



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/02566/2016**

Appeal Numbers:

02567/2016

IA/

02568/2016

IA/

02569/2016

IA/

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 13th October 2017

Promulgated

On 20th October 2017

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MR FAHAD ALI
MRS RUBY FAHAD
MASTER SYED AYAN ALI
MISS IRAJ ALI**

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Miah (instructed by Lee Valley Solicitors)

For the Respondent: Ms J Isherwood (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the appellants.

2. The appellants are husband, wife and their two children born in 2006 and 2009.
3. The first appellant was granted leave to enter the UK as a student in 2004. His leave was thereafter variously extended, most recently as a Tier 1 (General) Migrant until 29 March 2014. The second appellant entered the UK as the first appellant's dependent and the two children were born in the UK.
4. The appellant made an application for further leave to remain as a Tier 1 (General) migrant in March 2014 on the basis that he is a self-employed businessman who also has three employed jobs. His wife and children made applications as his dependents.
5. All four applications were refused on 7 November 2016. All four appellants lodged notices of appeal.
6. All the appellants elected and paid for their appeals to be dealt with on the papers.
7. The matter was placed before a Judge of the First-tier Tribunal (Judge Suffield- Thompson) on 19 January 2017 and she dismissed the appeals in a Decision and Reasons promulgated on 3 February 2017.
8. Permission to appeal that decision was granted by a Judge of the First-tier Tribunal on 14 August 2017. He found it to be arguable that the Judge had applied the wrong standard of proof when he used terms such as "I cannot be sure" and "it is not possible to be certain." He also found that the decision under the rules was relevant to the Article 8 assessment.
9. The Secretary of State sought to defend the decision of the First-tier Tribunal on the basis that the appellants had lodged no additional evidence in support of the appeal.
10. That is of course correct. However, what is striking about this decision is that the Judge had four appellants to deal with. It is clear from the heading of the Decision and Reasons that the Judge was aware that there were four appellants. However, throughout the Decision and Reasons she deals only with the first appellant. It is correct of course that the application that was made under the Immigration Rules was on the basis of the first appellant with the other three being successful or not dependent upon his situation. However, when it comes to consideration of human rights and in particular those of the two children, both of whom have been in the United Kingdom for more than seven years, the Judge was required to look at each appellant and reach a conclusion on each appellant's appeal.
11. At paragraph 23 the Judge referred herself to paragraph 276 ADE (iv) with regard to a child who has been in the UK for more than seven years, although the Judge misunderstands what that Rule provides. Despite referring to paragraph 276ADE the Judge fails to deal with the question of

whether it is reasonable to expect the children to leave the UK. She says only that the appellant had not provided any evidence to the Tribunal about his children or why it is in their best interests to remain in the UK.

12. The Judge then goes on to consider section 117B of the Immigration and Asylum Act 2002 and notes that although the children have lived in the UK for more than seven years she had no evidence before her as to whether the appellant had any relationship with the children and that he provided nothing to show that he was still living with his wife and children or if he was separated whether he had regular contact. That is puzzling indeed given that the family had made a joint application and the Secretary of State clearly treated them as a family unit.
13. There is a clear material error of law in the Decision and Reasons in that three of the four appellants have not had their appeals determined.
14. So far as the first appellant is concerned I do not find that the Judge applied the wrong standard of proof. Her choice of words is unfortunate but it is clear that she did apply the right standard of proof. She found it was not possible to be certain to the relevant standard of proof where the money the appellant claims to have been self-employed earnings actually came from.
15. I therefore preserve the finding that the first appellant did not meet the requirements of the Immigration Rules in relation to his application as a Tier 1 (General) Migrant. However, the second third and fourth appellants all need to have their appeals determined and the first appellant needs his Article 8 appeal to be given proper consideration taking into account the other members of the family.
16. I therefore set aside the Decision and Reasons of the First-tier Tribunal save for the preserved finding indicated above. As the second third and fourth appellants have never had their appeals determined it is appropriate that the matter be remitted to the First-tier Tribunal for a rehearing on all matters save the first appellant's ability to meet the requirements of the Immigration Rules as a Tier 1 (General) migrant.
17. There is an indication the appellants now wish to have an oral hearing before the First-tier Tribunal. Thus far they have paid only for paper disposal. If they wish to have an oral hearing then they must notify the first-tier Tribunal accordingly and pay the appropriate fee.
18. No anonymity direction having been requested, none is made.

Signed

Date 18th October 2017

Upper Tribunal Judge Martin