



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case Nos: UI-2024-000178,
UI-2024-000179 & UI-2024-
000180

First-tier Tribunal No:
EA/00665/2023, EA/00669/2023 &
EA/00670/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 10 September 2024**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**MR HAMMAD TAHIR
MR RAJA WADEED ANJUM
MR MIRZA MUHAMMAD WALEED JARRAL**

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: no appearance

For the Respondent: Mr A Mullen, Home Office Presenting Officer

Heard at 52 Melville Street, Edinburgh on 31 July 2024

DECISION AND REASONS

1. The appellants appeal with permission against the decision of First-tier Tribunal Judge G A Black, promulgated on 11 September 2023, dismissing their appeals against the decisions of an Entry Clearance Officer made on 7 January 2023 in respect of the first two appellants and on 19 August 2023 in respect of the Third Appellant to refuse to grant leave to enter the United Kingdom under the Appendix EU (Family Permit) of the Immigration Rules.

2. The appellants' case is that they are the family members of a relevant EEA citizen, Rashid Khan Begum ("the sponsor") who is married to their father.
3. The respondent refused the applications on the basis that the birth certificates provided were not reliable evidence of the parental relationship between each of the appellants and the sponsor, given discrepancies in the certificates, as set out in Document Verification Reports relating to the birth certificates and the death certificate for the mother of the third appellant.
4. The appellants appealed against those decisions on the grounds that there was an explanation for the apparent defects, and that the appellants had brought a civil suit against the Union Council which was responsible for the issue of birth certificates, resulting in the issue of letters of explanation from the Union Council.
5. The appellants did not request an oral hearing but did provide a bundle of documents in support of the appeal which included the documents relating to the civil suit.
6. On 7 September 2023, Judge Black decided the appeals on the papers, dismissing them for the reason set out in her decision promulgated on 19 September 2023.
7. The appellants sought permission to appeal against that decision. On 2 February 2024, UTJ Keith granted permission on the limited grounds that Judge arguably erred in failing to consider documents which were before her, relating to the court case in Pakistan, which was said to be relevant to the inaccuracy of family registration documents, and which explains the inconsistencies in those documents.

The hearing

8. The sponsor did not attend the hearing. I deferred the start of the hearing until 12 noon by which time the sponsor had not attended, nor had he provided any explanation for a failure to attend. Having had regard to the grounds, and the issues involved, I was satisfied that in all the circumstances, it would be in the interests of justice to proceed with the appeal. I did, however, raise with Mr Mullen that the bundle described by the judge at [4] did not appear to match that on file. I heard brief submissions from Mr Mullen who submitted that there was no material error. I reserved my determination.
9. The judge refers to there being a bundle of 49 pages in her determination. That matches the length of the appeal notice and the accompanying documents.
10. Having obtained a copy of the filing history in the three appeals in the First-tier Tribunal, it appears that a bundle was filed on 6 April 2024 which is 104 pages long. 6 April 2023 is outside the 42-day time limit specified

in the notice of 13 February 2023 by which any material should have been served. There is a note that this non-compliance was noted and a direction issued, but I have not got a copy of that, or the subsequent email of 30 April 2023 which purported to attach another bundle.

11. It is the longer 104-page bundle which contains the documents referred to by UTJ Keith, and I am satisfied that this is the bundle served on 6 April 2023.
12. It follows that, either the judge was not made aware of that bundle; or, she was aware of it but ignored it and excluded it from her consideration as it was out of time, without explaining why. I find it wholly improbable that an experienced judge would have done so. It is far more likely that, owing to an administrative error of which she was unaware, the bundle containing the relevant information was not given to her, and she proceeded to determine the appeal without it.
13. I am in the circumstances, satisfied that a procedural error occurred in this case, through no fault of the judge, and which resulted in relevant material not being considered, thus giving rise to an error of law, not because of any error by the judge, but due to a procedural error. This was a matter entirely outside the judge's knowledge.
14. Nonetheless, the decisions did involve the making of an error of law and I set it aside. As the error resulted in there being an unfair determination, albeit not due to an error by the judge, the appeals must be remitted to the First-tier Tribunal.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I direct that the appeal be remitted to the First-tier Tribunal sitting in Glasgow for a fresh hearing on all issues, not to be heard by FtT Judge G A Black
3. An Urdu interpreter will be required.

Signed
Jeremy K H Rintoul
Judge of the Upper Tribunal

Date: 27 August 2024