



IAC-AH-KEW-V1

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

Appeal Numbers: IA/31597/2014
IA/31604/2014
IA/31593/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 24th November 2015**

**Decision & Reasons Promulgated
On 21st December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**EDO (FIRST APPELLANT)
WDO (SECOND APPELLANT)
POD (THIRD APPELLANT)
{ANONYMITY DIRECTION NOT MADE}**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: No legal representation

For the Respondent: Miss C Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellants appeal against a decision dated 17th February 2015 of Judge Gladstone of the First-tier Tribunal (the FTT).
2. The First Appellant is the mother of the Second and Third Appellants who are minors.

3. The Appellants applied for permanent residence in the UK relying upon the Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations).
4. The applications were refused on 17th July 2014 with reference to regulation 15(1)(b) of the 2006 Regulations in relation to the First Appellant, and regulation 15(1)(a) in relation to the Second and Third Appellants. Thereafter the Appellants appealed and requested that their appeals be decided on the papers without an oral hearing.
5. The FTT decided the appeals on the papers, which were dismissed in a decision dated 17th February 2015.
6. The Appellants applied for permission to appeal to the Upper Tribunal and permission was granted on 17th June 2015 by Designated Judge of the First-tier Tribunal McClure. Judge McClure commented, *inter alia*, in granting permission;

“Whilst it may be that it would be better for the first and second named Appellants in this application to present a fresh application with all the supporting documents and whilst there is no guarantee that the judge has made an error of law, all the documents that had been submitted to the Home Office and the Tribunal in support of the various applications ought to have been before the judge and considered by the judge. For whatever reason all the documentation and evidence was not before the judge and in the circumstances there is arguably a procedural error which constitutes an arguable error of law.”
7. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 indicating that the Respondent did not understand the basis of the application for permission or the grant of permission that refers to documents lodged in part with different applications. The Respondent’s view was that it was for the Appellants to establish their status and provide the evidence relied on. It was not accepted that the FTT had erred in law.
8. The Tribunal issued directions that there should be a hearing before the Upper Tribunal to decide whether the FTT decision should be set aside by reason of material error of law.

The Upper Tribunal Hearing

9. The First Appellant attended the hearing. There was no need for an interpreter and proceedings were conducted in English.
10. The First Appellant confirmed that she did not have legal representation and did not require legal representation and was content to proceed.
11. Miss Johnstone explained that there had been a separate decision made by Judge McClure in relation to ROO, who was the husband of the First Appellant and the father of the Second and Third Appellants, and also in relation to POD who is the Third Appellant in this application. The decision made by Judge McClure was that the appeals should be allowed. Following

that decision the Respondent had granted permanent residence to ROO, EDO, the First Appellant in this application, and POD, the Third Appellant in this application. I received from Miss Johnson a copy of Judge McClure's decision, and documentary proof that permanent residence had been issued.

12. The only member of the family who had not been granted permanent residence was therefore WDO.
13. I explained to the First Appellant the purpose of this hearing which was to ascertain whether the FTT had erred in law. It appeared to be somewhat academic so far as the First and Third Appellants were concerned as both had now been granted permanent residence.
14. I heard submissions from Miss Johnstone as to error of law, and she relied upon the rule 24 response submitting that the FTT had not erred in law, and that the Appellants had not produced evidence to discharge the burden of proof and therefore the FTT was correct to dismiss the appeals.
15. I then heard from the First Appellant who told me that documents had been sent, to prove that the family were entitled to permanent residence. She said that documents had been sent to the Tribunal although she did not have proof with her, as to when the documents were sent or what documents were sent.
16. I then reserved my decision, and explained to the First Appellant that I would issue a written decision.

My Conclusions and Reasons

17. A procedural error may in certain circumstances amount to a material error of law. Permission to appeal was granted on the basis that it was arguable that there had been a procedural error in this case.
18. I do not find that there has been such an error, and I do not find that the FTT erred in law in dismissing the appeals.
19. The appeals were decided on the papers, at the request of the Appellants. The Respondent did not request an oral hearing. I do not find that the FTT erred in law in deciding the appeals on the papers without an oral hearing.
20. The FTT noted that the Respondent had not submitted a bundle of documents and neither had the Appellants. The FTT noted that on 5th September 2014 the Appellants were advised that any written evidence and submission must be received by 3rd October 2014. The FTT noted that there was no indication that any submissions or evidence were sent. At the hearing before me, there was no indication that evidence or submissions had been sent to the Tribunal prior to 3rd October 2014, or prior to the FTT deciding the appeal on 15th February 2015.
21. The FTT Judge who dealt with the appeals on the papers noted that on 15th February 2015 a Designated Judge had indicated that it was appropriate to

proceed, as sufficient time had been given to the parties to supply documentation.

22. The FTT then proceeded to decide the appeals, and found that inadequate evidence had been submitted by the Appellants to prove that they were entitled to permanent residence. There is no error of law in that finding. The Appellants had not provided evidence to discharge the burden of proof.
23. It was the responsibility of the Appellants, having elected to have their appeals decided on the papers, to ensure that the documentation that they relied upon, was before the Tribunal. It appears that documentation was subsequently sent to the Tribunal, thus the appeals of two members of the family were allowed by Judge McClure on 23rd June 2015.
24. I therefore conclude that the FTT did not materially err in law in dismissing the appeals. Three of the four members of the family now have permanent residence in any event, and there appears to be no reason why an application for permanent residence could not be made on behalf of the remaining family member.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision. The appeals are dismissed.

Anonymity

~~No order for anonymity was made by the First tier Tribunal. There has been no request for anonymity and I see no need to make an anonymity order.~~

Signed

Date 1st December 2015

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The appeals are dismissed. There are no fee awards.

Signed

Date 1st December 2015

Deputy Upper Tribunal Judge M A Hall