



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HU/03737/2020
HU/04253/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On 29 October 2021**

**Decision & Reasons
Promulgated
On 02 December 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**MOHAMMAD NASIR UDDIN
SHAMEMA NASRIN
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mrs F Allen, Counsel, instructed by Paul John & Co Solicitors

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

DECISION AND REASONS

1. The appellants are citizens of Bangladesh. They are married to each other and the appeal concerns them and their two children born in May 2019 and in March 2021 respectively. They appeal against a decision of the First-tier Tribunal dismissing their appeal against the decision of the Secretary of State refusing them leave to remain on human rights grounds.
2. The short point is that the appellants may well have anticipated that they would be able to qualify for settlement under the “ten year rule” after ten years of continuous lawful residents but at some stage they neglected to apply in time to extend their leave with the result that they do not qualify under the ten year rule. The material application was late by only eleven days or thereabouts. Wherever there is a deadline there is going to be somebody very close to the deadline but the wrong side of it and that person is invariably

going to have a sense of vexation, or even grievance, but the plain fact of the matter, as Ms Allen properly and responsibly acknowledged, is that the Appellants did not qualify under the Rules.

3. Ms Allen essentially makes two points. She said that the Decisions and Reasons should have considered conspicuously the time that the Appellants did spend in the United Kingdom and should have made clear findings about the weight that ought to be given to the private and family life that the Appellants have established in the United Kingdom. In a way, that is clearly right. It is what *ought* to have been done.
4. The difficulty with the argument is that I can only be concerned with errors that are material and, as Mr Lindsay has pointed out, the fact that a person does not satisfy the Rules is not something that could be used to their advantage. The statute is quite plain; Section 117B(5) of the Nationality, Immigration and Asylum Act 2002 provides that little weight should be given to a private life established by a person when their immigration status is precarious. For these Appellants, their immigration status has always been precarious but if it was unlawful it was unlawful only for a very short period of time and that is not something that concerns me particularly as an adverse feature. This is not a case of people who have “hidden” from the authorities only to make an application when they thought sufficient time had elapsed or after they were apprehended as overstayers or something like that.
5. Even so, it follows that a judge doing the most meticulous analysis could not have given a great deal of weight to balance against the imperative of enforcing the Immigration Rules. I cannot see that a detailed explanation would have made any difference or that therefore the failure to consider it expressly is material.
6. It is also right to acknowledge, as Mr Lindsay has pointed out, that the judge very much had in mind the submissions that *were* made. Paragraph 26 of the Decision and Reasons refers to the appellants being in the United Kingdom “for a considerable period of time” and the judge has clearly read the supporting letters and given them such weight as was proper in her judgment but there is no family life element outside the nuclear family here and the private life element cannot be given a great deal of weight. I do not want to go around in circles repeating myself. I cannot see any material error has been shown there.
7. In the case of the children I make similar observations. Of course it would have been better if the First-tier Tribunal had expressly acknowledged the statutory duty to make findings about the best interests of the children but it would be wholly unfair to the judge to suggest, and indeed nobody has suggested, that the children were not very much in her mind. Paragraph 25 of the Decision and Reasons is particularly significant where the judge refers to there being “no very significant obstacles to her returning to Bangladesh with her very young children and highly educated and skilled husband”. The judge found in the same paragraph that the children:

“... will not have formed significant attachments to the UK without their parents and their welfare needs will not be adversely affected by returning to Bangladesh

with their family. There will be no very significant obstacles to their return with their family to Bangladesh”.

8. It is quite plain that the judge was concerned about the children, investigated their circumstances and made lawful findings with regard to the weight to give to them. It is regrettable that she did not go the whole way a refer to the best interests and the statutory obligation but these things were considered and there is nothing in the papers that persuades me of any realistic prospect of any judge reaching a different conclusion on the evidence that is available.
9. Mr Lindsay is right to remind us that it is not the case that no child can do better in Bangladesh than in the United Kingdom. Much depends on the educational opportunities and these depend on the wealth of the family and there is nothing here to show that these are people whose likely circumstances in Bangladesh would be very challenging for the children. That is just not the way the case was argued.
10. The First-tier Tribunal granted permission because of the concern that has to be shown for the children. I am satisfied that there is no material error in the Decision and Reasons for the reasons I have given and I dismiss these appeals.

11. Notice of Decision

12. The appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 26 November 2021