



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/14428/2013
IA/14427/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 17 March 2014

Determination Promulgated
On 12 May 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR
UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MUHAMMAD USMAN KHAN
TAHREEMA KHAN

Respondents

Representation:

For the Appellant: Mr M Diwynch, Senior Home Office Presenting Officer
For the Respondents: Mr T Hussain, instructed by Morgan Mark Solicitors

DETERMINATION AND REASONS

1. The respondents, who were born respectively on 28 March 1981 and 16 October 1988, are citizens of Pakistan. I shall hereafter refer to the respondents as “the appellants” and to the Secretary of State as the respondent (as they were before the First-tier Tribunal).

2. The appellants have made applications for leave to remain in the United Kingdom as Tier 1 (General) Migrants. On 22 April 2013, their applications were refused. They appealed to the First-tier Tribunal (Judge Buckwell) which, in a determination promulgated on 20 November 2013, allowed the appeal both on human rights (Article 8 ECHR) grounds and under the Immigration Rules. The Secretary of State appealed to the Upper Tribunal and was granted permission on 6 December 2013. The appellants had been refused leave to remain on the basis that they had failed to submit certain documents to the Secretary of State in compliance with the Immigration Rules. Whilst the judge relied upon *Khatel* [2013] UKUT 44 (IAC) he recorded at [24] that:

in relation to Immigration Rule grounds, I am satisfied that the documents stated to have been submitted by the first appellant were submitted and it is clear they should have been considered and taken into account by the respondent before a decision was made. That did not happen. What is additionally relevant here is that Mr Van Heck [Home Office Presenting Officer], in his submission, accepted that the documents provided appeared to be compliant with the requirements.

3. It is clear that the Tribunal should now follow the judgment of the Court of Appeal in *Raju* [2013] EWCA Civ 754. The guidance as to the application of the principles of *Raju* were given by the Upper Tribunal in *Nasim & Others (Raju: reasons not to follow?)* [2013] UKUT 610 (IAC). Whilst the concept of a “continuing application” was disapproved by the Court of Appeal in *Raju* the Upper Tribunal observed that:

(4) As held in Khatel and others (s85A; effect of continuing application) [2013] UKUT 44 (IAC), section 85A of the Nationality, Immigration and Asylum Act 2002 precludes a tribunal, in a points-based appeal, from considering evidence as to compliance with points-based Rules, where that evidence was not before the Secretary of State when she took her decision; but the section does not prevent a tribunal from considering evidence that was before the Secretary of State when she took the decision, whether or not that evidence reached her only after the date of application for the purposes of paragraph 34F of the Immigration Rules.

4. It is clear from the determination of the First-tier Tribunal (and it was accepted by Mr Diwynch, for the Secretary of State) that the circumstances in the present appeals fall firmly into the category identified at headnote (4) of *Nasim* which we have quoted above. Accordingly, Mr Diwynch did not seek to persuade us that the First-tier Tribunal had erred by allowing the appeal under the Immigration Rules. We find that he was right to do so.

Decision

5. This appeal is dismissed.

Signed

Date 10 April 2014

Upper Tribunal Judge Clive Lane