



Case No: C5/2016/0219

Neutral Citation Number: [2019] EWCA Civ 713
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

The Royal Courts of Justice
Strand, London, WC2A 2LL

Thursday, 7 March 2019

Before:

LORD JUSTICE FLOYD

Between:

NI (BANGLADESH) & ORS

Applicants

- and -

**SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Respondent

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(Official Shorthand Writers to the Court)

Mr Singh appeared on behalf of the **Applicant**

The **Respondent** did not appear and was not represented

Judgment
(Approved)
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LORD JUSTICE FLOYD:

1. This is a renewed oral application for permission to appeal from the decision of the Upper Tribunal dated 6 November 2015, which dismissed an appeal from the First-tier Tribunal dated 31 March 2015, which in turn dismissed the first and second applicants' appeal from the decision of the Secretary of State of 5 June 2014, by which she refused them leave to remain in the United Kingdom. Permission to appeal to this court was refused on the papers by Longmore LJ on 29 July 2016. The oral renewal is one of a group of appeals which were held back pending the decision of this court in *MA (Pakistan)* [2016] EWCA Civ 705. That case (or group of cases) considered the application of the test of reasonableness arising in relation to the removal of a child. Subsequently this case was again stood out pending the decision of the Supreme Court in *KO (Nigeria)* [2018] UKSC 53, which was handed down in October 2018. That case has given further guidance on the application of the test. It is therefore nearly five years from the date of the Secretary of State's decision.
2. The appellants before the two tribunals included the first and second applicants' three children: Nabid, born on 20 February 1996, who is now 23; Nabil, born on 29 March 2000, who is now nearly 19; and Nasif, born on 20 March 2008, who is now nearly eleven. Since the decision of the Upper Tribunal, Nasif has been granted British citizenship and Nabil and Nabid have been granted 30 months' leave to remain under the ten-year route. The three children have therefore withdrawn their appeals. The applicants nevertheless wish to pursue their application for permission to appeal to this court. This appeal, if permission for it was granted, would have to be decided on the basis of the facts as they were before the tribunals.

3. The First-tier Tribunal found at paragraph 40 in respect of the parents:

"The reality is that they will be returned to Bangladesh with their two parents, both of whom had worked as teachers in Bangladesh before they came to the UK, and there is accommodation to which they can return, because that accommodation is the family home from which they left to come to the UK. In other words, the adults can live and work as they did before coming to the UK with at least two of their three children who were born in Bangladesh."

4. And then, skipping a paragraph to paragraph 43:

"While the education facilities and opportunities in Bangladesh may not be of the standard and quality enjoyed so far by the children in the UK, they have had those facilities free here because their mother chose to overstay on her visitor's visa."

5. In the Upper Tribunal at paragraph 12, the judge says this:

"12. The judge took into account the circumstances which the minor Appellants could expect to find themselves in Bangladesh, notably the existence of a family home where the eldest lived until he was 10 years old, the ability of the parents to live and work in Bangladesh as teachers, as they did before they came to the United Kingdom. The judge bore in mind that the children would be able to enjoy educational facilities and opportunities in Bangladesh which, whilst not of a standard and quality enjoyed in the United Kingdom, did not of itself give rise to any determinative issue in respect of their position. The judge noted that the family in Bangladesh could continue to receive the financial support that they had received from family members in the United Kingdom if required.

13. There is no basis to assert, as Mr. Reza argued, that the terms reasonableness of the child leaving is inevitably limited to the consideration of factors relating to the child."

6. As the Supreme Court has explained in *KO (Pakistan)*, it is not correct to say that the position of the parents is irrelevant. Reasonableness of return has to be determined in the real world. If the parents have no independent basis for remaining in the UK in the sense that they are piggybacking on the children's position, then in deciding the reasonableness question, account has to be taken of where the parents are likely to be, since it is normally reasonable for the children to be with the parents.

7. The most recent skeleton argument filed by the applicants says this at paragraphs 24 and 25:

"If the arguments set out above are accepted, it follows that an individuated assessment (e.g. without considering the position of the parents' relocation) of reasonableness of the removal of a particular child appellant must be undertaken pursuant to paragraph 276 ADE (iv) and paragraph Ex(1)(a) of Appendix FM. It is apparent that no such assessment was carried out in this case. Both the FTT and the Upper Tribunal appear to have looked at the reasonableness of the child appellant's relocation on the basis that the other family members would be removed and the children would be removed with them. This was wrong."

8. As *KO (Nigeria)* shows, it is not necessary to ignore the position of the parents' relocation, and the Upper Tribunal and the First-tier Tribunal were entitled to take that into account.

9. This morning Mr Singh on behalf of the two remaining applicants accepts that it is necessary to consider the case on the basis of the material before the two tribunals. But he says that the two tribunals below placed too much weight on public interest considerations. Whilst neither judgment is expressed in the clearest of language, it seems to me that both tribunals did face up to the question of whether it was reasonable

for the children to return, given that the parents had no independent right to be in the United Kingdom, and addressed all the relevant circumstances. It therefore seems to me that on the law as it now stands an appeal would not have a real prospect of success. Moreover, this is a second appeal, and such an appeal must raise in addition to an arguable point of law an important point of principle or practice. Give the clarification of the law by the Supreme Court, no such question arises. I therefore refuse permission to appeal.

Order: Application refused