



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/26857/2013  
IA/26867/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 9 January 2014

Determination Promulgated  
On 16 January 2014

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

MR SHAHAB UD DIN  
MRS ROOMI GUL

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr E Waheed of counsel instructed by Mitchell and Co solicitors  
For the Respondent: Mr C Avery a Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellants are citizens of Pakistan and husband and wife. The husband was born on 1 January 1970 and the wife on 9 September 1982. They have been given permission to appeal the determination of First-Tier Tribunal Judge Mrs RJNB Morris ("the FTTJ") who dismissed their appeals against the respondent's decisions of 23 May 2013 to

refuse the husband leave to remain in the UK as a Tier 1 (Entrepreneur) Migrant under the Points-based System and to refuse the wife leave as his spouse.

2. The husband was first granted leave to enter the UK as a student on 14 September 2008 for a period expiring on 31 January 2010. He was granted further periods of leave firstly as a student and secondly as a Tier 1 (Post Study) Migrant. The last period of leave expired on 11 January 2013. On 11 January 2013 the husband, the wife and their four children made further separate applications which have led to these appeals. The respondent issued six separate refusal decisions on 23 May 2013, one for each of the husband, the wife and the children. Each of these generated a separate right of appeal.
3. The appellants' solicitors made six separate appeal applications and, as enquiries carried out at my request by the Tribunal staff now show, six separate appeal files were generated each with its own appeal number. These enquiries also show that the appeals of the four children have been listed for hearing in the First-Tier Tribunal on 28 August 2014.
4. In refusing the husband's application the respondent declined to award him the required points for access to funds, funds held in a regulated financial institution, funds disposable in the UK and Maintenance (funds). He was awarded the required 10 points for English language skills. He was not awarded the points for the financial requirements because the respondent considered that, whilst he had provided evidence that there was at least £50,000 in an account with HSBC, he had not established that he had access to these funds. The other appellants' applications were refused in line with his.
5. The appeals of the husband and the wife came before the FTTJ on 24 October 2013. Both parties were represented. The appellant's representative said that there had been six separate applications by the husband and wife and the children and six separate refusals. The respondent had not considered her obligations under Section 55 of the Borders Citizenship and Immigration Act 2009 with the result that the decisions in relation to the children were not in accordance with the law. Furthermore, the respondent had not complied with her own evidential flexibility policy or the principles in Rodriguez (Flexibility Policy) [2013] UKUT 00042 (IAC). It was argued that the proper course of action would be to remit the decisions to the respondent for reconsideration. The FTTJ concluded that the only cases listed before her were those relating to the husband-and-wife. It would not be appropriate to remit the cases to the respondent without considering the decisions in relation to the children at the same time as the decisions in relation to the husband and wife. The respondent's representative took instructions and indicated that the respondent was not prepared to withdraw any of the decisions. The FTTJ decided to hear the appeals of the husband and wife; "which were the only cases before me".
6. The FTTJ heard oral evidence from the husband. She concluded that the appeals failed under paragraph 245DD and 319C(b) of the Immigration Rules. On the facts neither the respondent's evidential flexibility policy nor Rodriguez assisted the husband.

7. The FTTJ went on to consider the Article 8 human rights grounds. She found that the husband-and-wife had a family life with each other as spouses and "however, since they would return to Pakistan as a family, the decision would not constitute an interference with their family life." They had also established a private life. Considering the Article 8 grounds both under the Immigration Rules and the pre-existing Strasbourg Jurisprudence the FTTJ found that there would not be an interference with the family life of the husband-and-wife and that interference with their private lives would be proportionate. She dismissed the appeals of the husband and wife.
8. The husband and wife applied for permission to appeal which was granted by a judge in the First-Tier Tribunal. The grounds submit that the FTTJ erred in law and that there was unfairness and procedural impropriety arising from the failure to link all the appeals so that the appeals of the husband, wife and four children were all heard and considered together. The FTTJ had failed to consider whether the S 47 removal decisions were lawful. The Article 8 ground could not be considered properly except in the context of the children's circumstances. There had been no proper consideration of the respondent's evidential flexibility policy or Rodriguez principles.
9. At the hearing I informed the representatives of the result of the enquiries made by the Tribunal staff in relation to the children's appeals which I have set out. They agreed that this was the position. On behalf the respondent Mr Avery conceded that the FTTJ erred in law by failing to decide that all six appeals should be heard together. The failure to do so was a procedural impropriety resulting in unfairness. He said that he would not make any submissions in relation to the other grounds of appeal.
10. I have studied the FTTJ's record of proceedings which is clear and legible. She was told that there was a query about the fees payable in relation to the children's appeals. I have studied the Tribunal "History Reports" for each of the children's appeals from which it appears that there was some query about the appeal fees which had been paid at this stage although it was subsequently resolved in the children's favour and their appeals were listed. Furthermore, after the respondent's representative indicated that she would not concede that the appeals should be remitted for further consideration the appellant's representative did not make a request for an adjournment on the basis that all six appeals should be linked and heard together. However, I find that, whether or not requested, the failure to link all six appeals and hear them together amounted to a procedural unfairness causing injustice. This is reinforced by my finding in relation to the third ground of appeal. The FTTJ considered only the family life of the husband and wife not, as was clearly required, the family life which they had with their four children. In paragraph 23 she refers only to the family life which the husband-and-wife had with each other as spouses. The subsequent passing reference to returning to Pakistan "as a family" is not a sufficient indication that the FTTJ was referring to or had considered all six members of the family. There is no reference to any factors affecting the children separately from their parents or to their best interests.

11. I also find that the FTTJ erred in law in her treatment of the respondent's evidential flexibility policy and Rodriguez principles. These are referred to in her findings between paragraphs 15 and 17 but not applied to the husband's evidence. He was not asking for the opportunity to submit "fresh applications" but that proper consideration to be given to documents submitted, albeit late. Finally, the appeals against the S 47 removal directions should have been considered and allowed.
12. I find that the FTTJ erred in law and that the decision should be set aside and remade by a judge in the First-Tier Tribunal.
13. The separate appeals of the husband, the wife and their four children should be linked and heard together. It is highly desirable that as the appeals of the husband and wife have got so far in advance of the appeals of the children that all six appeals be relisted and heard earlier than August 2014.

Signed:.....  
Upper Tribunal Judge Moulden

Date: 10 January 2014