IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003983
UI-2024-003984
First-tier Tribunal No: HU/59972/2023
HU/59975/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 5th of December 2024

Before

UPPER TRIBUNAL JUDGE HIRST

Between

NURUN NAHAR AHMMED
FAHAD AHMMED
(NO ANONYMITY ORDER MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Karim, counsel instructed by KPP Barristers
For the Respondent: Mr Wain, Senior Home Office Presenting Officer

Heard at Field House on 15 November 2024

DECISION AND REASONS

1. The Appellants appeal from the decision of First Tier Tribunal Judge Wyman promulgated on 20 May 2024, dismissing their appeal.

Background

2. The Appellants are nationals of Bangladesh and the Second Appellant is the 17 year old son of the First Appellant. They entered the UK on 31 July 2019 with valid leave as the dependents of Mr Shala Ahmed, the husband of the First Appellant and the father of the Second Appellant.

3. On 12 July 2021 Mr Ahmed sadly and unexpectedly died of a heart attack. On 27 May 2022 the Appellants made an application for further leave to remain under paragraph 276ADE of the Immigration Rules and Article 8 grounds outside the

Rules. On 4 August 2023 the Respondent refused the Appellants' application for further leave to remain.

4. The Appellants' appeal against that decision came before the First Tier Tribunal on 8 May 2024. Judge Wyman found that there were not very significant obstacles to the Appellants' reintegration to Bangladesh, and that she therefore could not meet paragraph 276ADE. She dismissed the appeal under the Immigration Rules and Article 8 outside the Rules.

5. The Appellants sought permission to appeal on three grounds. First, that the judge had not engaged with the objective evidence before her as to the position of single women in Bangladesh or considered the First Appellant's position as a woman without male support. Second, that the judge had not considered or made findings of fact in relation to the evidence that the First Appellant's father and father in law could not provide financial support to the Appellants on return. Third, that the consideration of the Second Appellant's best interests and the proportionality of his removal was flawed by failure to consider his imminent GCSE exams, and/or the attachment of 'little weight' to his private life.

6. Permission to appeal was granted by Upper Tribunal Judge Kamara on 11 September 2024. The case came before me at an error of law hearing on 15 November 2024, where I heard submissions from both parties. I reserved my decision.

Decision

7. I bear in mind that judicial caution is appropriate when considering whether to set aside the decision of a specialist tribunal of fact, and that in particular an appellate court should not assume that a first instance judge has misdirected herself or failed to consider relevant matters unless it is quite clear that she has done so: cf *HA (Iraq) v SSHD* [2022] UKSC 22 at [72]. I also remind myself that it is not appropriate to subject the determination of the First Tier Tribunal to detailed textual analysis.

8. This was an Article 8 appeal. The questions of whether the First Appellant would face 'very significant obstacles' to her reintegration in Bangladesh under paragraph 276ADE(1)(vi), whether her return to Bangladesh would give rise to unjustifiably harsh consequences for her or for her son, and whether removal was in the Second Appellant's best interests, were identified by the judge as the issues in the appeal [§10]. The judge was therefore required to consider the evidence and submissions presented to her on those issues.

9. Turning first to Ground 1, it was clearly part of the Appellants' case before the First Tier Tribunal that the difficulties consequent on the First Appellant's status as the widowed single mother of a minor child constituted 'very significant obstacles' to her reintegration on return. That issue was raised clearly in the Appellants' skeleton argument for the appeal and in submissions, and was supported by reference to the Country Policy and Information Note (CPIN) for Bangladesh. The judge was of course not bound to accept the Appellants' case on that issue, but she was required to address it and give reasons if she rejected it.

10. Although the judge correctly directed herself at paragraph 15 by reference to the 'broad evaluative assessment' required (*SSHD v Kamara* [2016] EWCA Civ 813), she did not make any reference to the First Appellant's status as a single

mother, and referred to her widowhood only in passing at paragraph 24. The judge's failure to address the First Appellant's particular circumstances and to consider the evidence of social stigma was an error which was material to the outcome of the appeal.

11. The Appellants' Ground 2 was that the judge had not considered, or made findings in relation to, the evidence that the First Appellant's father and father-in-law could not provide support. At paragraph 24 of the determination, the judge recorded the First Appellant's evidence as being that her mother-in-law had died and she had no contact with her father-in-law. The evidence before the judge also included a letter from the First Appellant's father stating that he could not support the Appellants due to health problems and lack of income. Again, the judge was not bound to accept the letter or indeed to accord it significant weight, but her statement at paragraph 24 of the determination that it was "unclear" why the First Appellant could be supported by her parents indicates that she did not consider it; if she did consider it then her reasons for rejecting it were not adequate. Because of the relevance of financial support to the Appellants' circumstances on return, the judge's failure to address this evidence was material.

12. Ground 3 criticised the judge's balancing exercise at paragraph 26 onwards, and in particular the failure to engage with the Second Appellant's then imminent GCSE examinations. However, the judge considered the Second Appellant's educational progress at paragraph 21 and noted that he was due to sit his GCSE exams in the next few weeks. I consider that that factor was not as significant in the Article 8 balancing exercise as the Appellants suggest, and that the judge was entitled to conclude that the Second Appellant would be able to continue his studies in Bangladesh. I do not consider that there was any material error in the judge's consideration of the Second Appellant's education or GCSE examinations. In view of my conclusions on Grounds 1 and 2, however, the Second Appellant's situation on return will need to be re-examined by the Tribunal.

13. The parties were in agreement that if I were to find an error of law there would need to be a *de novo* fact finding. Although Mr Wain suggested that the appeal could be retained in the Upper Tribunal, Mr Karim indicated that fresh evidence might be required both to address the Second Appellant's changed situation and the recent political upheaval in Bangladesh. I consider it appropriate to remit the appeal to the First Tier Tribunal for a *de novo* hearing with none of Judge Wyman's findings preserved.

Notice of Decision

The decision of the First Tier Tribunal involved the making of a material error of law and is set aside. The appeal is remitted to the First Tier Tribunal for a *de novo* hearing by a judge other than First Tier Tribunal Judge Wyman with no findings preserved.

L Hirst

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 November 2024