



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

**Appeal Number: IA/21144/2014
IA/21149/2014
IA/21150/2014
IA/21154/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On August 3, 2015**

**Determination Promulgated
On August 10, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR MUHAMMAD ROUMAN TABASSUM
MRS HUMAIRA ROUMAN
MASTER ZIDANE TABASSAM
MISS ZOYA TABASSUM
(NO ANONYMITY DIRECTION)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Mr Doyle (Legal Representative)

Respondent

Mr Clarke (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellants are citizens of Pakistan. The first-named appellant came to the United Kingdom as a student on September 19, 2006 and has lived

here ever since. The second-named appellant came to the United Kingdom in March 2007. The third and fourth appellants were both born here but are also citizens of Pakistan. The appellants submitted applications for further leave to remain as Tier 4 students and as dependants respectively. The respondent refused these applications on June 27, 2012 and the appellants appealed those decisions under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

2. The appeals came before Judge of the First-tier Tribunal Coutts on August 28, 2012 and in a decision promulgated on September 3, 2012 the Tribunal remitted the whole decision back to the respondent because the Tribunal found the decision was unlawful. That decision was not appealed by the respondent and today it was accepted by Mr Clarke that that Tier 4 application remains outstanding regardless of what was contained in the recent Rule 24 letter and the recent determination of Judge of the First-tier Tribunal Burns.
3. Following the hearing on August 28, 2012 the appellant indicated they were advised by Judge of the First-tier Tribunal Coutts to apply again for leave to remain as Tier 4 student/dependants. They submitted this application on August 31, 2012 but before the decision was taken on that application the earlier decision was promulgated. On October 26, 2012 this second application was refused because the respondent stated that the appellants had an outstanding appeal and by implication they still had leave under section 3C of the Immigration Act 1971.
4. Nothing happened until February 3, 2014 when the appellants were each served with Forms IS151A as overstayers. The appellants' representatives sent a letter to the respondent on February 14, 2014 pointing out that decisions were outstanding and the notice was unlawful but this was disregarded in the sense that the respondent issued each appellant with a removal decision on April 22, 2014.
5. The appellants appealed those decisions and the matters came before Judge of the First-tier Tribunal Burns on February 26, 2015 and in a decision promulgated on March 9, 2015 he refused their appeals under Article 8 ECHR and rejected Mr Doyle's argument that the decision was unlawful.
6. The appellant applied for permission to appeal on March 23, 2015 submitting the Tribunal had erred. Permission to appeal was granted by Judge of the First-tier Tribunal Levin on the grounds it was arguable the Tribunal had erred.
7. A Rule 24 response was filed by the respondent on June 4, 2015 but as stated above Mr Clarke no longer relies on this document.

ERROR OF LAW ISSUES

8. The issue was quite simple namely that the decision to issue a removal decision under section 10 of the Immigration and Asylum Act 1999 was unlawful and consequently not in accordance with the law. Mr Doyle acknowledged that the appellants continued to have an outstanding Tier 4 decision and regardless of the merits of that application a decision was still pending and the appellants continued to reside here lawfully with 3C leave.
9. Mr Clarke agreed that the decision taken on April 22, 2014 was unlawful and the appellants' appeals should be allowed to that extent. The result of such a finding would be to require the respondent to make a decision on the Tier 4 application and if appropriate to issue a notice of removal under section 47 of the Immigration, Asylum and Nationality Act 2006.
10. Mr Doyle agreed with this course of action.

DECISION

11. There was a material error. The respondent's decisions of April 22, 2014 were unlawful and the appeals are allowed to the extent that the respondent is required to make a lawful decision (and to address the outstanding Tier 4 decision).

Signed:

Dated:




Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT
FEE AWARD**

No fee award made.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis