



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/06550/2016  
HU/06553/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 16<sup>th</sup> July 2018

Determination Promulgated  
On 2<sup>nd</sup> August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

MR MD ISRAIL (FIRST APPELLANT)  
MRS FATEMA KHATON (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representations:

For the Appellants: Ms J Elliott-Kelly, Counsel

For the Respondent: Ms A Everett, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellants are both nationals of Bangladesh and are a husband and wife born on 19<sup>th</sup> March 1934 and 5<sup>th</sup> October 1955 respectively. The Appellants appeal against the refusal to grant leave to remain under the Immigration Rules on family and private life grounds under Appendix FM and under paragraph 276ADE and due to compelling or compassionate circumstances outside the Immigration Rules as set out

in a refusal letter dated 8<sup>th</sup> October 2016. The Appellants appeal against that decision on the basis of their human rights under Section 82(1) of the 2002 Act.

### **Immigration History**

2. The Appellants were previously granted entry clearance as visitors to see their British adult children in 2011 and left the United Kingdom on 7<sup>th</sup> August 2011. They were similarly granted entry clearance as visitors with leave to enter again valid from 12<sup>th</sup> May 2015 to 12<sup>th</sup> November 2015. Both Appellants entered the UK on 14<sup>th</sup> June 2015. The Appellants applied on 12<sup>th</sup> November 2015 for leave to remain shortly before the expiry of their visit visas on 15<sup>th</sup> November 2015.

### **Procedural History**

3. The Appellants previously appealed against the Respondent's decision of 5<sup>th</sup> February 2016 which was heard before the First-tier Tribunal but set aside by me for material error of law. The Secretary of State in appealing against that successful decision challenged the lawful basis upon which the judge ultimately concluded in the Appellants' favour and in light of that discrete challenge in an Error of Law Decision and Reasons promulgated on 27<sup>th</sup> November 2017, I set aside the decision of the First-tier Tribunal but preserved the findings made by the First-tier Tribunal at paragraphs 8 to 17 of that previous decision as they were unaffected by legal error and unchallenged by the Respondent.

### **Applicable Law**

4. It is accepted in the present case that the Appellants cannot meet the requirements of the Immigration Rules for a grant of leave to remain, on private or family life grounds, nor as Adult Dependent Relatives under Appendix FM, primarily because the Appellants were already in the United Kingdom having entered as visitors (as set out above) and so could not meet the requirements of EC-DR.1.1.(a) or (b) of Appendix FM. Nonetheless, the requirements for entry clearance or indefinite leave to enter as an Adult Dependent Relative provide a useful framework towards the assessment of Article 8 ECHR in light of the Immigration Rules governing this area of migration and the extent to which the Appellants are able to meet the remainder of those Rules. The relevant Immigration Rules read as follows:

"5. Section E-EC-DR: Eligibility for entry clearance as an adult dependent relative

'E-ECDR.1.1. To meet the eligibility requirements for entry clearance as an adult dependent relative all of the requirements in paragraphs E-ECDR.2.1. to 3.2. must be met.

#### **Relationship requirements**

E-ECDR.2.1. The applicant must be the-

- (a) parent aged 18 years or over;

- (b) grandparent;
  - (c) brother or sister aged 18 years or over; or
  - (d) son or daughter aged 18 years or over of a person ("the Sponsor") who is in the UK.
- E-ECDR.2.2. If the applicant is the Sponsor's parent or grandparent they must not be in a subsisting relationship with a partner unless that partner is also the Sponsor's parent or grandparent and is applying for entry clearance at the same time as the applicant.
- E-ECDR.2.3. The Sponsor must at the date of application be-
- (a) aged 18 years or over; and
  - (b)
    - (i) a British Citizen in the UK; or
    - (ii) present and settled in the UK; or
    - (iii) in the UK with refugee leave or humanitarian protection.
- E-ECDR.2.4. The applicant or, if the applicant and their partner are the Sponsor's parents or grandparents, the applicant's partner, must as a result of age, illness or disability require long-term personal care to perform everyday tasks.
- E-ECDR.2.5. The applicant or, if the applicant and their partner are the Sponsor's parents or grandparents, the applicant's partner, must be unable, even with the practical and financial help of the Sponsor, to obtain the required level of care in the country where they are living, because-
- (a) it is not available and there is no person in that country who can reasonably provide it; or
  - (b) it is not affordable.

