Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: HU/20426/2016**

HU/20432/2016

HU/20435/2016

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 30th November 2018

Decision & Reasons Promulgated
On 1st February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) MR S A
(2) MRS J K A
(3) MISTER M A I (A MINOR)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M Mustafa (Counsel)
For the Respondent: Mr A McVeety (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Malik, promulgated on 13th July 2018, following a hearing at Manchester on 28th June 2018. In the determination, the judge dismissed the appeal of

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the Appellants, whereupon the Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are all nationals of Bangladesh. The first and second Appellants are husband and wife, and the parents of the third Appellant, who was born in 2003. They appealed against a decision of the Respondent dated 20th July 2016 refusing their application for leave to remain in the UK.

The Appellants' Claim

3. The essence of the first Appellant's claim is that he and his wife came to the UK in December 2009, together with his son, and they did this on a visit visa which was valid until 8th June 2010. Further applications for leave to remain were rejected by the Secretary of State. There were appeals made to the Tribunals. The first Appellant now claims that he has been living in the UK for eight years, has made friends here, and has been involved in the community and with charity organisations. In the time that he has been living here, he has cared for his 89 year old mother, who is permanently settled here. She has Type 2 diabetes, hypertension, high cholesterol, and senile dementia. Her care needs are high. He and his wife help in her daily living. Their son came to the UK at the age of 6 and has been attending school. Both parents maintain that his first language is English. They believe that the son should be granted leave to remain under paragraph 276ADE(1) because he has been in the UK for over seven years. There will be "social stigma" on the son if he were to be returned back to Bangladesh (paragraph 11). As against this, the first Appellant had eight children in total, and the remaining ones were in Bangladesh, with the eldest son being over 18. His son in the UK was now 14 years of age and his other children were older.

The Judge's Findings

4. The judge held that the first Appellant and his family could not succeed, and that there would be no obstacles to their integration were they to return to Bangladesh. As the judge observed, "essentially these appeals are predicated on their son having been in the UK in excess of eight years". Their son had not been in the UK for seven years at the time of application and/or decision and so too he did not meet the requirements of paragraph 276ADE(1)(iv), as the judge stated at paragraph 23 of the determination. In fact, the minor Appellant had seven siblings in Bangladesh, some of whom were married, and with children. His mother denied in evidence before the judge that this minor Appellant was in contact with his siblings in Bangladesh, but the judge did not find her account to be credible that there was no contact with the other children and grandchildren in Bangladesh (paragraph 28). The judge gave weight

to Section 117B of the 2002 Act and held that the maintenance of effective immigration control was in the public interest so that it had to be given controlling weight (paragraph 34).

5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge erred in his consideration of the third Appellant's case in the light of the decision in **MT and ET (child's best interests: ex tempore pilot) Nigeria [2018] UKUT 88**. In that case, it was said that there need to be "powerful reasons" for why a child who had been in the United Kingdom for over ten years should be removed (paragraph 33). In that case it was held that,

> "There are no such powerful reasons. Of course, public interest lies in removing a person such as MT, who has abused the immigration laws of the United Kingdom ... but, given the strength of ET's case, MT's conduct in our view comes nowhere close to requiring the Respondent to succeed ... the point is that her immigration history is not so bad as to constitute the kind of 'powerful' reason that would render reasonable the removal of ET to Nigeria" (paragraph 34).

7. On 25th September 2018 permission to appeal was granted by the Tribunal.

Submissions

8. At the hearing before me, Mr Mustafa, appearing on behalf of the Appellants, made the following submissions. First, although the judge had considered (at paragraph 21) the third Appellant's age and length of residence in the UK, he failed to consider the fact that the Appellant had spent important years of his life in the UK, which were above the age of 4 years, given that the third Appellant had arrived in the country at the age of 6. Second, the judge overlooked the fact that the third Appellant would start his GCSEs in September 2018 and was at a crucial stage of his education (paragraph 30). Third, the judge's finding (at paragraph 29) that the third Appellant would be able to resume education in Bangladesh was predicated on the finding that he is able to speak Bengali. However, the third Appellant would also need to be able to read and write Bengali and yet the judge makes no finding on this pertinent point. Fourth, the judge finds that (at paragraph 30) there is no specific evidence of "any social contacts of any significance" but this is a mistake of fact as a letter from the third Appellant's school (see the Appellant's bundle at page 21) confirms that he has a good number of friends in this country. The judge failed to recognise that the third Appellant's removal would be unreasonable. Finally, whether or not there was a functioning education

system in Bangladesh, was not relevant to the fact that the third Appellant had no direct experience of Bangladesh.

