



IAC-AH-SC-V1

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

Appeal Numbers: HU/14683/2016  
HU/14686/2016 HU/14688/2016  
HU/14690/2016 HU/14699/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 July 2018**

**Decision & Reasons Promulgated  
On 18 July 2018**

**Before**

**UPPER TRIBUNAL JUDGE WARR**

**Between**

**M M (FIRST APPELLANT)  
S H (SECOND APPELLANT)  
M H M (THIRD APPELLANT)  
M H (FOURTH APPELLANT)  
H R (FIFTH APPELLANT)  
(ANONYMITY DIRECTION MADE)**

**Appellants**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellants: Mr Basith, Taj Solicitors

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

1. The first named appellant is a national of Bangladesh born on 13 November 1977. He is accompanied by his spouse, the second appellant, who was born on 22 October 1973. The remaining appellants are their children. They were all born in the United Kingdom. The issues in this case centre on the third appellant (Master M) who was born on 2 October 2008. He had been in the United Kingdom for seven years as at the date of the decision.
2. The appellants made an application on human rights grounds on 2 December 2011. The second appellant claimed to be a British national but in the respondent's decision it was noted that she had claimed to have entered the country on 9 February 2007 by presenting a British passport which she had failed to satisfy the Home Office was rightfully hers. The passport had been revoked on 1 November 2012. The Home Office concluded "to a high degree of probability" that the second appellant was a national of Bangladesh. Despite being given any every opportunity, evidence had not been provided to confirm her nationality. Moreover, the relationship had not been accepted as genuine and subsisting in a previous refusal decision on 17 June 2010. There was also no up-to-date evidence of the relationship. The decision was made on the basis that the second appellant was not the partner of the first named appellant. The parties could not meet the requirements of E-LTRP.1.2 and 1.7 of Appendix FM of the Immigration Rules and EX.1 did not apply. The respondent went on "for completeness" to give consideration to EX.1. The third named appellant had lived in the UK continuously for at least seven years because he was born in the UK on 2 October 2008 and this was confirmed by his birth certificate. However, it was considered reasonable for him to leave the UK because there was no evidence or an explanation to confirm specifically why he could not leave the UK. The appellants could leave the UK together as a family unit. There were no insurmountable obstacles preventing the first named appellant's family life with his spouse continuing outside the UK. For reasons set out at length in the decision the appellants could not meet the requirements of 276ADE and while the respondent had a duty to safeguard and promote the welfare of children under Section 55 of the Borders, Citizenship and Immigration Act 2009, there were no exceptional circumstances. The first named appellant and his wife would be able to support the appellants in Bangladesh and they were young enough to adapt to learn a second language if they could not speak Bengali.
3. The appellants' appeals came before a First-tier Judge on 14 June 2017. At the hearing the judge noted that the second named appellant conceded she was not a British national and had no immigration status in the UK. Her account had been inconsistent.
4. The First-tier Judge carefully considered the inconsistencies at paragraphs 5 and 6 of her determination. She also noted from a previous determination by a different Immigration Judge that the first named appellant had also lied when his evidence had been taken. The judge had concluded that when the appellant had said he had reported to the police that his wife had lost her passport that the appellant had deceived the British Police.

5. The determination of the First-tier Judge continues:

- “8. Both the first and second Appellant lied about the passport being lost. I find that the first Appellant continues to lie before me, because he states in his witness statement that he did not report the passport as lost to the police but his wife did. As noted above the evidence given before Judge Chana was that he did. Either he lied before Judge Chana then or he is lying before me. Either way both the Appellants have lied about matters relating to the second Appellant’s immigration status. I have no hesitation in finding that both the first and second Appellant continue to be dishonest in their testimony and there is no credence to their evidence that her father has retained the passport and is refusing to hand it over. Both Appellants also indicated in their witness statement that there had been no contact with her father since 2008. Yet, evidence was given before me that just two months ago, the Appellant had again tried to obtain ‘documents’ from her father.
9. I note also that in the 2015 immigration interview the second Appellant indicated that she was aware that her passport had been revoked and admitted that she had not taken up the offer to attend further interviews and had no outstanding claims for a passport lodged. Yet her Solicitors asserted in their letter dated the 10<sup>th</sup> of April 2014 that the second Appellant had made an application for a passport and the decision was pending (M1). That again was a lie given to the Solicitors on instruction from the Appellant. Although Mr Shah relied on letters from the Home Office which were handed to me to show that the second Appellant had been attending interviews to try and resolve issues about her passport, these letters are only an invitation to try and resolve matters and as noted from the answers that she gave in her December 2015 – she accepted that she had not.
10. Both the Appellants have lied in their current witness statements when they state that they have lived in the UK for many years without recourse to public funds. In the application form submitted in 2011 for further leave to remain, the first Appellant (at T3) said that he was claiming: Council Tax Benefit, Housing Benefit, Working Tax credit, Child Tax Credit and Child Benefit. Question 4.5: Are you receiving public funds? Is marked by a clear tick: Yes.
11. All of the above leads me to find that the first and second Appellant have no credibility whatsoever. They have repeatedly lied about a number of matters and notwithstanding previous lies have continued to do so before me.”

