



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/00443/2020  
HU/00448/2020  
HU/00451/2020

**THE IMMIGRATION ACTS**

Birmingham Civil Justice Centre  
On 17<sup>th</sup> August 2021

Decision & Reasons Promulgated  
On 27<sup>th</sup> September 2021

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

MRS MANJOT KASHMIRSINGH GHOTRA (1)  
MR KASHMIR SINGH SHARAM GHOTRA (2)  
MR JASVIR SINGH GHOTRA (3)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: No appearance by or on behalf of the appellants  
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are all nationals of India. The first appellant is the partner of the second appellant. The third appellant is their son, who was born on 22<sup>nd</sup> December 1993 and is now 27 years old. Their appeal against the respondent's decision of 16<sup>th</sup> December 2019 to refuse their application for leave to remain in the UK on Article 8 grounds, was determined on the papers and dismissed by First-tier Tribunal Judge Buckwell for reasons set out in a decision promulgated on 12<sup>th</sup> October 2020.
2. The appellants claim that on 30<sup>th</sup> December 2019 they exercised their right to appeal the decision of the respondent. They accept that when they filed the form IAFT-5 they stated that they wanted to have their appeal decided on the papers. They claim that was a mistake, they changed their mind, and had decided they wanted an oral hearing. They claim they did not receive the respondent's bundle sent to them under cover of a letter dated 8<sup>th</sup> April 2020 and they had not received the directions issued by the Tribunal in March 2020 directing that they must send any written evidence and submissions to the Tribunal and the respondent, by 3<sup>rd</sup> April 2020. They claim the Tribunal should have made sure that the documents were properly served and informed the parties of the directions to be complied with. They claim it was completely irrational for Judge Buckwell to determine the appeal solely upon the information set out in their application made in March 2017.
3. Permission to appeal was granted by First-tier Tribunal Judge Parkes on 25<sup>th</sup> November 2020. He said:

"2. The grounds state that the appellant applied for a paper hearing of their appeals in error and then change their minds. There is no suggestion that the uplift fee was paid, or their change of mind communicated to the Tribunal. The grounds state that the third appellant is now living apart from the first and second appellants and that the appellants did not receive the respondent's bundle or the directions requiring them to serve their own bundle.

3. *If the appellant did not receive the directions and respondent's bundle that could amount to an error of law, although I have been unable to locate it there is a recent case in which the evidence of service to the given address was sufficient to find service had been effective. However this is a matter that will need to be investigated. Both the Home Office and Tribunal will need to provide evidence of what directions were sent out and the address that they were sent to. If there is no evidence that an uplift fee was paid, the Appellants will not be able to complain that the decision was unfair."*

4. On 12<sup>th</sup> July 2021 a Notice of Hearing was sent to the parties, informing the parties that the appeal will be heard on Tuesday 17<sup>th</sup> August 2021. The notice sent to the parties makes it plain that; “If a party or his representative does not attend the hearing the Tribunal may determine the appeal in the absence of that party.”.
5. On 16<sup>th</sup> August 2021 (*at 15:37hrs*) an email was received by the Tribunal from Sanampreet Ghotra attaching a bundle comprising of 122 pages. The email was signed off with the name “MR Ghotra”. On 17<sup>th</sup> August 2021 (*the morning of the hearing before me*), a copy of the bundle comprising of 122 pages was also delivered to the Tribunal. On a copy of the Notice of Hearing, in manuscript, it is said; “*Apps not coming as all ill*”. The appellants bundle has been delivered to the Tribunal under cover of an undated letter that is signed by all three appellants. It is said to be a bundle that the appellants would have submitted to the First-tier Tribunal, had they “*got the notice of hearings*”. The covering letter states:

“Payment

We can confirm that we had only paid £80 earlier; however, I refer to my grounds of appeal at paragraph 6 which stated that

“I intends (*sic*) to particularise each ground further at the hearing of the appeal and such other and further grounds may be argued at the hearing of this appeal.”

This ground of appeal in itself were an indication that my intention was to advance grounds of appeal at the appeal hearing which would be requiring an oral appeal hearing.

I therefore, request that the error of law is found in the determination and the matter remitted back to the First Tier Tribunal for the consideration of our evidence as advanced in our witness statement, which has been submitted in our appeal bundle. In such appeal hearing, we would be attending the courts with some supporting witnesses and also require an interpreter.

**To save costs to us we would not be attending the courts on 17<sup>th</sup> August 2021 and request that the hearings are decided in our absence only.”**

6. The hearing before me was called on at 2:30pm as listed, and there was no attendance by or on behalf of the appellants. It is obvious that they have received Notice of the Hearing before me. As I have said, on a copy of the Notice of Hearing, that was delivered to the Tribunal on the morning of the hearing in

manuscript it is said; *"Apps not coming as all ill"*. No further information or explanation is provided.

