



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/07610/2013
OA/17871/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 13th November 2014**

**Determination
Promulgated
On 9th December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

AQF & HF

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khan, Counsel instructed by
Thomas Andrew Daodu Solicitors

For the Respondent: Mr Bramble Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are citizens of Afghanistan and are minors.
2. As these proceedings impact upon the status and welfare of children, I make an anonymity direction.

3. This is an appeal by the appellants against the determination of First-tier Tribunal Judge Pears promulgated on 7th August 2014, whereby the judge dismissed the appellants' appeals against the decisions of the respondent dated the 14 and 15 January 2013 to refuse the appellants entry clearance to the United Kingdom under paragraph 297 of the Immigration Rules and under the Article 8 of the ECHR..
4. By decision made on 8th of October 2014 permission to appeal to the Upper Tribunal was granted. The case appears before me to determine in the first instance whether or not there was a material error of law in the original determination.
5. The original immigration decisions were taken in January 2013.

Factual background

6. The first appellant was born in 1996 and the second appellant in 1998. They live in Kabul. The father of the appellants died on 8 September 2009 and their mother died on the 3 May 2012.
7. The appellants have an older brother in the United Kingdom, who is seeking to sponsor their entry to the United Kingdom. It is the appellants' case that the sponsor has been sending money to Afghanistan in an effort to support the appellants. The appellants being minors are presently living with family friends, described as a child care family.
8. With the death of the mother application was made for the appellants to enter the United Kingdom under paragraph 297. The judge found that the appellant did not meet the requirements of paragraph 297. The judge went on to consider article 8 outside of the rules.
9. The grounds of appeal assert that the judge has made a material error of law by seeking to establish credibility issues when the documentary evidence provided supported the assertions that the parents were dead and the sponsor has been sending money to the appellants. It is submitted that the appellants met the requirements of paragraph 297 and the documents to substantiate that had been submitted. It is submitted that the judge erred in seeking to make credibility findings in such circumstances.
10. With regard to the death of the parents that is dealt with in paragraph 11 of the determination and thereafter in paragraph 25. I do not see that in paragraph 25 the judge has challenged the issue of the death of the parents. The issue that the judge is raising relates to the family caring for the appellants and whether that family were intending to leave Afghanistan and go to Germany. The assertion by the appellants being that the family were going to Germany. As the judge pointed out the family allegedly only went to Germany more than a year after the original decisions. The judge concludes that he is not satisfied on the basis of the evidence that the family were genuinely intending going to Germany. The

judge has pointed out in the light of the evidence the documents from the authorities were not accurate at the time that they were made.

11. Those were findings of fact that were available to the judge on the basis of the evidence. The judge has pointed out inconsistencies in the evidence and pointed out that the documents produced otherwise were setting out details that were not accurate at the time that they were made. The documents are documents from local authorities and from police in Kabul. The judge was merely pointing out that whilst those documents claimed that no one was caring for the appellant, in fact the family caring for the appellants were still looking after the appellants at the time of the documents. In paragraph 23 the judge notes the change in evidence of the sponsor with regard to whether there were other individuals, who could look after the appellants.
12. It is further submitted that in considering paragraph 297 and article 8 the judge has failed to take account of the best interest of the children. However it is to be noted that the sponsor and the appellants have not lived together for a number of years. The appellants have lived all their lives in Afghanistan and the judge was satisfied that there were other relatives or other persons capable of caring for the appellants in Afghanistan.
13. Reliance was placed by the representative upon the case of *Mundeba* [2013] UKUT 88. Specific reference was made paragraph 37 and the factors that had to be taken into account in assessing the best interests of the children in the context of any issue under paragraph 297 and family life. There is a requirement to assess the welfare needs of the appellants. The case gives assistance as to what is meant by serious and compelling circumstances. The paragraph specifically identifies whether there is evidence of neglect or there are unmet needs or the arrangements for the children are stable.
14. Judge had considered the circumstances of the appellants. There was no evidence of neglect or abuse. There was an allegation that there was a risk of them being exploited because of their age. However the judge was satisfied that there were other family members there that could look after the appellants. The judge was not satisfied that the claims as to the welfare of the appellants otherwise were made out.
15. The judge has properly considered all the evidence and the issues. The judge was entitled to make the findings that he did. There is no material error of law in the determination. I uphold the decision to dismiss these appeals on all grounds.

Signed

Date

Deputy Upper Tribunal Judge McClure

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