



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/16243/2015**

Appeal Numbers:

IA/16249/2015

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated
On 14 March 2018**

On 8 March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**(1) MRS SHAMINDER KAUR
(2) HARDAS BIR SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J. Plowright, Counsel instructed by Hunter Stone Law
For the Respondent: Mr Ian Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal to the Upper Tribunal on procedural irregularity grounds from the decision of the First-tier Tribunal (Judge Lisa Gibbs sitting at Hatton Cross on 29 June 2017) dismissing their appeals against the decision of a Border Force Officer made on 1 September 2014 to refuse the first appellant leave to enter as a student on the ground that her existing student leave had been curtailed to expire before her attempt to re-enter the UK, and so she no longer had valid leave to enter the UK. The second appellant, whose date of birth is 29 July 2012, is the first

appellant's child, and he joined in his mother's appeal to the First-tier Tribunal as her dependent.

2. The delay in their appeals being heard by the First-tier Tribunal is explained in the decision of Judge Gibbs at paragraphs [4] to [9]. On 25 April 2016 the Tribunal held that the first appellant's husband, who is the father of the second appellant, did not have a right of appeal in respect of the refusal of entry to his wife. A substantive hearing of the appeals of mother and son was scheduled to take place in December 2016. On this occasion, Mr Plowright of Counsel appeared on behalf of the appellants. After lengthy submissions (which are on file), an adjournment was granted on the basis that the respondent had served documents which raised "*new issues*". Directions were made and the respondent subsequently provided "*a further submission*".
3. The appeals came before Judge Gibbs on 29 June 2017 at Hatton Cross. The respondent was represented by a Presenting Officer, but there was no appearance by the first appellant or by a legal representative acting on her behalf.
4. The Judge went on to hear the appeals in the absence of the first appellant, and in her subsequent decision she gave her reasons for dismissing the appeals.
5. At paragraph [10] of her decision, she explained why she had proceeded to hear the appeals pursuant to Rule 28. She was satisfied that the appellants and Hunter Stone Law had been given a notice of the day, time and place of the hearing and no good reason had been provided for their non-attendance.
6. The appellants applied for permission to appeal to the Upper Tribunal on the ground that neither they nor Hunter Stone Law had in fact been notified of the hearing. On 19 December 2017, Judge Pooler granted them permission to appeal because, while noting that Judge Gibbs declared herself satisfied that the appellants had been served with a notice of hearing, "*there appears to be no evidence of any such notice in the Tribunal's files*".
7. At the hearing before me to determine whether an error of law was made out, I confirmed from inspection of the file that there was no Notice of Hearing for a hearing on 29 June 2017. According to Hunter Stone Law, the Tribunal at Hatton Cross had subsequently confirmed to them orally that no notice of hearing had been sent out.
8. It is a mystery therefore how the appeals came to be listed before Judge Gibbs on 29 June 2017 and also how there was a Presenting Officer in attendance, which would suggest that she had advance notice that the appeals had been listed for hearing on that day.
9. Nonetheless, the respondent has not offered any evidence in rebuttal of the claim that the appellants did not receive notice of the hearing, and Mr

Jarvis did not seek to persuade me that they had been notified of the hearing.

10. Accordingly, I find that the appellants were not notified of the hearing; and that, by disposing of their appeals on the mistaken premise to the contrary, the Judge committed a procedural irregularity which was capable of making a material difference to the outcome or fairness of the proceedings.

Notice of Decision

11. The decision of the First-tier Tribunal is vitiated by a material error of law such that it must be set aside and remade.

Directions

12. **These appeals are remitted to the First-tier Tribunal at Hatton Cross for a de novo hearing before any judge apart from Judge Gibbs. None of the findings of fact made by the previous Tribunal shall be preserved.**

Anonymity

The First-tier Tribunal did not make an anonymity direction, and I do not consider that the appellants require anonymity for these proceedings in the Upper Tribunal.

Signed

Date

Deputy Upper Tribunal Judge Monson