



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: EA/02110/2016  
EA/02126/2016, EA/02128/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 6<sup>th</sup> August 2018

Decision & Reasons Promulgated  
On 15<sup>th</sup> August 2018

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

HASINA [A]  
YOUSUF [A]  
[E Y]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Salim of Counsel, instructed by Thamina Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellants appeal against the decision of First-tier Tribunal Judge Hussain promulgated on 28 February 2018, in which their appeals against the Respondent's decision to refuse their applications for EEA Residence Cards as extended family

members of an EEA national exercising treaty rights in the United Kingdom dated 10 February 2016 were dismissed.

2. The Appellants are nationals Bangladesh, born on 1 January 1983, 2 February 1981 and 25 September 2005 respectively, who on 27 August 2015 applied for EEA Residence Cards as confirmation of a right to reside in the United Kingdom.
3. The Respondent refused the applications on 10 February 2016 on the basis that he was not satisfied as to the claimed relationship with the EEA Sponsor, nor that there was any evidence of dependency on the Sponsor or membership of their household either in Bangladesh or in the United Kingdom. Further, that there was insufficient evidence of the Sponsor exercising treaty rights in the United Kingdom and original documents had not been submitted. The application was refused under Regulation 8(1) of the Immigration (European Economic Area) Regulations 2006.
4. Judge Hussain dismissed the appeal in a decision promulgated on 28 February 2018 on all grounds. The Appellants had not attended the hearing before the First-tier Tribunal nor had they submitted any further documents or evidence in support of their appeals. Judge Hussain considered that there was no reasonable explanation for their absence, was satisfied that they had been notified of the hearing and in accordance with the overriding objective decided that it would be fair and just to reach a decision in their absence. That decision, on the basis of the evidence before the First-tier Tribunal, was that the Appellants had failed to demonstrate the primary facts upon which they sought to rely in applying for an EEA Residence Card.

### **The appeal**

5. The Appellants appeal on the basis that there has been a procedural irregularity in the appeal before the First-tier Tribunal in that they had not been notified of the hearing or any directions in relation to the appeal. The Appellants instructed new representatives, following the intervention by the Solicitors Regulation Authority in their previous solicitors. The new representatives wrote to the Tribunal on 23 November 2016 putting themselves on record and notifying the Tribunal of a new address for the Appellants. Nothing further was heard from the Tribunal and a query was raised by the Appellants' representatives on 20 December 2017, at which point they were told the appeal had been heard on 1 December 2017, albeit not promulgated until 28 February 2018. There was a request for a new hearing date on the basis that no notice had been given of the previous listing but no response was forthcoming from the Tribunal.
6. Permission to appeal was granted by Judge Kelly on all grounds.

### **Findings and reasons**

7. At the oral hearing, one of the Appellants confirmed that the original address given on the notice of appeal was that of their then solicitors and that they moved to their new address just prior to instructing new solicitors in November 2016, which was notified to the Tribunal.

8. I indicated to the parties at the oral hearing that it appeared clear that the First-tier Tribunal had not updated its records to reflect the Appellants' new address further to notification of same on 23 November 2016 and therefore notices in relation to the appeal, including case management directions, transfer of proceedings and notice of hearing were not sent to the Appellants and further, the initial directions upon receipt of the appeal were sent to the Appellant's previous solicitors who had been closed down shortly thereafter. In these circumstances, the Appellant had not been given notice of the appeal hearings and the Home Office Presenting Officer did not oppose the appeal.
9. The decision made by Judge Hussain to proceed with the hearing in the absence of the Appellants on the basis that they had been notified of the hearing, is not sustainable in light of the clear evidence that they were never served with directions or notice of hearing in relation to their appeals. This is a procedural irregularity which has resulted in unfairness to the Appellants, whose appeals should have been adjourned for proper notice of hearing to be given and for them to therefore have the opportunity to respond to the directions, file evidence and attend the hearing to pursue the appeals. In these circumstances, that amounts to a material error of law and it is therefore necessary to set aside the decision and remit the appeal to the First-tier Tribunal to be heard de novo.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal involved a procedural irregularity causing unfairness to the Appellants which amounted to a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remit the appeals to the First-tier Tribunal (Taylor House hearing centre) be heard de novo before any Judge except Judge Hussain.

No anonymity direction is made.



Signed

Date 6<sup>th</sup> August 2018

Upper Tribunal Judge Jackson