



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

Appeal Numbers: HU/00287/2017
HU/00292/2017
HU/00300/2017
HU/00333/2017

THE IMMIGRATION ACTS

Heard at Field House

On 7th January 2019

**Decision & Reasons
Promulgated
On 5th February 2019**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MISS FAHMIDA TANZEEM
MR SAIFUDDIN MUHAMMED TARIQ
MR WASEEUDDIN MUHAMMED RAFID
MRS SELINA AKTER
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr N Paramjorthy, Counsel, instructed by FLK Solicitors
For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

This is an appeal to the Upper Tribunal by the Appellants. There are four Appellants, all citizens of Bangladesh. The Appellants had made application for leave to remain indefinitely on human rights grounds. At the time of the

Decision none of the Appellants had accumulated ten years' lawful residence nor were either of the children qualifying children, having not been here for seven years.

It took a long time for this case to come before the First-tier Tribunal and it was adjourned on one occasion, at the Secretary of State's request, so that he could reconsider the matter on the basis that by this time the first Appellant had accrued ten years' lawful residence in the United Kingdom and one of the children had become a qualifying child, having arrived on 12th September 2010.

Unfortunately, as is too often the case, the Secretary of State in fact did not make any further Decision and when the matter came before First-tier Tribunal Judge Handley on 16th April 2018 chose not to be represented either. There had been some indication previously from the Secretary of State that the fact that one Appellant had been here for ten years and one was now a qualifying child were new matters. The judge decided that they were new matters and therefore did not take those factors into account in deciding the human rights appeal.

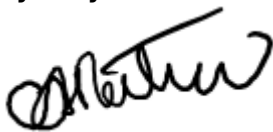
Whilst it is true that the judge could not have found that they met the requirements of the Immigration Rules on the basis of ten years' lawful residence the facts being that he had in fact been here that length of time and that one of the children was a qualifying child were clearly matters which were important considerations in the proportionality exercise.

The judge in deciding that they were new matters did not take those into account when considering Article 8 and in that regard, I find that the judge has made an error of law which is clearly material to the outcome. The passage of time is not a new matter. The judge was considering Article 8, which has to be decided on the basis of the facts as they are at the date of hearing. Ms Pal was unable to indicate where in the judgment the First-tier Tribunal did take those matters into account. Clearly, it did not, and therefore the matter has to be set aside in its entirety. It is appropriate, given that it all has to be redecided, for it to be remitted to the First-tier Tribunal to be considered before a different judge. The appropriate hearing centre is Taylor House and I would hope that the Secretary of State in the meantime will look again at this case and if not, at the very least will field a Presenting Officer on the next occasion.

Notice of Decision

The appeal is allowed to the extent that the Decision and Reasons is set aside and remitted to the First-tier Tribunal for a full rehearing on all matters.

No anonymity direction is made.



Signed
Upper Tribunal Judge Martin

Date 18th January 2019