Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/22945/2018
HU/22947/2018
HU/22950/2018

THE IMMIGRATION ACTS

Heard at Field House (via Skype)
On 15 December 2020

Decision & Reasons Promulgated
On 13 January 2021

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

(1) FATIMA BEGUM
(2) SABBIR AHMED
HUSSAIN AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Daykin, instructed by Makka Solicitors
For the Respondent: Mr Melvin, Senior Presenting Officer

DECISION AND REASONS

1. This decision follows a hearing on 15 December 2020 which was not, in the event, contested by Mr Melvin on behalf of the respondent. As I shall endeavour to explain relatively briefly, it is a case in which the correct outcome could not be clearer, even though the respondent might have been correct in the decisions she reached as long ago as 25 October 2018.

2. The appellants are Bangladeshi nationals who were born on 23 October 1968, 7 January 1995 and 12 June 1998 respectively. The first appellant is the mother of the second and third appellants. The first appellant is married to Abdul Ahad, a British citizen who was born on 18 December 1963. Mr Ahad is the father of the second and third appellants.

3. The appellants were admitted to the United Kingdom on 15 January 2014. They each held entry clearance which was valid from 19 December 2013 to 19 March 2016. The first appellant's entry clearance was as a spouse; the second and third appellants' entry clearances were those of dependent children.

4. On 12 March 2016, the appellants applied for Indefinite Leave to Remain. Their applications for ILR were refused but they were granted further leave to remain until 10 August 2018.

5. On 5 July 2018, the appellants applied for ILR once again. The first appellant's application was made under paragraph 287 of the Immigration Rules. The second and third appellants' applications were made under paragraph 298 of those Rules. These provisions, rather than those in Appendix FM, continue to apply due to the transitional provisions in paragraph A320 of the Immigration Rules.

6. There was a single ground of refusal, common to each of the appellants. It was not accepted by the respondent that the family's income was sufficient to maintain and accommodate them to the level required by the Immigration Rules. That level is the level of adequacy which applies to cases under Part 8 of the Immigration Rules and not the level which has come to be known as the Minimum Income Requirement, under Appendix FM of the Immigration Rules. What the appellants were required to show, therefore, was that the household income was sufficient to pay the rent and council tax on the family home and that there would be a surplus thereafter which was either greater than or equal to the amount which would be received by a family on income support. That is the income support 'yardstick' considered and approved in cases such as KA (Pakistan) [2006] UKAIT 65, Yarce [2012] UKUT 425 (IAC) and French v ECO (Kingston) [2011] EWCA Civ 35.

7. In her decisions of 23 October 2018, the respondent concluded that the family's income, less rental costs of £1107.68, resulted in a surplus of £230.65 per week. This was some £35.45 per week lower than the income support yardstick, and the applications were accordingly refused. The respondent went on to consider whether there were other provisions in the Rules which might avail the appellants, or whether their removal would otherwise be disproportionate under Article 8 ECHR, but I need not consider the reasoning in those sections of the refusal letters in any greater detail.

8. A judge of the FtT dismissed the appellants' appeals. His decision was found to be erroneous in law by Upper Tribunal Judge Kekic. It was set aside, in part, and the matter was retained in the Upper Tribunal for the decisions on the appeals to be remade. UTJ Kekic noted that what remained for consideration was whether the appellants were able to establish adequate maintenance at the date of hearing and, if not, whether their removal would be contrary to Article 8 ECHR.

9. At the outset of the remaking hearing, I asked Ms Daykin and Mr Melvin whether it was accepted that the appropriate date for my enquiry was the date of the hearing. Ms Daykin agreed that it was. Mr Melvin was initially minded to submit that the focus of the Tribunal's enquiry, under the Immigration Rules, should be on the date of the respondent's decision. I suggested to him, however, that there was nothing in either paragraph 287 or 298 which confined my enquiry to a fixed historic timeline, as is so often the case in Appendix FM cases or those under the Points Based System. Having considered the paragraphs of the Rules for himself, Mr Melvin agreed, and accepted that the Tribunal should consider for itself whether the appellants were able to meet the Income Support threshold at the date of the hearing, and therefore on the up-to-date evidence presented.

10. I then asked the advocates to assist me with the relevant figures, starting with the Income Support figure. It was accepted on all sides that the appropriate figure to use was the current rate, and not the rate at the date of the respondent's decision. It was also agreed between the parties that the appropriate figures were as follows. The first appellant and the sponsor, being a couple both aged over 18, would receive £116.80 per week in Income Support. The second appellant, being a single adult over 25, would receive £74.37. The third appellant, being a single adult under 25, would receive £58.90. No additional sums were to be included. In total, therefore, the appellants were required to show a surplus income, after housing costs, of £250.07 per week.

11. It was then agreed that the relevant housing cost was absent from the bundle. It was clear, however, that the respondent had used a figure of £1107.68 in the first appellant's refusal letter. That figure was for an address in London E3, which the appellants (and the sponsor) demonstrably continue to occupy together, as a family. In the circumstances, Mr Melvin was prepared to accept that the relevant figure was likely to be £1107.68 or slightly more. Translating that monthly figure into a weekly figure results in a sum of £255.62. In order to satisfy the Rules, therefore, the appellants require a household income of £505.69 (£250.07 + 255.62) per week. That is £26,295.88 per annum or £2191.32 per month.

12. I then asked Ms Daykin to take me through the evidence in the bundle showing the earnings of the sponsor and the appellants. The sponsor was said to earn £15,815 per annum. The first appellant was said to earn £13,200 per annum. The second and the third appellant, who work in identical roles, earn salaries of £19,773 per annum. Ms Daykin helpfully confirmed that these sums combined to give an overall household income of £68,561.

13. Mr Melvin was content – in light of the detailed evidence in the bundle – to accept that the earnings were as claimed. On that basis, it was clear that the combined household income is more than double that which is required by the relevant Immigration Rules. Although the sponsor and the appellants were available to give evidence via Skype, Mr Melvin confirmed that he had no questions for them and that he had no submissions in answer to Ms Daykin's. He was content for me to allow the appeals on Article 8 ECHR grounds on the basis that the requirements of paragraphs 287 and 298 of the Immigration Rules were met and that there was accordingly no public interest in the removal of the appellants: TZ (Pakistan) [2018] EWCA Civ 1109 refers, at [34].

14. It was in these circumstances that I was able to indicate at the hearing that the appeals would be allowed for reasons which would follow in writing.

15. I must add this. My jurisdiction is limited to considering whether the respondent's decision is unlawful under section 6 of the Human Rights Act 1998. I have no jurisdiction to allow the appeal under the Immigration Rules. It is important to recognise, however, that the appeals have been allowed on human rights grounds *because* the requirements of paragraphs 287 and 298 of the Immigration Rules are accepted – on all sides – to be met. I make that point explicitly because it must result in the appellants being granted ILR and not the limited leave which would otherwise follow from an appeal being allowed on human rights grounds. That is not a direction; it is an observation for the respondent's benefit.

Notice of Decision

The decision of the FtT was set aside as it was erroneous in law. The decision on the appeals is remade by allowing each appeal on human rights grounds.

No anonymity direction is made.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

01 February 2021