9. Insofar as the public interest in removal was concerned under Section 117B(6), this was a case where the Appellants were not liable to deportation, where there was a genuine and subsisting parental relationship with a qualifying child between the adults; and where it would not be reasonable to expect the qualifying child to leave the United Kingdom.

10. Accordingly, submitted Mr Mustafa, the decision of the judge could not be held on the basis of proportionality and on the basis of his having misconstrued the meaning of “powerful reasons”.

11. Finally, Mr Mustafa also handed up the recent Supreme Court judgment in **KO (Nigeria) [2018] UKSC 53**. He submitted that this case raised the question of what is “reasonable” for the child, and pointed out that “there is nothing in the subsection to import a reference to the conduct of the child” (paragraph 17), when regard is had to Section 117B(6).

12. For his part, Mr McVeety submitted that **KO (Nigeria) [2018] UKSC 53** does not assist the Appellant because it makes it clear that one has to look at the position in the real world. If the parents do not have the right to remain here then neither does their minor son. As for the decision in **MT and ET [2018] UKUT 88**, this has been rejected insofar as it states that the immigration status of persons does not matter. In reply, Mr Mustafa submitted that **KO (Nigeria)** was relevant and this is clear from paragraph 19 of the judgment. The fact that the parents do not have leave to remain was only one factor. Ultimately, there has to be a balancing exercise. This was a case where there was no deception exercised by the parents. The status of the parents was only one factor. Judge Malik had misconstrued the role of “powerful reasons” in the decision making process, when he concluded that there was nothing to suggest that it was not in the third Appellant’s best interests to continue to live with his parents and that, “I find it is in his best interest to do so and that, as set out above, there are powerful reasons – and that it would not be unreasonable for him to return to Bangladesh to enjoy a family and private life with his parents, siblings and other family members” (paragraph 33).

No Error of Law

13. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and re-make the decision. My reasons are as follows.

14. First, in employing the language of “powerful reasons”, the judge was not inverting the expression of that term as used in **MT and ET [2018] UKUT 88**, which stated that, “we need to look for ‘powerful reasons’ why a child

who has been in the United Kingdom for over ten years should be removed ...” (paragraph 33). What the judge had done was to explain why it would not be contrary to the best interests of the minor child “to continue to live with his parents”.

15. The judge was clear that, “I find it is in his best interest to do so”. He was clear that,

> “It would not be unreasonable for him to return to Bangladesh to enjoy a family and private life with his parents, siblings and other family members; nor do I find in doing so would it lead to unjustifiably harsh consequences for the minor Appellant, nor his parents”.

It was in this respect that the judge observed that “there are powerful reasons” (paragraph 33).

16. Second, this appeal by the Appellants is in any event not helped by the decision in **KO (Nigeria) [2018] UKSC 53**, which implied that it would be unreasonable to expect a child to follow a parent, after a period of time in the UK, because that would violate the child’s “best interests”. What the Supreme Court now makes clear is that the question of “reasonableness” is to be assessed “in the real world in which the children find themselves” (paragraph 19). What this means is that, “if neither parent has the right to remain, then that is a background against which the assessment is conducted”.

17. This is as distinct from a situation where one parent has the right to remain but the other does not. In this case, as the judge found, neither parent had the right to remain here, and this is the context in which the “reasonableness” of requiring the third Appellant to go with them to Bangladesh, had to be assessed because this was “the real world in which the children find themselves” in this case. The third Appellant also had seven of his siblings in Bangladesh. The judge did not accept that there was no contact with these children or that the third Appellant did not speak his own language. Accordingly, there is no error of law.

Notice of Decision

18. The decision of the First-tier Tribunal did not involve the making of an error of law. The decision shall stand.

19. An anonymity direction is made.

20. This appeal is dismissed.

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

Unless and until a Tribunal or court directs otherwise, the Appellants 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.

Signed Date

Deputy Upper Tribunal Judge Juss 15th January 2019