7. On behalf of the respondent, Mr Bates invites me to determine the appeal in the absence of the appellants. He submits there is no application for an adjournment and no evidence before me that they are unable to attend the hearing. Mr Bates submits there is nothing in the respondent's papers that indicates that the appellants had requested an oral hearing before the First-tier Tribunal. There is no evidence of any additional fee being paid by the appellants. The directions issued by the Tribunal and sent to the parties on 5<sup>th</sup> March 2020 were received by the respondent and the respondent's bundle was sent to the appellants, at the address provided by the appellants to the respondent in December 2019. He submits the respondent's bundle simply refers to the appellant's immigration history and has attached to it, a copy of the FLR(FP) applications made, the supporting evidence relied upon by the appellants and a copy of the respondent's decision. All the documents provided in the respondent's bundle are documents that emanate from the appellants and there is therefore nothing in the respondent's bundle that the appellants were unaware of, or that they did not have access to themselves. He submits it is beyond coincidence that correspondence sent to the appellants both by the respondent and the Tribunal, independently, but addressed to the same address, would not reach the appellants. Mr Bates submits nothing further was heard from the appellants and it was open to Judge Buckwell to determine the appeal on the papers and dismiss the appeal for the reasons set out in his decision.

### Discussion

8. I am satisfied that it is in the interests of justice and in accordance with the overriding objective to proceed with the hearing listed before me, in the absence of the appellants. The appellants are plainly aware of the hearing listed before me. There is no application for an adjournment made by the appellants. It is apparent from the undated covering letter to the bundle (*addressed to the Birmingham Justice Centre*) delivered to the Tribunal on 17<sup>th</sup> August 2021, and which was before me,

that the appellants did not intend to attend the hearing before me and have requested that the hearing proceed in their absence. I am satisfied the appellants have had an opportunity to participate, and that in proceeding in their absence, I can deal with the appeal fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties.

9. I have carefully considered the Tribunal file and note:
- a. On 30<sup>th</sup> December 2019, the Form IAFT-5 'Appeal against your Home Office decision' was received by the Arnhem Support Centre. A separate form was completed by or on behalf of each appellant and the address at which the appellants can be contacted, is the same for each of them. The appellants stated that they wish to have their appeal decided on the papers.
  - b. On 14<sup>th</sup> December 2020, the Tribunal informed the appellants that there is a "requirement to pay a fee". The Notice was sent to the appellants at the address provided by them and states in bold text:

**"You have not requested an oral hearing and you must now pay £80.00 in order for your appeal to proceed. This payment must be made to the tribunal no later than Tuesday, 3 March, 2020. Failure to pay the fee will result in the tribunal taking no further action on your appeal."**
  - c. The fee of £80 was paid by the appellants on 14<sup>th</sup> February 2020.
  - d. Directions were sent to the parties by the Tribunal on 5<sup>th</sup> March 2020. The directions were posted to the appellants by second class post to the address provided by them. The directions have not been returned to the Tribunal as "undelivered".
  - e. The respondent's bundle was received by the Tribunal and the covering letter to that bundle is addressed to the first appellant and refers to the address provided by the appellants in the Form IAFT-5

10. Judge Buckwell states at paragraph [3] of his decision:

“By Notices dated 30 December 2019 each appellant exercised their right of appeal under section 82 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”). It is recorded that an appeal fee in the sum of £80 was paid by or on behalf of each appellant. That provided for each appeal to be determined only on the basis of the consideration of documentation and without the convening of any oral hearing. As these were combined applications they are combined appeals and it is appropriate for these three appeals to be determined together.”

11. The appellants accept that when they completed the Form IAFT-5, they stated that they wanted to have their appeal decided on the papers. They claim in the grounds of appeal that they had “opted for the paper hearing by mistake”. They claim they changed their mind and decided that they wanted an oral hearing. They do not claim within the grounds of appeal, or in the covering letter to the bundle delivered to the Tribunal on 17<sup>th</sup> August 2021 that they had informed the Tribunal that they wish to have an oral hearing. They accept that they only paid a fee of £80 in respect of the appeal. The appellants claim in their letter it must have been apparent from the grounds of appeal that an oral hearing was required. It is said that at paragraph [6] of the grounds of appeal, they stated:

“I intends (*sic*) to particularise each ground further at the hearing of the appeal and such other and further grounds may be argued at the hearing of this appeal.”

