptional reasons for allowing her appeal on article 8 grounds (*SSHD v SS (Congo) & Ors* [2015] EWCA Civ 387; *MF (Nigeria) v Secretary of State for the Home Department* [2013] EWCA Civ 1192, at [42]*)*. I note again that the 3rd appellant is not independent or self-sufficient and remains living with the 1st and 2nd appellants. I additionally take into account the unchallenged evidence that the 2nd appellant is dependent to a large degree on the 1st appellant. The 2nd and 3rd appellants enjoy close and loving relationships with the 1st appellant, relationships that include elements of reliance and dependency, and any separation would have a very significant detrimental impact on these relationships.

38. In assessing the proportionality of the proposed removals, I consider and apply the factors identified in s.117B of the 2002 Act. I attach weight to the public interest in the maintenance of effective immigration controls. I note that the 1st appellant has attained an English-language test at CEFR Level B1.1, and that she previously had two jobs in the UK. The only reason she no longer works is because of changes to her immigration status. I am satisfied she is proficient in English and is capable of being self-sufficient, although I regard these as neutral factors. I note that she has passed the 'Life in the UK' test. I am satisfied that the 1st appellant has established a private life in the UK having lawfully resided here since July 2007, some 10½ years, although, pursuant to s.117B(5) I must attach little weight to that private life. Given the relatively low threshold for establishing a breach of article 8 I am satisfied that article 8 is triggered in respect of the 1st appellant. I find that her proposed removal is in accordance with the law and in pursuit of a legitimate aim.

39. Section 117B(6) states,

> 'In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
>
> (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
>
> (b) it would not be reasonable to expect the child to leave the United Kingdom.'

40. In *MA(Pakistan)* the Court held, at [17],

> "Subsection (6) falls into a different category again. It does not simply identify factors which bear upon the public interest question. It resolves that question in the context of article 8 applications which satisfy the conditions in paragraphs (a) and (b). It does so by stipulating that once those conditions are satisfied, the public interest will not require the applicant's removal. Since the interference with the right to private or family life under article 8(1) can only be justified where there is a sufficiently strong countervailing public interest falling within article 8(2), if the public interest does not require removal, there is no other basis on

> which removal could be justified. It follows, in my judgment, that there can be no doubt that section 117B(6) must be read as a self-contained provision in the sense that Parliament has stipulated that where the conditions specified in the sub-section are satisfied, the public interest will not justify removal."

41. The 1st appellant has a genuine and subsisting parental relationship with the 3rd appellant, and I have already concluded that it would be unreasonable to expect the 3rd appellant to leave the UK. I consequently find that the public interest does not require the 1st appellant's removal even having regard to the countervailing public interest considerations. Having regard to the assessment conducted outside the immigration rules in *PD and Others (Article 8 – conjoined family claims) Sri Lanka* [2016] UKUT 00108 (IAC), at [43], I am satisfied that the effect of dismissing the 1st appellant's appeal would be to stultify my decision that the 3rd appellant qualifies for leave to remain in the United Kingdom in accordance with article 8 considerations. Undertaking the s.117B(6) balancing exercise, and in light of my previous analysis and findings, I am satisfied that the test of compelling or exceptional circumstances is satisfied. I am additionally and independently satisfied that it would be disproportionate to separate the 1st appellant from the 2nd appellant. There is a clearly family life between them (applying *Singh & Anor v Secretary of State for the Home Department* [2015] EWCA Civ 630) and the 2nd appellant remains significant dependent on the 1st appellant. Given the serious difficulties the 2nd appellant would encounter in Bangladesh as a result of her deafness and her ability to communicate only using BSL, I find it would be disproportionate to remove the 1st appellant.

Decision

The appeals are allowed on article 8 grounds outside the immigration rules

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants in this appeal are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

2 March 2018

Signed Date

Upper Tribunal Judge Blum