The judge found that the only truthful aspect of the appeal was the existence of the three children and that the appeal was primarily concerned with the status of the eldest

child who was 8 years old as at the date of the hearing before the First-tier Judge. It was not in dispute that he had been in the UK for more than seven years and the test was whether it would be reasonable under paragraph 276ADE(iv) to expect him to leave the UK.

6. The First-tier Judge directed herself by reference to **ZH (Tanzania) [2011] UKSC 4** where it had been emphasised that the best interests of the children must be considered first and while that was a primary consideration it was not a paramount consideration. She referred to **Zoumbas v Secretary of State [2013] 1 WLR 3690**. In **Kaur (children's best interests/public interest interface) [2017] UKUT 17 (IAC)** it had been held that the principles in **Zoumbas** did not preclude an outcome where the best interests of a child must yield to the public interest and the interests of the children should be assessed in isolation from other factors such as parental misconduct. The judge also referred to **Azimi-Moayed [2013] UKUT 00197**. The judge noted in that case that:

“Lengthy residence in a country other than the state of origin can lead to development of social cultural and educational ties that it would be inappropriate to disrupt, in the absence of compelling reason to the contrary. What amounts to lengthy residence is not clear cut but past and present policies have identified seven years as a relevant period.

Apart from the terms of published policies and rules, the Tribunal notes that seven years from age 4 is likely to be more significant to a child than the first seven years of life. Very young children are focussed on their parents rather than their peers and are adaptable.”

7. The judge found that Master M was a child who was attending school and doing well and his school reports were all positive and complementary and there were no concerns about his health and he was a happy child. It was in his best interest to be with his parents and family and while he had spent some of his formative years in the UK he was still of an age where he was adaptable and with the help of his parents could adapt to a new school and make friends in Bangladesh. The remaining children were still of an age where their focus would be on their parents and would be able to adapt to a different environment with their parents' help. While the judge had been told that all the children spoke English and this was the language spoken at home she did not find that the evidence of the first two appellants carried any weight at all when it came to this issue and that both the appellants' mother tongue was Bengali Sylheti. The first named appellant had used an interpreter for his evidence. She did not accept that the appellants' evidence about their children's language was credible. The children would have been taught their mother tongue from a young age and it was not plausible that the children had no understanding of it. Such understanding could be built upon in Bangladesh with the help of their parents and teachers. The judge referred to **EV (Philippines)** and what had been said by Lewison LJ at paragraphs 58 to 60 and assessing the best interests of the children “on the basis that the facts are as they are in the real world.” The situation in the appeal before her was no different

from the circumstances considered by Lord Justice Lewison and neither of the parents had a right to remain in the UK and that was the background against which the assessment of their best interests was assessed. The judge found that it was in the best interests of the children to be with their parents and if they were removed from the UK as a family unit that was in their best interests as well.

8. The judge directed herself by reference to MA (Pakistan) [2016] EWCA Civ 705 at paragraph 45 where it was held that the public interest considerations would be relevant to the question of reasonableness in Section 117B(6). The only significance of Section 117B(6) "is that where the seven year rule is satisfied, it is a factor of some weight leaning in favour of leave to remain being granted."

9. The judge's determination continues as follows:

"24. The public interest considerations that I take into account are as follows. Both the appellants have been dishonest about the immigration status of the second Appellant. Since 2009 when enquiries about the passport were raised and the since 2010 when the first Appellants application for leave to remain was refused their status in the UK has been precarious. They have been reliant on public funds during the period that the second Appellant was lawfully in the UK and so have been a burden on UK taxpayers. The reasons for refusal letter makes it clear that as Bangladeshi nationals they would not have been entitled to such benefits."

