



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/12582/2016  
HU/12586/2016, HU/12587/2016  
HU/12589/2016, HU/12590/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 4 April 2018

Decision & Reasons Promulgated  
On 18 May 2018

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

SHAMILA [K]

[H K]

[A S]

[M K]

[R K]

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Ms S Hussain, appearing as an unpaid friend

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants in this case are all citizens of Pakistan and they apply for entry clearance as a partner/children of a person present and settled in the United Kingdom. Their applications were refused on 5 April 2016 and they appealed against these refusals. Their appeals were heard before First-tier Tribunal Judge T Jones, sitting at Bradford on 31 July 2017, but in a Decision and Reasons promulgated on 23 August 2017 Judge Jones dismissed the appeals.
2. Permission to appeal has been granted by First-tier Tribunal Judge Kinnell on 31 January 2018. When giving his reasons for granting permission, Judge Kinnell stated as follows:

“The Tribunal’s findings are contradictory and difficult to follow. At the second paragraph 9 the Judge finds the burden of proof has not been discharged, but nevertheless finds for the appellants, before going on to dismiss the appeal, and at paragraph 13 states that because the immigration rules are met, the proportionality exercise falls in favour of the respondent. In the preceding paragraph the Judge finds the rules have not been met.

A party is entitled to know why an appeal has been decided against him. In this case the reasons are incomprehensible.”

3. At the hearing before me today, the appellants have been represented by Ms Hussain, who is a family friend who was appearing, with the permission of this Tribunal, unpaid, in order to provide assistance to the sponsor and the appellants. That was the capacity in which she had appeared below, although (wrongly) she has been described in the decision as “Legal Representative”. The Home Office was represented by Mr Kotas, Senior Home Office Presenting Officer, who has very helpfully explained what actually occurred during the hearing, which I have to say is not entirely (or at all) apparent from the decision. He has been assisted by the notes of the Presenting Officer taken during the course of the hearing. Apparently the only issue between the parties was whether or not the sponsor was able to supply sufficient evidence of his income to satisfy the Rules. If he did, then so far as Article 8 is concerned, it was accepted that it would not be proportionate to refuse entry clearance under Article 8. The specific Rule is dealt with at Appendix FM-SE under paragraph 7(h)(bb) which provides as follows:

“If the business is not required to produce annual audited accounts, unaudited accounts for the last full financial year and an accountant’s certificate of confirmation, from an accountant who is a member of a UK Recognised Supervisory Body (as defined in the Companies Act 2006)”

is sufficient evidence to satisfy the Rules.

4. In this case what happened is that Ms Hussain was invited to e-mail these documents (that is unaudited accounts of the sponsor coupled with an accountant’s certificate of confirmation) to the court within three days, in the understanding that if she did so the appeal would be allowed. Regrettably, that understanding does not appear within

the decision and so to that extent the decision does not explain properly, as it ought, why the appeal was dismissed. What apparently happened was that Ms Hussain was given an incorrect e-mail address by the court usher, which excluded a small "i" with the result that the e-mail which she sent (immediately after the hearing) bounced back. Subsequently, she discovered what had happened and resent the documents but by that time the decision had already been made.

5. The reason why paragraph 7(h)(bb) is applicable is because the sponsor is a taxi driver and therefore annual audited accounts are not required. Very fairly, on behalf of the respondent, Mr Kotas accepts both that the documents submitted are sufficient that had they been before the judge as they ought the appeal ought to have been allowed, and also that the circumstances as set out above disclose a procedural irregularity, such as to amount to a material error of law.
6. In my judgement, Mr Kotas was right to make the concessions he did. I have seen the documents which are sufficient to establish that the appellants are entitled to leave to enter under the Rules. I also agree with Mr Kotas that in the circumstances, it having been agreed by the First-tier Tribunal that provided these documents were sent to the court within three days the appeals would be allowed, the fact that Ms Hussain was given an incorrect e-mail address (which I accept is what happened) is sufficient to amount to a procedural irregularity. It is also the case, as I have already noted, that by reason of his failure to explain within his decision why the appeal was dismissed (which was in reality because the documents which had been required had not been sent within the correct time) the judge failed adequately to set out what the reasons were why the appeals had been dismissed.
7. In these circumstances Judge Jones's decision must be set aside and remade. As I have now seen the documents which establish that in fact the appellants are entitled to entry clearance under the Rules, and as this is not disputed on behalf of the respondent, I am able to remake the decision myself allowing the appeals, which I will now do.

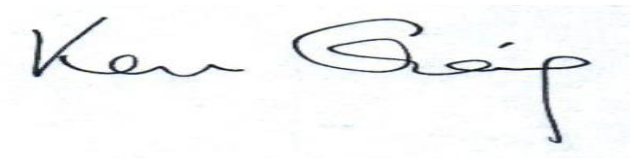
### **Decision**

**I set aside the decision of First-tier Tribunal Judge T Jones as containing a material error of law, as set out above, and substitute the following decision:**

**The appellants' appeals are allowed on human rights grounds (Article 8).**

**No anonymity direction is made.**

Signed:

A handwritten signature in black ink, appearing to read "Ken Craig". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Upper Tribunal Judge Craig

Date: 30 April 2018

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable.

Signed:

A handwritten signature in black ink that reads "Ken Craig". The signature is written in a cursive style with a large, prominent 'K' and 'C'.

Upper Tribunal Judge Craig

Date: 30 April 2018