### **Financial requirements**

- E-ECDR.3.1. The applicant must provide evidence that they can be adequately maintained, accommodated and cared for in the UK by the Sponsor without recourse to public funds.
- E-ECDR.3.2. If the applicant's Sponsor is a British Citizen or settled in the UK, the applicant must provide an undertaking signed by the Sponsor confirming that the applicant will have no recourse to public funds, and that the Sponsor will be responsible for their maintenance,

accommodation and care, for a period of 5 years from the date the applicant enters the UK if they are granted indefinite leave to enter.”

5. The Court of Appeal considered the challenge to the new Immigration Rules governing “Adult Dependent Relative” applicants (interchangeably abbreviated to “ADR”) in *R, (on the application of BritCits) v Secretary of State for the Home Department* [2017] EWCA Civ 368 wherein the Master of the Rolls emphasised the following at [59] of that judgment:

“... the focus is on whether the care required by the ADR applicant can be ‘reasonably’ provided and to ‘the required level’ in their home country. As Mr Sheldon confirmed in his oral submissions, the provision of care in the home country must be reasonable both from the perspective of the provider and the perspective of the applicant, and the standard of such care must be what is required for that particular applicant. It is possible that insufficient attention has been paid in the past to these considerations, which focus on what care is both necessary and reasonable for the applicant to receive in their home country. Those considerations include issues as to the accessibility and geographical location of the provision of care and the standard of care. They are capable of embracing emotional and psychological requirements verified by expert medical evidence. What is reasonable is, of course, to be objectively assessed.”

6. In dealing with Article 8, the burden of proof of showing that the Appellants’ removal would breach the United Kingdom’s obligations under the European Convention falls upon the Appellants and the standard of proof is the balance of probabilities.
7. When considering an individual’s right to respect for private and family life in accordance with Article 8, the proper approach taken step-by-step is that set out in *Razgar* [2004] UKHL 27 wherein the following five stage test was adumbrated:
- (i) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
  - (ii) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
  - (iii) If so, is such interference in accordance with the law?
  - (iv) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
  - (v) If so, is such interference proportionate to the legitimate public end sought to be achieved?

8. When considering the public interest applying a fair balance and proportionality approach to Article 8, the Tribunal is required by Section 117A of the Nationality, Immigration and Asylum Act 2002 to have regard in all cases to the considerations listed in Section 117B of the same legislation. Section 117B of the 2002 Act provides as follows:

“117B Article 8: public interest considerations applicable in all cases:

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –
  - (a) are less of a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –
  - (a) are not a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (4) Little weight should be given to –
  - (a) a private life, or
  - (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person’s immigration status is precarious.”

### **Findings and Reasons**

9. As noted above the Appellants are both nationals of Bangladesh currently aged 84 and 62 years old respectively. The couple arrived in the UK in June 2015 for a family visit with their British son (Mr Wazih Ahmad, DOB: 10/12/1982) and their daughter (Mrs Ashrafi Siddique, DOB: 02/09/1977) and their daughter’s children (the Appellants’ grandchildren). Whilst here as a visitor the First Appellant suffered an episode of acute limb ischaemia, which led to two cardiac arrests and emergency surgery. As a result, on 12<sup>th</sup> November 2015 the couple applied in time for further leave to remain under Article 8 as dependants on their adult children. The application was refused by the Respondent on 5<sup>th</sup> February 2016 and is the subject of this present appeal.
10. As also noted above the previous findings which were unchallenged by the Secretary of State have been preserved, given that they are uncontroversial. Those findings are

set out at paragraphs 8 to 17 of the previous decision of the First-tier Tribunal of 7<sup>th</sup> August 2017 and I include those paragraphs within the text of this judgment for the sake of completeness and ease of reference:

- “8. I accept that both Appellants were granted visit visas in 2011 and returned to Bangladesh in August 2011. I accept that both were granted visit visas in 2015 and made an in-time application for further leave to remain on 12 November 2015, i.e. three days before their visit visas expired.
9. I find that A1 had a number of existing health conditions in Bangladesh which were severe including diabetes mellitus, heart failure, chronic kidney disease, hypothyroidism and Parkinson’s, and that he received treatment for these conditions in Bangladesh as per the letter of Professor (Dr) A.K.M. Musa who in effect certified on 9 June 2015 that he was sufficiently fit to fly and there are prescriptions listed at pages 77–78 given in Bangladesh. I accept that A1 had a number of falls in Bangladesh as described by his son Mr Wazih Ahmad as per paragraph 5 of his witness statement, although as a British citizen he clearly was not present.
10. I find that on 31 July 2015 approximately six weeks after his arrival, A1 suffered an acute limb ischaemia, of which there is a website description at pages 197–203 and that this is essentially a blood clot which requires emergency treatment within six hours, and that although his son took him to hospital it was too late for Heparin to thin his blood to work and hence he underwent an operation to remove the embolus and that following the quick response of the son and children and the NHS, A1 did not require any amputation. I also accept as per the oral evidence and witness statements of the Appellants’ son and daughter that A1 had two VT (vascular thrombosis in his right and lower left limbs) arrests before surgery. I accept whether as a consequence of this surgery or general old age that A1 has less physical and mental strength than when he arrived in the UK in 2015 and that although he used to be able to go out and visit shops and enjoy the company of family and friends, that he is now less able to do so.
11. I accept the oral evidence of Mrs Ashrafi Siddique that she attended the hospital and gave informed consent for the surgery on her father and that she herself is a qualified doctor specialising in respiratory medicine.
12. I accept as per Dr Adelola Oseni’s discharge letter dated 9 August 2015 at Annex E1–E3 on which the Respondent relied that there were numerous conversations about the risks regarding further surgery and those risks associated with travelling back to Bangladesh and that he recommended A1 should have further investigation of his arrhythmias and the need for anticoagulation medication on return to Bangladesh.
13. I accept what is set out in A1’s GP letter, Dr N Teotia, at pages 72–73 that Mr Israil was admitted to Queen’s Hospital, Romford as a medical emergency on 31 July 2015 with extensive vascular thrombosis to his right and left lower limbs and that he also had impaired cardiac functions due

to a history of heart problems from 1988, that he underwent an emergency embolectomy but suffered a ventricular cardiac arrest before surgery and was successfully resuscitated and that he now needs substantial help in his daily activities, that his mobility is much restricted.

14. I record that he attended the hearing in a wheelchair and that he can only walk using a stick with somebody to supervise his walking. I give weight to the fourteen different types of medicine listed by Dr Teotia on page 73 and accept that A1 needs help in taking these medicines. I note from a letter at page 74 from Dr Teotia that A1 was seen as a private patient on 22 October 2015 and that he is a high risk patient due to his pre-existing medical conditions and recent episode of arterial thrombosis and that it is not advisable for him to travel by air until his conditions are stable and there is a reduced risk of air travel. I accept that at the date of the hearing A1 remains medically unfit to fly but in any event, given his age, would not be removed by the Respondent.
  15. Whilst I find that the frailty of Mrs Khaton, the second Appellant, has been exaggerated (see in particular the letter of Victory Solicitors at Annex F5) given that she is aged 62 years, it would clearly be unreasonable and disproportionate were she required to return to Bangladesh without her husband.
  16. I have considered the somewhat unattractive but understandable conduct of the Appellants' son and daughter that they have emptied the Appellants' house of belongings including clothes and furniture, some of which has been given to cousins in Dhaka. I accept that the Appellants lived in a rented property and find that they also owned some land on which tin sheds were built and rented to impoverished workers and that the rental income is apparently received by both Appellants, or possibly Mrs Khaton only. I accept that the Appellants' clothing was brought to the UK by the daughter and son and that their house was emptied of their belongings in 2016.
  17. I accept that the Appellants have distant relatives in Bangladesh and that Mrs Khaton has a sister living in Oldham and a brother living in London. I accept that their three children are all now British citizens and settled in the UK."
11. The Appellants are presently living in the United Kingdom with their son and the Second Appellant's brother at an address in Gants Hill. Although the First-tier Tribunal had the benefit of hearing evidence from the Second Appellant, I was told by the Appellants' Counsel that given the deterioration in mental health of the Second Appellant, she would not be in a position to give evidence on this occasion, and consequently the remainder of the evidence was received from the Appellants' son and daughter.

