
**Upper Tribunal**

**(Immigration and Asylum Chamber)** Appeal Numbers: HU/09840/2018
HU/09841/2018
HU/09843/2018
HU/09845/2018
HU/09847/2018

**THE IMMIGRATION ACTS**

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| **Field House** | **Decision & Reasons Promulgated** |
| **On 16th July 2019** | **On 18th July 2019** |

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ABDUL [S] (1)**

**TAHERA [B] (2)**

**[A B] (3)**

**[N B] (4)**

**[M S] (5)**

**(ANONYMITY ORDER NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

For the Respondent: Mr T Shah, solicitor, from Taj Solicitors

## DECISION AND REASONS

*Introduction*

1. The claimants are a family of Bangladeshi citizens. The first two claimants are a married couple, and the third, fourth and fifth claimants are their children who are 7, 6 and 3 years old. The first claimant entered the UK in April 2004 with a sector-based scheme visa valid for two years, and has not left since this time. The second claimant arrived in the UK in May 2008 with a visit visa valid for 6 months. She left during this period but returned in May 2010 as a visitor, and then overstayed from October 2010 when her leave to remain in this capacity expired. The first and second claimants met and were married in the UK in September 2011. The third, fourth and fifth claimants are their children who were all born in the UK. Human rights applications/ applications for reconsideration with additional evidence were made in 2009, 2011, 2014 and 2016. In January 2018 the claimants were asked for any additional grounds, and the response to this notice was found to be a human rights application which was refused on 16th April 2018 with a right of appeal. The appeal against this decision was allowed by First-tier Tribunal Judge Shore in a determination promulgated on the 23rd November 2018.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Grimmett on 28th December 2018 on the basis that it was arguable that the First-tier judge had erred in law. I found that the First-tier Tribunal had erred in law for the reasons set out in Annex A below. The matter now comes before me to remake the appeal.

3. At the hearing Ms Willocks-Briscoe explained that due to the date of decision in this matter the decision refusing leave to remain would, in due course, be reviewed by the Secretary of State as it was a decision to which the previous policy of the Secretary of State: "Family Life as Partner or Parent and Private Life Version: Ten Year Routes" Version 1.0 published on 22nd February 2018 applied. It followed that powerful reasons were needed not to find it was unreasonable to expect a child who has been in the UK for seven years to leave the UK. She was not instructed to concede the appeal but was not in a position to make any sensible submissions on behalf of the Secretary of State in the circumstances of this case given the application of this policy. I therefore asked the four witnesses who had come to court (the first and second claimants and Mr Abdul [M] and Mr Malik [A]) to adopt their

statements and confirm that they were true and then informed Mr Shah that he did not need to make any submissions as I would be allowing the remaking appeal on the basis of the application of this policy.

*Evidence & Submissions – Remaking*

*4.* The key evidence of the first as set out by the first claimant in his witness statement is that he came to the UK to work as a butcher with a visa to do this in April 2004, and then applied to remain further on human rights ground as he wished to continue doing this. He met his wife, the second claimant, in 2010 and they had their eldest child, the third claimant, on 1st September 2011 and an Islamic marriage on 12th September 2011. They then went on to have two further children (the fourth and fifth claimants) in March 2013 and March 2016. The oldest two children are in school in the UK. He says that it would be very difficult for the family to settle in Bangladesh because they have lost ties with their country of nationality. He has now lived in the UK for 15 years, and has friends in this country. He says that it would be hard to find a job and accommodation in his country of origin. His eldest daughter, the third claimant, has friends and sees herself as British having lived here all of her life. He would not be able to afford English medium schooling as this is very expensive in Bangladesh, costing about $18,000 US per year. The third claimant cannot read or write in Bengali. Bengali medium state schools also suffer from large class size and the schools lack books and other resource materials. Returning to Bangladesh would lead to a life of poverty and hardship for all of them, including the three child claimants. They would also lose out on contact with his UK based relatives, he has one brother who is settled here and the second claimant has three brothers, along with cousins and other extended family. UK family could not afford to support them in Bangladesh as this would be an on-going permanent type of support whereas the support given here is time-limited as it will cease if they have leave to remain as the first and second claimants are confident that they could get work here with permissions to do so. There are no family in Bangladesh who could provide financial or practical assistance.

*5.* The evidence of the second claimant sets out the same points as outlined by the first claimant.

