Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HU/14413/2017
HU/14415/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10 September 2018	**On 25 September 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

RUBINA BEGUM
ABDUL MARUF
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr O Sobowale, Counsel instructed by Samad & Co Immigration (Witton)
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants, who are nationals of Bangladesh, are twins born on 23 January 2000. They arrived in the United Kingdom on 21 February 2010 accompanied by their parents with entry clearance as visitors for six

months. Their parents then departed for Bangladesh leaving them in the care of their sister Jasmine. The Appellants made an application to remain in the United Kingdom on the basis of their family life on 4 April 2010, which was refused with no right of appeal on 26 November 2012. The Appellants then made a subsequent application for leave which was refused in a decision dated 24 October 2017, with the right of appeal.

2. The appeal came before Judge of the First-tier Tribunal Moore for hearing at Birmingham on 18 May 2018. In a decision and reasons promulgated on 29 May 2018, the judge dismissed the appeal. Permission to appeal to the Upper Tribunal was sought on the basis that the judge had erred materially in failing to apply the law correctly in that at [23] the judge held *"There are in my view no powerful reasons as to why the Appellants should not be removed"*. It was asserted secondly that the judge had failed to provide reasons in support of his decision in light of his acceptance that the Appellants were not to blame for the choices made by their parents that led to their presence in the UK and bearing in mind there was no adverse conduct on the part of either Appellant. Reference was made to the decision of the presidential panel in MT and ET [2018] UKUT 00088 (IAC).

3. Permission to appeal was granted in a decision dated 13 July 2018 on the basis that the grounds were arguable.

Hearing

4. At the hearing before the Upper Tribunal, Mr Sobowale sought to rely on the grounds of appeal. He submitted that the judge had misapplied the law. There were no powerful reasons as to why the Appellants should not be removed but this was a flawed approach given that both Appellants were qualifying children at the date of decision and the law states that leave should be granted unless there are powerful reasons why the Appellants should not be granted leave. The judge accepted the Appellants were not at fault due to their parents' decision and there were no adverse findings as to their conduct. He submitted that the judge has effectively inverted the test. Mr Sobowale submitted that MA (Pakistan) [2016] EWCA Civ 705 at [46] to [49] makes clear that the best interests of the Appellants would be for them to remain in the United Kingdom given that they had resided continuously for over seven years. He submitted that nowhere in the decision and reasons does the judge give any reasons relating to the specific Appellants and their private life which showed he had failed to consider private life and the reasons why the Appellants should be removed.

5. In his submissions, Mr Whitwell submitted that there were a number of reasons put forward by the judge at [19] that the parents deliberately tried to circumvent the Immigration Rules in order that the two Appellants could get a better education and more comfortable life in the UK. At [20] both Appellants are now adults aged 18 years of age; they lived in Bangladesh until the age of 10 and have been educated there. The Appellants speak

both English and Bengali, which would be an attribute if they returned to Bangladesh and sought to further their education or secure employment. The Appellants' parents, in the absence of evidence to the contrary, continued living in the family home and there were other family members in Bangladesh who might not only be able to provide accommodation but also offer financial or other assistance upon their return. At [23] the Judge found that the parents should be willing and able to care for the Appellants although they are now of adult age upon return to Bangladesh and that it would be in their best interests to live with their parents as part of a family unit. Mr Whitwell submitted that whilst at [23] the judge says remove rather than grant in relation to the test, that this may be typographical and in any event is not material in that the judge is quite clear in respect of the principle that he was trying to enunciate.

6. Mr Whitwell submitted that the grounds of appeal are simply a disagreement with the findings of fact which were open to the judge on the evidence. He submitted that in the decision of the presidential panel in MT and ET [2018] UKUT 00088 (IAC) the circumstances were very different in that key to the decision of the Upper Tribunal was the level of education reached by that Appellant at [30] and [31] and the absence of any experience of her home country. This was clearly distinguishable in that these Appellants lived in Bangladesh until they were the age of 10 and are now 18 and adults and have completed their education as children. Mr Whitwell acknowledged that a different Tribunal may have reached a different outcome but there was no substance to the submission on behalf of the Appellants that the judge had not provided reasons for his findings.

7. In reply, Mr Sobowale drew attention to the fact that at [16] and [19] of the decision, the judge expressly found that the Appellants were not at fault. He submitted that powerful reasons to justify removal have to be laid out but were not in this case. There was a lack of clarity and this is why the judge fell into error. Mr Sobowale submitted that there are similarities between these Appellants' appeals and the cases of MT and ET (op cit). The judge had paid lip service to this but had paid no attention to the private life established by the Appellants in the UK and why it was justifiable to remove them.

Findings

8. I find no material errors of law in the decision of the First-tier Tribunal Judge, who took the relevant jurisprudence into account and as Mr Whitwell identified, provided reasons for his finding that there are no powerful reasons as to why the Appellants should not be removed. Whilst this is a variation of the test set out in MA (Pakistan) (op. cit.) and endorsed by the presidential panel in MT and ET, which is that there ought to be powerful reasons why a child should be removed, I do not consider that this is a material error. That is because the judge has identified a number of reasons which when considered as a whole amount to powerful

reasons in favour of removal. Those are the reasons identified by Mr Whitwell in his submissions at [5] above.

9. Of particular note is the fact that the Appellants are now adults, they lived in Bangladesh until the age of 10 and they do have their parents and siblings who continue to reside in Bangladesh. The judge made express findings in that respect, rejecting the evidence that there had been no contact with the parents since they left the children in the UK in 2010. The judge was entitled to take account of the fact that the parents had effectively sought to circumvent immigration control having essentially run into financial difficulties by taking out loans to support the student visa in relation to the Appellants' older brother [AM]. I find that the judge was also entitled to take account of the fact there was an absence of evidence from this brother [AM]: see [16] and [19].

10. I further find that the judge's decision is in accordance with the jurisprudence in that it is clear the case is not on all fours on its facts with the decision in MT and ET and I accept Mr Whitwell's submission that the key to the Tribunal's finding in that case was the age the Appellant had reached having resided in the UK since the age of 4, she was now 14, was integrated into school and was at a key stage in her education. That is not the same as the two Appellants in this particular case, who have completed their initial education at least. Moreover, it is clear from the decision in MA (Pakistan) [2016] EWCA Civ 705 that whilst following the decisions in ZH (Tanzania) [2011] UKSC 4 and Zoumbas [2013] UKSC 74, the children cannot be blamed for the actions or poor immigration history of their parents, this is still a material factor in the assessment of the proportionality of the decision as a whole.

11. Moreover, whilst the factors identified by the Judge, set out at [5] above would not normally or necessarily amount to powerful reasons why the Appellants should be removed, in light of the examples of such reasons set out in the Home Office guidance on Family and Private Life: 10 year route, updated on 22 February 2018, the distinguishing feature in this case is that it is clear from the jurisprudence and the guidance that the removal of a child is envisaged. In this case, whilst only young adults, the Appellants are no longer children and thus at the date of hearing, which is the relevant date for the assessment, their best interests are no longer in play. Despite that, notably at [23] the First tier Tribunal Judge did consider their best interests.

12. In conclusion, I find that Judge of the First-tier Tribunal Moore made no material errors of law in dismissing the appeals. He gave adequate reasons for finding that removal of the Appellants on the particular facts of their appeal was justified.

13. The appeal is dismissed with the effect that the decision of the First-tier Tribunal is upheld.

No anonymity direction is made.

Signed Rebecca Chapman Date 20 September 2018

Deputy Upper Tribunal Judge Chapman