12. I found both witnesses to be credible and I accept the evidence they gave before me in its entirety. I set out a summary of the evidence I heard which is accepted as a matter of fact and forms the basis for my decision.
13. Both witnesses confirmed that the First Appellant's health was extremely serious and he was seriously unwell and they confirmed that the health ailments (which are already noted at paragraph 9 of the previous decision) remain the same and that the First Appellant remains unfit to fly.
14. In respect of the First Appellant's day-to-day care I heard evidence that he requires assistance in relation to his mobility issues and whilst he is able to wipe his face and brush his teeth he needs assistance with showering and bathing and using the toilet. I was also told that in the last six months his condition had deteriorated in that he used to be able to go out to visit a café with his adult children, however in the last four to five months he was unable to continue doing this, mainly due to his dizziness combined with his Parkinson's. I was told by Mrs Siddique that she visits her parents on weekends and gives food and checks on how they are doing, including the First Appellant's blood sugar. However, the majority of the care was handled primarily by Mr Ahmad, the Appellants' son, but also by the Second Appellant's brother (the adult children's maternal uncle) whilst Mr Ahmad was at work during normal office hours (although he works flexible hours).
15. In respect of the Second Appellant the witnesses confirmed that she mainly suffered from memory loss problems and also gave indications of dementia and had been prescribed medication for anxiety, and although was now less anxious, her memory problems still prevailed. The witnesses also confirmed under cross-examination that when Mr Ahmad went on a two week vacation to Bangladesh recently the Second Appellant's brother looked after the two Appellants in his brief absence. This was not a difficulty for the Second Appellant's brother given that he is a self-employed landlord and "works from home". I also heard in evidence that there was a maid who came twice a week to clean the house (where the Appellants, Mr Ahmad and the Second Appellant's brother live) and to also cook meals, but only twice a week.
16. In respect of Mrs Siddique's evidence, she also confirmed that from her investigations a qualified nurse would not be available to come and look after her parents and stay with them whilst they were in Bangladesh and that there was a lack of qualified carers or nursing staff available to stay with the Appellants and take care of them all of the time. This is a factor of some significance given that the First Appellant is unable to look after or care for himself in any way apart from brushing his teeth and washing his face, as I have said, and given that the Second Appellant suffers from memory loss and dementia and I have heard anecdotal evidence of her leaving the stove on several times when she was trying to do some cooking. In other words, the Second Appellant could not be relied upon in any way to look after the First Appellant on her own and indeed I find that she would be a risk to not only him but also herself if she were left to be the sole carer for either or both of them in Bangladesh.

17. In terms of the availability of care in Bangladesh for the Appellants' health concerns, the witnesses summarise their concerns as being that there was an *unavailability* of qualified staff and even then the lay maids and cooks who were available to hire were unable to perform the duties required of them and were not reliable in that they would frequently fail to attend and could not be relied upon to provide regular care, and alongside that there was a serious risk of abuse of the Appellants given their vulnerable state as the objective evidence put forward confirmed (which I shall come to shortly).
18. Turning to the medical evidence which has not already been examined by the First-tier Tribunal, there is in the supplementary bundle before me a clinical indication report concerning the Second Appellant as well as an expert medical report from Harley Street Medical Express Clinic drafted by a Professor Lingam. I accept both reports and note that these reports, like the rest of the Appellants' evidence, was not challenged by the Respondent.
19. In respect of the clinical indication report this evidence is dated 22<sup>nd</sup> September 2017 from Dr Sandeep Pathak, a Consultant Radiologist at the Spire Roding Hospital (at page 3 of the supplementary bundle) which shows that following an MRI to the Second Appellant's head there was a clinical indication of "Dementia and impaired memory" and Dr Pathak made the following findings:

"There is mild periventricular altered signal around the frontal horns compatible with lowgrade chronic small vessel ischaemia. No focal brain lesion. There is mild global brain atrophy. No foci of restricted diffusion. There is inflammation of the mucosa covering the right inferior turbinate. The orbits, pituitary gland, ventricles and brain stem are normal. No other significant finding."
20. Turning to the medical report from Professor Lingam dated 28<sup>th</sup> January 2018 the report discusses and updates the health of the First and Second Appellants and confirms that Professor Lingam had before him an appeal bundle which included also the decision of the First-tier Tribunal, my decision of 27<sup>th</sup> November 2017 and the witness statements of the First and Second Appellant, as well as that of their son and daughter and other related evidence that was before the First-tier Tribunal. Professor Lingam discusses the GP's medical report of 19<sup>th</sup> July 2017 and notes that the GP has listed eleven medical problems including reactive depression due to deteriorating medical conditions, poor vision in the right eye due to cataract, and also notes that assessing the First Appellant and his gait he was at great risk of falling and would need an assessment to prevent this risk and, by way of analogy, if he were hypothetically asked to assess the First Appellant's eligibility for any disability benefit in the UK he would have opined that the First Appellant would achieve the highest level of disability for both daily living and mobility difficulties. Professor Lingam also went on to confirm that the First Appellant was still suffering from severe cardiac disease following his ventricular tachycardia arrest in July 2015 and his leg thrombosis. In his overall opinion Professor Lingam stated that the First Appellant was a man with severe and enduring disabilities which are "permanent

and longstanding” and which would not change significantly in the future and concluded that his medical condition was severe and that he suffered from depression, which would also need addressing.

21. In respect of the Second Appellant Professor Lingam confirmed that her health is deteriorating fast, in his words, and having seen her MRI he opined that without a shadow of a doubt it showed features of “dementia with chronic small vessel disease”. Professor Lingam also recorded that the Second Appellant was forgetful and confused and following a brief assessment she was unable to draw a clock face and was only to name four different countries in the world and became stressed when trying to answer his questions. Professor Lingam concluded that she suffered from dementia and would need a detailed evaluation.
22. In light of those above pieces of medical evidence that I have studied with great care, in respect of E-ECDR.2.4. it is plain that the Appellants, as a result of their illnesses, as confirmed by the medical experts, do require long term personal care to perform everyday tasks.
23. Turning to the question of E-ECDR.2.5. and whether the Appellants are unable, even with the practical and financial help of the Sponsor, to obtain the required level of care in the country where they are living, I turn to the objective and subjective evidence. In respect of the availability of carers in Bangladesh I note the contents of the Appellants’ bundle at pages 204 to 220 which contain several articles in relation to the treatment of the elderly in Bangladesh and the availability of care. I note for example that in a Help Age International Press release dated 4<sup>th</sup> July 2017 the article confirms that in Bangladesh 88% of older people were mentally abused, 83% neglected, 54% economically abused and 40% physically abused. A further article entitled “Elder abuse and neglect in Bangladesh” from 2017 states that the study found that all older persons interviewed irrespective of socio-economic class had experienced more or less abuse and neglect. The report goes on to confirm that some of the elderly Respondents confirmed that the treatment meted out to them came from individuals which could include a “paid caregiver” and organisations too, including paid caregivers in “an institutional setting” also.
24. The report recommended that the Government needed to increase support for the aged population and incorporate this issue in its policy and plans. A further article from the Bangladesh Journal of Bioethics from 2016 also confirmed that Bangladesh does not have a social welfare system and consequently there would be competition for the “inadequate resources”, specifically health and medical services. The journal further confirmed that there are initiatives taken by Government and NGOs and social organisations for the elderly, but it is not enough to cover the elderly population of Bangladesh. The journal further stated that the vulnerability of the elderly appeared in terms of food consumption, shelter, community and social attitude. That evidence to my mind sits in well, and in harmony, with the evidence I have heard from the witnesses today, namely that the son and daughter have investigated whether it is feasible to hire carers to look after their parents in Bangladesh but were unable to do so, despite their means. As already noted above