10. The judge considered letters confirming that the appellants were currently financially supported in the UK and the judge found no reason to believe that such support could not continue. The judge noted that the first appellant had said he was given between £1,000 and £2,000 a month. In addition, the first appellant had obtained a qualification in laundry work and the second appellant had also worked in the UK and there was no reason why, in the judge's view, both could not find work in Bangladesh. They were both Bangladeshi nationals and were aware of its language and culture. The judge considered that the public interest in ensuring effective immigration control was a powerful factor that was against the first and second appellants. There had also been a clear burden on the state by claiming benefits to which they were not entitled. Any private life that they had established had been when they had no lawful means to be in the UK and when their immigration status was precarious and accordingly the judge placed little weight on it. The determination continues:

"27. All these factors are against the first and second Appellant and can be taken into account when considering whether it is reasonable for Master M to leave the UK. In all the circumstances, I find that it is reasonable to expect Master M to leave the UK with his parents and his siblings as a family unit. As noted, in my assessment of his and his sibling's best interests they would be supported by their parents to adapt to life in Bangladesh. They are

Bangladeshi Nationals – and are entitled to enjoy the full benefits of being nationals of that country.

28. In terms of private life, the children could make new friends in Bangladesh. There is no reason why their parents they could not re-integrate into Bangladesh and I do not find that they would face very significant obstacles in doing so. As noted in the case of **Treebhawon and Others (NIAA 2002 Part 5A - compelling circumstances test) [2017] UKUT 00013 (IAC)** mere hardship, mere difficulty, mere hurdles, mere upheaval and mere inconvenience, even where multiplied, are unlikely to satisfy the test of ‘very significant hurdles.’
11. The judge considered the factors relevant to the Article 8 assessment on the balance sheet approach advocated in **Hesham Ali v Secretary of State [2016] UKSC 60** at paragraph 82. She found that the factors against the appellants outweighed those that were in their favour and any interference with their private life was proportionate to the public interest in maintaining effective immigration control. There was no interference with their family life as they would be removed as a unit. The judge accordingly dismissed the appeals of the appellants.
12. There was an application for permission to appeal. Permission was refused by the First-tier Tribunal. However, on 15 May 2018 the Upper Tribunal gave permission in the following terms:

“Although the First-tier Tribunal has made detailed finding of fact in a carefully drafted decision, it is arguable that it has failed to attach ‘significant weight’ to the eldest’s child’s residence of over seven years when considering his best interests and the reasonableness of expecting him to go to Bangladesh – and that this approach is arguably not in accordance with **MA (Pakistan) v Secretary of State [2016] EWCA Civ 705.**”
13. Mr Basith noted that the Master M would be 10 in October. There had been mention of his attendance at school and doing well in paragraph 20 but his best interests as a qualifying child had not been properly considered. In relation to the public interest points concerning the conduct of the parents, reference was made to the case of **MT and ET (child’s best interests; ex tempore pilot) Nigeria [2018] UKUT** where the Tribunal had referred to paragraph 46 of **MA (Pakistan)** and the need to give significant weight to the fact that a child had been in the United Kingdom for seven years when carrying out the proportionality exercise. In the Immigration Directorate Instructions it was stated there needed to be strong reasons for refusing leave in such circumstances. The child’s mother in **MT and ET** had used false documentation. It appeared that at some stage the mother had received a community order for using a false document to obtain employment, although the Presenting Officer had not sought to rely on the matter. Despite this, the judge had not found powerful enough reasons to depart from the seven year Rule. The appellants in this case had not engaged in

criminality to the same extent. The judge had referred to **Treebhawon and Others** but the Court of Appeal in **Parveen v Secretary of State** [2018] EWCA Civ 932 had commented on what was said in that case at paragraph 9 and counsel submitted that a calibrated approach was required.