*6.* Written evidence was also provided by Mr Abdul [M] and Mr Malik [A]. Mr Abdul [M] is the older brother of the first claimant. He confirms he is a British citizen and that the claimants have lived with him, and that the third, fourth and fifth claimants have strong bonds with himself and his wife and his children who are of a similar age. He says the first claimant would struggle to obtain employment in Bangladesh and that he only gives him a small amount of cash in the UK which would not suffice for the claimants to get a house or live in Bangladesh. He believes that the claimants would struggle to reintegrate in Bangladesh and it would be

very hard on them all. Mr Malik [A] is the first claimant's cousin. Mr [A] says that he is a British citizen and that the claimants live with him, and that he is happy for them to continue staying with him.

*7.* There other evidence in this case consists of letters from Mr Adbul [Md] (cousin of the first claimant), Mr Md [S] (brother of the second claimant), Mr Mohammed [R] (brother of the second claimant), Mr Sofike [U] (brother of the second claimant), Mr Salek [U] (cousin of the second claimant). They are all British citizens who confirm that they support the claimants in the UK, and have contact with them and believe that it is their best interests to remain in this country as they would not be able to provide support to them in Bangladesh. School documents from the third claimant's school show that she is a friendly, hardworking and well-mannered member of the class who is working academically at or above the national age expectations. The fourth claimant is likewise described as a delight to teach and is exceeding academic expectations in all areas.

*Conclusions - Remaking*

*8.* The third claimant is a qualifying child as she has lived in the UK for more than 7 years, have been born here on 1st September 2011. The first and second claimants have genuine and subsisting parental relationships with her as her father and mother. These facts are accepted by the Secretary of State, and clearly true from the evidence before me.

*9.* This case turns on whether it would be reasonable to expect the third claimant to leave the UK. If it is not, there will be no public interest in her removal as she will meet the requirements of the Immigration Rules at paragraph 276ADE (1)(iv) and there will be no public interest in the removal of her parents as s.117B(6) of the Nationality, Immigration and Asylum Act 2002 states this is the case if it is not reasonable to expect the third claimant to leave. Her siblings, the fourth and fifth claimants, would then also succeed in this appeal as it would be a disproportionate interference with their family life relationships with the first, second and third claimants to require them to leave as they are very young children (aged 6 and 3 years) whose interests are simply to be with their parents and older sibling.

*10.* The Policy Document of the respondent: "Family Life as Partner or Parent and Private Life Version: Ten Year Routes Version 1.0 published on 22nd February 2018 sets out as follows at page 75 of the document: "The requirement that a non-British citizen child has lived in the UK for a continuous period of at least the seven years immediately preceding the date of application, recognises that over time children start to put down roots and to integrate into life in the UK, to the extent that it may be unreasonable to require the child to leave the UK. Significant weight

must be given to such a period of continuous residence. The longer the child has resided in the UK, and the older the age at which they have done so, the more the balance will begin to shift towards it being unreasonable to expect the child to leave the UK, and strong reasons will be required in order to refuse a case where the outcome will be removal of a child with continuous UK residence of seven years or more".

*11.* I find that there are no strong reasons to find that it is reasonable to expect the third claimant to leave giving significant weight to the third claimant's seven year period of residence in line with the policy outlined above which it is accepted for the respondent applied at the time of decision in this case. Whilst her parents have overstayed their leave to remain they did not enter illegally and have not used false identities and there is no evidence that they have committed any other unlawful acts. I find it is in the best interests of the third claimant to be able to continue living in the UK where she is excelling at school, where she is surrounded by extended family members and where she has her school friends. I find that her parents will be able to provide for her with accommodation and financial support very much more easily from work in the UK than in Bangladesh as her father came to the UK to work under the Sector Based Scheme as a butcher for this very reason. Whilst her father may well obtain work in Bangladesh if the family were returned he is not a highly educated or qualified person and the family is likely to live in a significant degree of poverty. The third claimant cannot current write and read in Sylheti or Bengali and so her education would be hindered for a significant period of time if she had to return to Bangladesh and learn these skills at a point when other children will have already acquired these skills.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision and all of the findings of the First-tier Tribunal.
3. I remake the appeal allowing it under Article 8 ECHR.