the evidence I have heard indicates that there is a lack of qualified care available in terms of “at home” care and the concept of care homes is relatively new to Bangladesh and the witnesses confirm that there were no care homes in which they could put the First and Second Appellants.

25. In respect of lay persons such as maids and cooks attending the Appellants’ home to look after them, in my view, in light of the evidence from the witnesses, they are correct to express concern in light of the objective evidence that they have put forward that the elderly would be at great risk of neglect and abuse from caregivers and which supports their position, not least because the objective evidence shows that even “qualified” caregivers are confirmed as being perpetrators of such mistreatment.
26. The cross-examination from Miss Everett confirmed that the Appellants did have extended family in Bangladesh, however they did live some 200 miles away from the Appellants’ former home in Dhaka and given that that family has its own elderly relatives to look after, and given their letters which they have provided at pages 90 to 93 of the bundle, I accept that the extended family have their own commitments above, including full-time teaching jobs as well as another person in that family who is still performing his studies.
27. In light of the above evidence I do find that the Appellants would be unable, even with the practical and financial help of their sponsoring children to obtain the required level of care in Bangladesh.
28. Turning to E-ECDR.3.1. and E-ECDR.3.2., aside from the affirmations in their witness statements the Sponsor witnesses have confirmed in evidence before me that they stand by their written undertaking and gave a further oral undertaking that if the Appellants were given leave to remain in the United Kingdom they would have *no* recourse to public funds for a period of five years from the date of a grant of such leave, and the Sponsors would be responsible for their maintenance, accommodation and care.
29. In light of my findings, I do find that the Appellants are able to meet the substantive requirements of Section E-ECDR in terms of eligibility for entry clearance as adult dependent relatives save for the fact that they were in the United Kingdom on visit visas at the time of their application. However, such a meeting of the Rules is of course relevant to the public interest in their removal as, if they were able to meet the terms of the Rules for entry clearance as Adult Dependent Relatives in a hypothetical application for such entry clearance from Bangladesh, there would not be any public interest in their removal (see *Chikwamba v Secretary of State for the Home Department* [2008] UKHL 40, as affirmed in the recent judgment of the Supreme Court in *R (on the application of Agyarko & Iguka) v Secretary of State for the Home Department* [2017] UKSC 11).

30. In light of my findings regarding the entry clearance Rules for Adult Dependent Relatives, I turn to my assessment of the Appellants' private and family life under Article 8 ECHR.
31. I find that family life has been established between the Appellants and their son and daughter given the extreme dependence upon the children which the Appellants have shown which goes beyond the normal ties expected between adult relations (see *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 170 at [19] and [25], as confirmed in *BRITCITS v Secretary of State for the Home Department* [2017] EWCA Civ 368 at [61]).
32. In respect of the Appellants' private lives, there is none that I find established beyond the relationships which they share with their children and the limited ties which have been set down since their most recent entry on visit visas; and for the purposes of this section of my decision, I consider both family and private life as one.
33. Given that Article 8 is engaged the next question is whether the Appellants' removal to Bangladesh would form an interference with their right to respect for family life established in the United Kingdom. In my view the removal would form more than a technical interference with their lives and would indeed form a 'real' and 'serious' interference with their family life and their recent, sudden and serious dependency upon their adult children.
34. Turning to the next limb of *Razgar*, the Appellants' removal would be in accordance with the law pursuant to the legitimate aim of the economic wellbeing of the United Kingdom through the maintenance of immigration control.
35. I take into account the factors set out in Section 117B of the Nationality, Immigration and Asylum Act 2002 when undertaking the balancing exercise and I note that the maintenance of immigration control is in the public interest and that it is also in the public interest for persons to speak English and that it is in the public interest for a person to be self-sufficient and that little weight should be given to family life established at a time that a person is in the UK unlawfully or precarious private life.
36. In the present case, although the Appellants are unable to speak English, were they to qualify for a grant of entry as adult dependent relatives there would be no English language requirement and consequently, whilst I place weight against them in the balance on this issue the weight is not significant in light of the Immigration Rule which they, in my view, can meet by way a hypothetical out of country application.
37. In terms of the Appellants' financial independence and self-sufficiency, I do find that this factor should not fall against them given that they are financially independent and are self-sufficient as they are being sponsored by their adult children whom have given undertakings in this respect.
38. Finally, in respect of their private and family life, I note that their private life was established at a time when their status was precarious and consequently their private lives are deserving of less weight, however I note that their family life was

