Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/23669/2018
HU/23673/2018
HU/23678/2018
HU/23683/2018

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
Via Skype for Business	
On 22 January 2021	**On 8 February 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BEGUM SADIA
ROSHIA BEGUM
HAMDU MIAH
MUJAKKIR HUSSAIN

Respondents

Representation:
For the Appellant: Mr Bates, Senior Home Office Presenting Officer
For the Respondent: Mr Khan, instructed by Aubrey, Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondents as the 'appellants', as they appeared respectively before the First-tier Tribunal. The appellants are citizens of Bangladesh. The first and the third

appellants are wife and husband. The appellants appealed to the First-tier Tribunal against a decision of the Secretary of State dated 8 November 2018 refusing their human rights applications. The First-tier Tribunal, in a decision promulgated on 28 November 2019, allowed the appeals. The appellants now appeal, with permission, to the Upper Tribunal.

2. During the course of the application and appeal, 20 years elapsed from the date (September 1999) the third appellant had first entered the United Kingdom. The judge acknowledged [42] that the appellant had not completed 20 years continuous residence from the date of his application to the Secretary of State (28 February 2018) so could not in consequence meet the requirements of paragraph 276ADE of HC 295 (as amended). The judge also found as a fact that the appellants would not encounter very significant obstacles on return to Bangladesh [46]. In the conclusion of his analysis [55], the judge highlighted the length of residence of the third appellant and to his finding that the first and fourth appellants had spent the Immigration Rules 'formative years' living in the United Kingdom. He found that the appeals should be allowed on human rights (Article 8 ECHR) grounds.

3. In essence, the Secretary of State grounds take issue with this conclusion of the First-tier Tribunal. First, the third appellant had entered the United Kingdom using deception and had also failed to report; it was likely that he would be denied discretionary leave to remain on the basis of long residence on the basis of unsuitability so the judge had placed improper weight on a factor which was by no means certain as seemed to accept. Secondly, it was also unclear why the fact that two of the appellants had spent their formative years in the United Kingdom should be accorded such weight given that, notwithstanding that fact, the judge had found there exist no very significant obstacles to their re-integration into Bangladesh. Thirdly, there was nothing in the judge's analysis to show that he had given adequate regard to application of section 117B of the 2002 Act. The judge had referred to these statutory provisions in general terms at [47] but he had not applied the provisions to the facts as he found them or expressly considered how the provisions might impact on the proportionality assessment. Finally, the judge had failed to consider the precarious nature of any award of discretionary leave to remain which the third appellant might obtain on account of his long residence.

4. Mr Khan, who appeared for the appellants, submitted that the judge had before him 'massive' evidence of the educational achievements of the second and fourth appellants. There had been no need for the judge in his analysis to refer to all the evidence of which he had taken account whilst the decision he had reached had manifestly been available to him on the evidence.

5. The judge's conclusions at [55] not unreasonably highlight a couple of factors which he found played a decisive part in his decision. I accept that he did not err in law simply because he did not set out exhaustively in this

conclusion all the various issues or items of evidence which he had considered, some of which are addressed earlier in the decision. Having said that, it is clear that the prominence given to two factors (the 'formative years' of the second and fourth appellants and the third appellant's long residence) is problematic. I agree with Mr Bates that the judge has not reconciled the weight which he has given to the time the younger appellants have spent in the United Kingdom with his finding that they could, without meeting very significant obstacles, return to Bangladesh. Indeed, he has not considered at all the fact that the family as a whole could chose to pursue their family life together in Bangladesh irrespective of the either of the factors which the judge highlights. I agree also with the respondent that the judge has rather paid lip service to the Section 117 provisions without actually applying them to the facts. For example, the judge makes nothing of his finding that the family cannot support itself financially. As regards the third appellant's long residence, I agree with the respondent that the judge has failed to consider whether the appellant might, notwithstanding his length of residence, still fail to achieve a grant of discretionary leave to remain on suitability grounds and that he has also failed to acknowledge the relevance in the proportionality assessment of the fact that, even if granted discretionary leave to remain, his immigration status would remain precarious.

6. The two factors highlighted by the judge at [55] whilst not necessarily determinative of the appeal in the judge's mind, plainly figured prominently in his reasoning. For the reasons given by the respondent, neither factor is entitled to carry the weight which the judge assigns to it. In addition, other relevant factors have not been brought into the analysis at all. In consequence, I agree with Mr Bates that the judge has failed to provide adequate reasons to the Secretary of State to explain why she lost. This is not say that the appeal could not, on these facts, have succeeded; the judge's error is one of process rather than perversity. Whilst I set aside the decision for legal error, therefore, I shall not simply reverse the outcome. I accept that the circumstances of the appellants may have altered over the period of more than a year which has elapsed since the promulgation of the First-tier Tribunal's decision; indeed, Mr Khan told me that the third appellant has suffered a heart attack in recent months. Given that there may need to be further fact-finding, I return the appeal to the First-tier Tribunal for that Tribunal to remake the decision at or following a hearing *de novo.*

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. **The appeal is returned to the First-tier Tribunal (not Judge Cameron; first available date; Taylor House; no interpreter; 1.5 hours; First-tier Tribunal to determine whether face to face or remote hearing)** for that Tribunal to remake the decision at or following a hearing *de novo.*

Upper Tribunal Judge Lane
22 January 2021