Signed: Fiona Lindsley Date: 16th July 2019

Upper Tribunal Judge Lindsley

**Annex A: Error of Law Decision**

## DECISION AND REASONS

*Introduction*

1. The claimants are a family of Bangladeshi citizens. The first two claimants are a married couple, and the third, fourth and fifth claimants are their children who are 7, 5 and 2 years old. The first claimant entered the UK in April 2004 with a sector-based scheme visa valid for two years, and has not left since this time. The second claimant arrived in the UK in May 2008 with a visit visa valid for 6 months. She left during this period but returned in May 2010 as a visitor, and then overstayed from October 2010 when her leave to remain in this capacity expired. The first and second claimants met and were married in the UK in September 2011. The third, fourth and fifth claimants are their children who were all born in the UK. Human rights applications/ applications for reconsideration with additional evidence were made in 2009, 2011, 2014 and 2016. In January 2018 the claimants were asked for any additional grounds, and the response to this notice was found to be a human rights application which was refused on 16th April 2018 with a right of appeal. The appeal against this decision was allowed by First-tier Tribunal Judge Shore in a determination promulgated on the 23rd November 2018.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Grimmett on 28th December 2018 on the basis that it was arguable that the First-tier judge had erred in law in finding that there were no insurmountable obstacles to family life in Bangladesh but that the weight to be given to the eldest child having been in the UK for seven years outweighed the public interest in the removal of the family.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

*Submissions – Error of Law*

4. The grounds of appeal argue that the First-tier Tribunal failed to take into account the decision of the Supreme Court in KO (Nigeria) and others v SSHD [2018] UKSC 53 as there was a failure to look at the real world context of the best interests of the child which should have included the fact that the parents and children had no leave to remain in the UK. As there was a finding that there would be no very significant obstacles to integration at paragraph 62 of the decision; a finding that the third claimant was young enough to adapt to life in Bangladesh at paragraph 71; and a finding that there were no exceptional circumstances at paragraphs 71 and 77 the decision allowing the appeal fails to follow KO (Nigeria). It is argued that there was a failure to identify any best interests of the third claimant in remaining in the UK, such as matters relating to health, schooling or family ties with the UK, and indeed to the contrary it is found that all three child claimants speak basic Bengali and would be able to improve their language on return at paragraph 63. The First-

tier Tribunal found that the first and second claimants had deliberately attempted to avoid the immigration law, at paragraphs 29 and 61-64 and also found that there were other public interest factors against them, see paragraphs 73 to 78, including that they were not financially independent and could not speak English.

5. The claimants did not file a Rule 24 notice. Mr Shah argued initially that the grant of permission did not identify all of the aspects of the Secretary of State's grounds, but did not pursue this matter when I pointed out that the grant was not an explicitly limited one. He also argued that there was material before the First-tier Tribunal which might have led the First-tier Tribunal Judge to conclude that it was in the best interests of the children to remain in the UK, such as evidence about their having cousins and friends in the UK, and in relation to the progress with their schooling, but that evidence had not been set out in the decision.

*Conclusions - Error of Law*

6. The findings of the First-tier Tribunal are accurately summarised by the respondent in the grounds of appeal, and are as set out above.

7. I find that the First-tier Tribunal has erred in law by failing to give adequate reasons at paragraphs 69 to 72 for finding that it is in the third claimant's best interest to remain in the UK. There are no reasons given beyond the fact that the third claimant has lived in the UK all of the seven years of her life, and in fact reasons which would appear to question whether it is in her best interests to remain such as her being young enough to adapt to returning to Bangladesh; the fact that she would be returning with her family; and the fact that she already speaks basic Bengali and would be quickly able to catch up linguistically if returned to Bangladesh appear perhaps to point to the opposite conclusion.

8. I also find that the First-tier Tribunal erred, in the light of the guidance given in KO(Nigeria) at paragraph 19, in failing to provide reasons why it would not be reasonable to expect her leave the UK when applying s.117B(6) of the Nationality, Immigration and Asylum Act 2002 particularly given that that reasonableness must be a "real world" assessment which should have included reference to the fact that the third claimant's parents did not have leave to remain.

9. The lack of sufficient reasons for the decision on the third claimant's case under s.117B(6) then makes the decision unreliable in relation to the rest of the claimants as it is clear that the decision in her favour under this provision is the only factor found to be in the claimants favour, and thus the decisive factor which leads to the allowing of the appeal on Article 8 ECHR grounds for the whole family.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. I set aside the decision and all of the findings of the First-tier Tribunal.
3. I adjourn the re-making appeal to take place after the forthcoming guidance decisions on the implementation of KO (Nigeria) which are anticipated shortly from a Presidential panel of the Upper Tribunal.

Directions:

1. The matter will be listed for a case management review hearing at the first available date in April 2019, and it is anticipated that at this hearing a date will be fixed for the matter to be reheard de novo in the Upper Tribunal.
2. Any updating evidence relating to the best interests of the child claimants, or other relevant matters, will be served and filed in an indexed paginated bundle 10 days prior to the substantive remaking hearing.

Signed: Fiona Lindsley Date: 11th February 2019

Upper Tribunal Judge Lindsley