established at a time when they were in the United Kingdom lawfully and it is only due to the sudden cardiac arrest of the First Appellant that led the Appellants to stay beyond the terms of their visit visa and make an application in time for further leave to remain.

39. I then turn my attention to the proportionality of the Secretary of State's decision against the family and private life of the Appellants as outlined above. On behalf of the Secretary of State, Miss Everett's primary submission in relation to the decision being a proportionate one was that it was viable for the Appellants' son, Mr Ahmad, to dissolve his ties and extinguish his own life in the United Kingdom and return to Bangladesh with his parents and start life anew there and give them the support that was unavailable in Bangladesh from professional or lay carers. Miss Everett placed emphasis on the fact that the Appellants' son, although a British citizen and planning to start a business, could run that business from Bangladesh.
40. I have considered this matter with great care and notwithstanding those submissions and the Court of Appeal's decision in *Ribeli v Entry Clearance Officer, Pretoria* [2018] EWCA Civ 611, in my view Miss Everett's submission fails given that there is a key distinction between the Sponsor in *Ribeli* as opposed to the Sponsors in the current appeals: namely, on the facts of the *Ribeli* case, Miss Ribeli's daughter could reasonably relocate to South Africa and was indeed *willing to move* to South Africa if the appeal failed. That is not a concession that has been made by these Sponsors at all, and I note that the sponsoring daughter is a respiratory doctor here and has her own family here (including the Appellants' grandchildren) and there is no question of it being reasonable for her (or her children) to relocate to Bangladesh solely to care for her parents (not to mention the loss that a respiratory doctor will bring to our community interests). I also note that the Appellants' son has not accepted that he would be willing to move to Bangladesh and has given reasons why he would be unwilling to do so, including that the business which he hopes to incorporate would not be viable from Bangladesh given the logistical impossibility of operating the business from Bangladesh which relates to foreign exchange trade.
41. After all, as confirmed by the Master of the Rolls in the *BritCits* case, as is apparent from the ADR Rules and guidance, the focus is on whether the care can be "reasonably" provided, and in my view, given the above evidence the care cannot be reasonably provided there by the Sponsors personally or otherwise.
42. Furthermore, in the Appellants' favour in the balancing exercise, I take into account the Appellants' serious medical conditions, their advanced age, the strength and family life established with their adult children, and the very high degree of dependency upon them for which they require assistance (which is not dissimilar to the basis upon which an Article 8 health claim could feasibly succeed). Thus, for the many reasons already set out above, notwithstanding the significant public interest in the Appellants' removal, I find that the combination of their circumstances, their hypothetical ability to meet the entry clearance requirements as Adult Dependent Relatives and their strong family life, are such that their removal would be a

disproportionate interference with their right to respect for family life and I therefore allow the appeal under Article 8 ECHR.

**Notice of Decision**

43. The Appellants' appeal is allowed on human rights grounds.
44. No anonymity direction is made.

Signed

Date: 27.07.2018

Deputy Upper Tribunal Judge Saini