14. Mr Basith referred to **AM (Pakistan) v Secretary of State** [2017] EWCA Civ 180 (which had been put before me by Ms Isherwood). The children in that case were teenagers who had come to the UK age 6 and 4, whereas in the case of the appellants they had been born in the UK. The judge had not dealt properly with the proportionality assessment outside the rules.
15. Ms Isherwood submitted there was no material error of law. On the judge's findings it was plain that both appellants had lied. Lies had been told about the claimed British nationality of the second appellant. The appellants had told untruths to the previous judge and continued to lie to the First-tier Judge in this appeal. They had emerged, as the judge had put it, with no credibility whatsoever. The appellants had never had permission to work in the UK. It was of no relevance that it was open to the eldest child, the third appellant, to apply for a British passport in October.
16. The main focus in the appeal concerned the eldest child. The First-tier Judge was well-aware of his age and the fact that he had resided in the UK for more than seven years. The judge had carefully gone through the case law. She had given full consideration to the interests and circumstances of the children in paragraph 20. She had found that they could make new friends in Bangladesh and they would not face very significant obstacles in reintegrating. A child's academic progress was not a trump card - Ms Isherwood mentioned a decision of the Vice President to which she did not have the reference but the case appears to be AM (S 117B) Malawi [2015] UKUT 0260 (IAC) and what was said at paragraph 13. The Court of Appeal had followed **MA (Pakistan)** in **AM (Pakistan)**.
17. In response counsel submitted the conduct of the parents needed to be considered in the context of its severity and seriousness. The main point was whether the judge had weighed up correctly the misdeeds of the parents in carrying out the balancing exercise under Section 117B(6).
18. At the conclusion of the submissions I reserved my decision. I have carefully considered the representations made before me. I can only interfere with the decision of the First-tier Judge if it was materially flawed in law.
19. I note that when granting permission, the Upper Tribunal referred to the detailed findings of fact made in a carefully drafted decision and I would certainly agree that the decision of the First-tier Judge proceeds on a careful analysis of the facts. The sole complaint noted was that it was said she had failed to attach "significant weight" to the eldest child's residence of over seven years. Reference was made to **MA (Pakistan)**.

20. In my view the judge gave proper consideration to the issue and indeed referred to **MA (Pakistan)** as I have indicated above. She was aware accordingly that where the seven year Rule was satisfied it was a factor of some weight leaning in favour of leave to remain being granted and she was also aware of the guidance in the case of **Azimi-Moayed**. In relation to the point that the children should not be blamed for the conduct of the parents I do not find the judge erred in her approach bearing in mind what was said in **MA (Pakistan)** at paragraphs 41 to 47. At paragraph 42 of the judgment Elias L. J. Stated:

“I do not believe that this principle does undermine the Secretary of State's argument. As Lord Justice Laws pointed out in the matter of LC, CB (a child) and JB (a child) [2014] EWCA Civ 1693 para.15, it is not blaming the child to say that the conduct of the parents should weigh in the scales when the general public interest in effective immigration control is under consideration. The principle that the sins of the fathers should not be visited upon the children is not intended to lessen the importance of immigration control or to restrict what the court can consider when having regard to that matter. So if the wider construction relied upon by the Secretary of State is otherwise justified, this principle does not in my view undermine it.”

I am not satisfied that she erred in law in her consideration of the issues of reasonableness or the best interests of the children.

21. Reference was made to **MT and ET** and it was sought to distinguish the behaviour of the Appellants in the instant appeal from the criminality in the case of **MT**. I note that the Presenting Officer in **MT** did not seek to rely on the community order for using a false document to obtain employment that had been received at some stage by **MT**.
22. Each case will turn on its own facts. In the instant appeal reliance was and is placed on the serious and protracted attempts to deceive the Home Office and tell false stories to the First-tier Judge in these proceedings as well as the Immigration Judge in the previous proceedings. There was also evidence of false claims for various benefits as the judge states. Counsel noted that the judge, when considering the question of very significant obstacles in paragraph 28 of her decision, had referred to what was said in **Treebhawon**. However the Court of Appeal in **Parveen** had not found what was said in that case to be “a very useful gloss on the rules.” Of course the Court of Appeal’s decision was not available to the judge but I do not find that her approach conflicted with the task as described in the last sentence of paragraph 9 of **Parveen**:

“The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as “very significant”.”



23. I do not find that in the circumstances of this case, the judge failed to give appropriate weight to the fact that the third appellant was a qualifying child. In considering Article 8 she properly weighed up the relevant considerations on the balance sheet approach and was entitled to conclude that any interference with private life was proportionate to the public interest in maintaining effective immigration control. I do not find that her approach on any of the issues raised was materially flawed in law and accordingly these appeals are dismissed.

**Anonymity Direction**

24. Because the appellants include children I deem it appropriate to make an anonymity direction in this case.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

**TO THE RESPONDENT**  
**FEE AWARD**

The First-tier Judge made no fee award and I make none.

Signed

Date: 17 July 2018

G Warr, Judge of the Upper Tribunal