



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: OA/09589/2013

OA/09587/2013

OA/09588/2013

OA/09586/2013

THE IMMIGRATION ACTS

Heard at Glasgow

On 25th June 2015

Decision & Reasons Promulgated

On 16th July 2015

Before

**MR C M G OCKELTON, VICE PRESIDENT
DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MUHAMMAD FAISAL NADEEM
MUHAMMAD ASAD NADEEM
QUDSIA AMIN
MASSIRA AMIN**

First Respondent
Second Respondent
Third Respondent
Fourth Respondent

Representation:

For the Appellant: Mr P Duffy, senior Home Office Presenting Officer

For the Respondent: Mr C McGinley, of Gray & Co, solicitors.

DECISION AND REASONS

Introduction

1. For the purposes of this decision, we refer to the Secretary of State for the Home Department as the respondent and to Mr M F Nadeem, Mr M A Nadeem, Miss Q Amin & Miss M Amin as the appellants, reflecting their position before the First-tier Tribunal.

2. This is an appeal by the respondent against a decision of the First Tier Tribunal Judge Widdup (“the Judge”), promulgated on 5 February 2014, which dismissed the first and second appellants’ appeals against refusal of entry clearance as dependent relatives, but allowed the appeals of the third and fourth appellants under the Immigration Rules. The respondent’s appeal is directed at the decision in relation to the third and fourth appellants.

Background

3. The third appellant was born on 7 August 1996. The fourth appellant was born on 5 December 1998. The first and second appellants are the older siblings of the third and fourth appellants. All four appellants are nationals of Pakistan.
4. The mother and step-father of all four appellants are present in the UK and were granted discretionary leave to remain in the UK in September 2012. The first and second appellants made applications for entry clearance to join their parents in the UK as the adult dependent relatives of their parents. Those applications were made under Appendix FM to the Statement of Changes to the Immigration Rules, HC 395. The third and fourth appellants, at the same time, made applications for entry clearance to join their parents as the dependent children of parents present and settled in the UK. All four applications were refused by the respondent on 19 March 2013.
5. The respondent refused the first and second appellants’ applications because they could not satisfy the requirements of Appendix FM (EC-DR1.1(d)). The applications of the third and fourth appellants were refused on the ground that there was no satisfactory evidence that they were serious and compelling family or other considerations relating to their applications. The entry clearance officer was not satisfied that their step-father could maintain them without recourse to public funds. The entry clearance officer drew the conclusion that the requirements of Paragraph 301 of the Immigration Rules were not met.

The Judge’s Decision

6. All four appellants appealed to the First Tier Tribunal. The Judge dismissed the appeals in relation to the first and second appellants but after considering Paragraph 352D of the Immigration Rules, granted the third and fourth appellants’ appeals.
7. The Judge’s decision was promulgated on 5 February 2014. Grounds of appeal were not lodged by the respondent until 4 September 2014. On 8 October 2014, First Tier Tribunal Judge Ransley granted permission to appeal. In doing so, FTTJ Ransley granted an extension of the time limit for seeking permission to appeal. In this case, the application for permission to appeal was almost seven months late. It would have been helpful if FTTJ Ransley had commented more fully on the reasons for granting an

extension of the time limit. We remind ourselves of what is said in SS (Congo) [2015] EWCA Civ 387. FTTJ Ransley accepted that the explanation given by the respondent amounts to exceptional circumstances. The grounds of appeal clearly identify an arguable error of law which should be ventilated before the Upper Tribunal. We are confident that if the application for extension of time had been properly considered, the same conclusion would have been reached.

The Hearing

8. Mr Duffy for the respondent focused on [11], [12], [13] and [14] of the Judge's decision. It is clear there that the Judge proceeds on the basis that the appellants' parents have been granted refugee status and goes on to consider Paragraph 352D of the Immigration Rules. The respondent relies on copies of the immigration status documents for the parents of the appellants which quite clearly show that the appellants' parents have been granted discretionary leave to remain and have not been granted refugee status.
9. Mr McGinley conceded that the appellants' parents are not refugees but have been granted discretionary leave to remain.

Analysis

10. It is clear that the appellants' parents have been granted discretionary leave to remain in the UK "*...for a reason not covered by the Immigration Rules...*" They are not refugees. Paragraph 352D of the Immigration Rules is entirely irrelevant in this appeal. The correct Immigration Rule to be considered is Paragraph 301. That was not considered by the Judge. Indeed at [14], the Judge states "*If Paragraph 301 were the applicable Rule to consider in this case, the appeals of the third and fourth appellants could not succeed in that they could not meet the maintenance and accommodation requirements of the Rule*".

Decision

11. Paragraph 301 of the Immigration Rules is the applicable Rule to consider in relation to the third and fourth appellants. We therefore reach the conclusion that the decision of the First Tier Tribunal contains a material error of law so that the determination in relation to the third and fourth appellants cannot stand and must be set aside.
12. We remake the decision and dismiss the appeals in relation to all four appellants under the Immigration Rules.
13. For the avoidance of doubt, we note that the First Tier Tribunal Judge did not reach a conclusion in relation to Article 8 ECHR. There is no finding adverse to a claim in relation to the Article 8 rights of the fourth appellant (the youngest member of this family).

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Signed

Date

Deputy Upper Tribunal Judge Doyle