12. In my judgement the very vague and general claim made in paragraph [6] of the grounds of appeal was insufficient to require an oral hearing of the appeal in circumstances where the appellants had expressly invited the Tribunal to decide the appeal papers. In any event, on 14<sup>th</sup> December 2019 the Tribunal informed the appellants that there is a “requirement to pay a fee”. The Notice was sent to the appellants at the address provided by them, and the notice makes it clear to the appellants that they have not requested an oral hearing and they must pay £80.00 in order for their appeal to proceed. There is no doubt that the appellants received that notice. They do not claim that they did not receive that notice or that having received the notice, they contacted the Tribunal and informed the Tribunal that they had mistakenly said in the form IAFT-5 that they would like the appeals to be

determined on the papers, but in fact wish to have an oral hearing. The appellants had been informed by the Tribunal that payment of the fee must be made to the Tribunal no later than 3<sup>rd</sup> March 2020. The fee of £80 was paid by the appellants on 14<sup>th</sup> February 2020, as required. The First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011 provides that the fee for each person, where they consent to the appeal being determined without a hearing, is £80. Where they do not consent to the appeal being determined without a hearing, the fee is £140 per person. As the appellants had neither informed the Tribunal that they wanted their appeals determined following an oral hearing, nor paid the required fee for an oral hearing, it was my judgement undoubtedly open to Judge Buckwell to determine the appeals on the papers.

13. I then turn to the directions sent by the Tribunal to the parties on 5<sup>th</sup> March 2020. I am quite satisfied that the directions were sent to the appellants by second class post on 5<sup>th</sup> March 2020, to the address provided by the appellants as the address at which they can be contacted. The date upon which the directions were sent pre-dates any measures or announcement by the government of steps introduced to prevent the spread of Covid-19. There is no indication in the Tribunal file or in the Tribunal's records that the directions were returned to the Tribunal as undelivered. The directions were received by the respondent. The Tribunal Procedure Rules 2014 make provision for any document to be provided to the Tribunal or any person under the rules, practice direction or a direction, to be sent by post to an address identified for that purpose by the Tribunal or person to whom the document is directed. I am quite satisfied that the directions issued by the Tribunal on 5<sup>th</sup> March 2020 were sent to the appellants by post to the address identified by them, as required by the rules.
14. The respondent's bundle was also sent to the appellants to the address provided by the appellants to the respondent, and to the Tribunal. I accept, as Mr Bates submits, it is unlikely that the respondent's bundle was also not received by the appellants. In any event, the respondent's bundle simply provides the appellants

and the Tribunal with a copy of the FLR (FP) application made, copies of their passports, and the covering letter to their application. The bundle comprises of copies of documents that the appellants are plainly aware of and will have been in the appellants possession for some time. In fact they are documents that form part of the 122-page bundle now relied upon by the appellants. The lack of a bundle from the respondent did not prevent the appellants providing the Tribunal with the evidence they relied upon in support of their appeal.

15. There is in my judgment no error of law in the decision of First-tier Judge Buckwell, and it was in my judgement open to him to dismiss the appeals for the reasons set out his decision promulgated on 12<sup>th</sup> October. The decision is not infected by any procedural unfairness.
  
16. In any event, the appellants have provided what is described in the covering letter to the bundle delivered to the Tribunal on 17<sup>th</sup> August 2021, as the evidence that was not submitted to the Tribunal earlier, upon which they claim they would have relied. In a joint witness statement signed by the first and second appellants dated 16<sup>th</sup> August 2021, they accept, at paragraph [2], that they do not meet the requirements for leave to remain of the grounds family and private life as expressed in the immigration rules. They refer to the length of their residence in the UK and the fact that they have been self sufficient in the UK without recourse to any public funds and have established considerable ties to the local community. There is nothing within the 122-page bundle that even begins to establish that the appellants' protected rights, whether considered individually or collectively are such as to outweigh the public interest in the appellants removal having regard to the policy of the respondent as expressed in the immigration rules. The decision of Judge Buckwell made on the evidence before him was not only open to him: it was inevitable, even if the 122-page bundle now relied upon by the appellants had been before him. It follows that in my judgment even if the appellants had provided the 122-page bundle to the First-tier Tribunal in accordance with the



directions issued by the Tribunal, the evidence relied upon would not have impacted upon the outcome of the appeal.

17. I am quite satisfied in all the circumstances that the decision of Judge Buckwell was open to him and the appellants have failed to establish that there is a material error of law in his decision capable of affecting the outcome. It follows that I dismiss the appeal.

**Notice of Decision**

18. I dismiss the appeal and the decision of First-tier Tribunal Judge Buckwell stands

Signed *V. Mandalia*  
Upper Tribunal Judge Mandalia

Date

18<sup>th</sup> August 2021