



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: HU/20426/2016
HU/20432/2016
HU/20435/2016

THE IMMIGRATION ACTS

**Heard at Liverpool
On 14 March 2018**

**Decision & Reasons Promulgated
On 10th April 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**SONDU [A] - FIRST APPELLANT
JAHANARA [A] - SECOND APPELLANT
M I - THIRD APPELLANT
(ANONYMITY DIRECTION NOT MADE EXCEPT FOR THIRD APPELLANT)**
Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:

For the Appellants: Mr M Mustafa, Solicitor, Kalam Solicitors
For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants challenge the decision of Judge Herwald of the First-tier Tribunal (FtT) sent on 22 June 2017 dismissing their appeals against the decision made by the respondent on 9 August 2016 refusing them leave to enter.

2. The principal ground mustered by the appellants is that the judge failed to carry out an adequate assessment of the best interests of the child and also failed to properly apply the principles applicable in cases where a child has resided in the UK (as has the third appellant) for seven years by the date of hearing.
3. I heard very targeted submissions from both representatives, for which I express my gratitude.
4. I find that the appellants' principal ground succeeds. The judge's treatment of the third appellant's circumstances was clearly flawed. First, his reasons for dismissing the appeal were based on the incorrect understanding that the child is aged 7. Although when setting out the appellant's claim the judge at para 16(e) correctly states that the third appellant was 14, everywhere else, including in the section headed 'My Findings', refers to the child as aged 7 (see paras 1, 35 and 38) and the judge's treatment at para 33 regarding the third appellant's linguistic abilities in Bengali makes no sense unless it refers to a child who has only ever lived in the UK (whereas the third appellant lived for six years in Bangladesh).
5. Second, although the judge refers to **MA (Pakistan) [2016] EWCA Civ 705** and **EV (Philippines) [2014] EWCA Civ 374** it is apparent that he diverged from the guidance given in these cases. The judge did not take as his start-point that in the cases of a child resident for seven years "strong reasons" have to be given for refusing leave ([46] and "very powerful reasons" would have to be shown to justify refusing leave [49]). Nor did the judge correctly apply factor (a) set out in **EV (Philippines)** (as quoted in **MA (Pakistan)** at [48] as regards age, or factor (c) (as regards what stage their education has reached).
6. Mr Bates sought valiantly to defend the decision of the judge, emphasising that judge the had given consideration to the best interests of the child and the limited extent of the difficulties the third appellant would have in (re)-integrating into Bangladesh society. He submitted that the apparent mistake made by the judge as to the third appellant's age was not material. I am unable to agree. The best interests of the child assessment in respect of a 14 year old child cannot be equated with that of a 7 year old and the judge's treatment of the issue of reasonableness failed to take the **MA (Pakistan)** principles as its start-point. The judge's assessment of the third appellant's circumstances was also incomplete.
7. For the above reasons I set aside the decision of the judge for material error of law. Given that the heart of these appeals relates to the issue of the reasonableness of refusing leave to the third appellant, which presupposes a proper assessment of the child's best interests, I consider the case is best remitted to the FtT so that this assessment can be made by reference to an accurate factual matrix.

8. I would observe, however, that the appellants should not assume they will necessarily succeed when the case is heard again. The appellants' grounds raise no challenge to a number of findings made by the judge regarding: the existence of siblings in Bangladesh and family, social and cultural ties with Bangladesh (para 36); and the lack of credibility on the part of the first and second appellants as regards the availability of care for [FB] (the first appellant's mother) (para 37). At para 34 the judge also rejected the appellants' claim that they had suffered a "historical wrong". These findings should stand and are preserved.

Notice of Decision

To conclude:

The decision of the FtT judge is set aside for material error of law.

The case is remitted to the FtT (not before Judge Herwald).

No anonymity direction is made save in respect of the third appellant.

Signed

Date: 6 April 2018



Dr H H Storey
Judge of the Upper Tribunal