



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

Appeal Numbers: IA/06643/2014
IA/28429/2014
IA/28436/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 24 February 2015**

**Decision & Reasons Promulgated
On 10 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MRS ZEUNISA ABDUL RAZZAK SATTAR (FIRST APPELLANT)
MR MOHOMED IRSHAD ABDUL RAZAK ABDUL SATTAR (SECOND
APPELLANT)
MR NASIR ABDUL SATTAR (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A. Mahmood (Counsel)

For the Respondent: Ms A Holmes, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The three appellants are citizens of Malawi and their dates of birth are respectively 14 October 1950, 13 December 1979 and 9 May 1991. The first appellant is the mother of the second and third appellants. In a

decision dated 13th January 2014 the respondent refused an application made on 15 November 2013 on the grounds that the removal would not be a breach in obligations under the Human Rights Act 1998 and further gave directions under Section 10 of the Immigration and Asylum Act 1999.

2. In a determination promulgated on 16 October 2014 the First-tier Tribunal (Judge Gurung-Thapa) dismissed the appeals under the Immigration Rules and on human rights grounds.
3. An application for permission to appeal was made contending that the Tribunal erred in consideration of the claim under paragraph 276ADE in relation to length of residence in the UK. All three appellants asserted that they arrived in the UK in 1995 and have remained in residence to date. The First-tier Tribunal found [57] that there was insufficient documentary evidence to establish such continuous residence. The facts in respect of the third appellant were not in dispute. He arrived in the UK aged 4 on 12 July 1995 [3] and there was evidence from Leicester City Council and various educational establishments that he had attended schools and colleges over the years from 1999 to 2009. At [60] the Tribunal sets out that evidence and then finds the third appellant has not submitted satisfactory evidence that he has spent half his life in the UK as required by paragraph 276ADE(v). The main ground contended that such finding was unreasonable and contrary to the evidence. The evidence indicated that the third appellant had been in the UK at least from 1995 - 2009, some fourteen years and as such had spent half of his life in the UK and his appeal should have been allowed under paragraph 276ADE.
4. Secondly, the grounds in support of the application further contended that the Tribunal unreasonably concluded that the evidence given by the two witnesses was vague and evasive, and found it inconsistent as to places of residence. Thirdly, the Tribunal failed to take into account the Respondent's evidence confirming that the appellant's ex-husband had returned to Pakistan, divorced the appellant according to the Muslim tradition, married another woman, and had not returned to Malawi since. The Tribunal failed to take account of this evidence when making findings relevant to the Tribunal's consideration of whether or not there were close ties in Malawi. The Tribunal's consideration under Article 8 was flawed.
5. Permission was granted by First-tier Tribunal Judge A K Simpson who stated, "considered as a whole, it is arguable that the judge has not given sufficient credence to the evidence of independent witnesses as to the length of the appellant's residence in the United Kingdom. Moreover, it is arguable that the judge has not given sufficient consideration to the requirements of paragraph 276ADE(iv) and (vi) as to whether the first appellant has retained close ties with her country of origin".
6. At the hearing before me, Ms Holmes accepted that at [60] the Tribunal acknowledged that documentary evidence reflected the fact that the third appellant had attended primary and secondary school between 1999 and

2007 and thereafter at college until June 2008. The Tribunal's finding that there was no satisfactory documentary evidence to show that the appellant had spent at least half his life living in the UK was contrary to the evidence. Ms Holmes indicated that it would appear that he did in fact meet the requirement under paragraph 276ADE(v).

7. Mr Mahmood submitted that this error had effectively infected the whole of the determination. A decision that the requirements of paragraph 276ADE(v) were met by the third appellant would significantly impact on consideration of the appeals in relation to the first and second appellants. Given that the third appellant was a minor throughout his residence in the UK and lived with his mother, a finding that his mother was residing in the UK at the same time was likely to be made. The decision made therefore in respect of the third appellant is **Wednesbury** unreasonable in light of the independent documentary evidence produced that shows he has been resident in the UK since 1995 and therefore meets the requirement under paragraph 276ADE(v).

Discussion and decision

8. I proceeded on the basis that it was common ground that there was a material error of law in the decision made by the Tribunal. I am satisfied that the findings made as to the length of residence of the third appellant in the UK were contrary to the independent documentary evidence before the Tribunal.
9. Further I am satisfied that the Tribunal failed to take into account relevant evidence (in particular at page 29 of the appellant's bundle) which detailed the enquiries made by the British High Commission that established that the appellant's husband had divorced her and returned to Pakistan in 1993/1994. Further the judge erred in stating that a letter found at F4 of the respondent's bundle accepted that the appellant had family in Malawi, when it said nothing of the sort. The evidence was relevant to the issue of the existence of close ties in Malawi.
10. In considering how to proceed further I heard from both representatives. Mr Mahmood submitted that it may be possible for this Tribunal to deal with the matter without further hearing. The difficulty with that proposal was, as he rightly indicated, the error infected all of the findings made in the determination because the length of residence impacted on the first and second appellants. In addition to which I find errors in relation to evidence of close ties and the Tribunal's approach to evidence in support of that issue which need to be resolved.
11. I have decided to allow the appeal in respect of the third appellant who has met the requirements of paragraph 276ADE(v).

12. I have decided that the appeals for the first and second appellant are remitted to the First-tier Tribunal at Nottingham (not before Judge Gurung-Thapa) for rehearing.

Notice of Decision

1. There is a material error of law in the determination which shall be set aside.
2. The appeal of Mr Nasir Abdul Sattar is allowed on immigration grounds.
3. The appeals in respect of the first and second appellants are to be reheard at Nottingham on 21 April 2015.

No anonymity order made.

Signed

Date 10.3.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal in respect of the third appellant I make a fee award for repayment of that fee in total.

Signed

Date 10.3.2015

Deputy Upper Tribunal Judge G A Black