



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/07717/2016
HU/07721/2016, HU/07724/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 25th July 2018

Decision and Reasons Promulgated
On 07th August 2018

Before

Upper Tribunal Judge Chalkley

Between

M K M
M M S M
M M B

(ANONYMITY DIRECTION MADE)

Appellants

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellants:

Mr McIndoe, a solicitor with Latitude Law

For the Respondent:

Mrs Pettersen, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are siblings who were born on 16th January 1999, 10th January 2000 and 22nd February 2001 respectively. They are citizens of Bangladesh and their mother, [AN], who arrived in the United Kingdom in 2011 and was granted indefinite leave to remain on 11th August 2014, sponsors them. They applied to join their sponsor in the United Kingdom but the Respondent refused their applications. They appealed to the

First-tier Tribunal under Section 82(1) of the 2002 Act and in respect of their Article 8 rights against the decision of the respondent to refuse to grant them leave to enter the United Kingdom on the basis of their claimed family life with their sponsor.

2. At paragraph 30 of his determination, the judge found that the appellants, in recent years, effectively only ever had contact with their mother by telephone and there was no evidence before the judge why to the extent that they enjoyed family life with her, that family life could not continue in the future as it had done in the past. Effectively, he found that the decision of the Entry Clearance Officer would not cause and interference.
3. The sponsor gave oral evidence before the judge, confirming that she left Bangladesh in 2001 and that her "sister cousin" had cared for the appellants until 2011. The appellants were then cared for by her eldest son, F, with financial help and directions from the sponsor and F was responsible for the appellants from 2011 until 2016. He had since married and that arrangement had broken down, because the appellants were expected to live outside F's home and beg for work. They no longer attended school. At the date of the hearing before the First-tier Tribunal the youngest child was 16½.
4. The judge took into account the fact that the first-named appellant was born on 16th January 1999 and at the date of the hearing was an adult. He saw no reason on the evidence before him why the first-named appellant could not now adopt F's role.
5. That finding was challenged on behalf of the appellants. The grounds suggested that the judge took into account a matter which was not drawn to the attention of the parties and as a result unfairness occurred. This morning when I pointed out to Mr McIndoe that it did appear to me that it was an obvious point that the first-named appellant was an adult at the date of the hearing, he agreed. I have concluded that there is no merit in the first challenge and was no error, given that this was a matter that could and should have been explored by Counsel appearing on behalf of the appellants before the First-tier Tribunal.
6. The second challenge to the judge's determination was that there was no specific finding as to what had been said about the appellants' living conditions in Bangladesh. Mr McIndoe drew my attention to a statement at page 141 of the appellants' bundle signed by the first-named appellant. He said that the sponsor had also given oral evidence as to the conditions in which the three appellants are living and yet the judge has failed to make any findings on that evidence. At paragraph 6 of the judge's determination he refers to the 420 page bundle submitted on behalf of the appellants, the grounds of appeal and the skeleton argument and confirmed that he had read, considered and assessed the evidential weight of the contents of all documents before him and taken them into account in reaching his decision.

7. Quite why it was necessary for a bundle as large as this to have been placed before the judge is not clear. It appears that all the documents submitted to the Entry Clearance Officer were simply duplicated and submitted in the form of a bundle to the First-tier Tribunal.
8. First-tier Tribunal Judge Hillis, who heard this appeal in Bradford on 18th August 2017, makes it clear, however, that he has read the documentation.
9. The first-named appellant's statement is not awfully satisfactory because while it is signed, it is dated 9th December 2015 and does not bear an endorsement by an interpreter confirming that it has been read to the author of the statement, that the author of the statement has confirmed that it is true and accurate in all respects and that there are no amendments they wish to make to it.
10. In the statement, the first-named appellant refers to living with F and his wife and his younger siblings. They all share a room. He says he does not know how he is surviving and has to live outside most of the time because they cannot all fit into the small room to sleep. It is a cold season. He said: *"We will often go for a day without eating and spend a lot of time begging for work. It is unbearable."* At paragraph 7 of the statement he says:

"I blame my brother's marriage. Before this, life was very difficult but he no longer feels he can take care of us and remain married. Things have become even worse since this time. Every day [M] [[F]'s wife] shouts at us to get out of the house. She kicks us out and won't let us spend much time inside. She tells us to go and look for jobs."

The obvious thing about that statement is that at the time of the hearing before the judge it was two and a half years old. It was simply not up-to-date.
11. The second challenge appears to me not to identify any error of law.
12. The judge may not have quoted from the statement of F, but it is quite clear that he took it into account, because he says as much in paragraph 6 of the determination. In any event, it was not an up-to-date statement; it was 2 ½ years old at the time of the hearing before the First Tier Tribunal Judge. The sponsor has not been in Bangladesh since, I am told, 2002 when she fled an unhappy marriage. It seems to me that the judge was perfectly well entitled on the evidence before him to suggest that there appeared to be no reason why the first-named appellant could not adopt the role that his older sibling had performed. The sponsor and the first-named appellant both confirmed that financial support is sent to them from the sponsor in the United Kingdom. As for [M] shouting at the appellants to get out of the house, if it is a one roomed property that they all live in and they are no longer at school it is perhaps not surprising that she urges them to go and find employment.
13. I have concluded that the determination of First-tier Tribunal Judge Hillis does not involve the making of an error on a point of law and I uphold his determination.

Notice of Decision

The appeal is dismissed on human rights grounds

An anonymity direction is made.

Richard Chalkley

Upper Tribunal Judge Chalkley

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Richard Chalkley

Upper Tribunal Judge Chalkley

Dated 31 July 2018