



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/32740/2013

IA/32754/2013

IA/32764/2013

THE IMMIGRATION ACTS

Heard at Field House

Determination

On 18th July 2014

Promulgated

On 8th September 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MR KHURRAM MAHMOOD CHAUDHRY
MRS NOOR ULAIN KHURRAN
MISS ALEEZA MAHMOOD**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: S Ahmad (Khans Solicitors)

For the Respondent: Mr C Avery (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Respondent with regard to a determination of the First-tier Tribunal (Judge Holmes) promulgated on 14th May 2014.

2. The Appellants had sought leave to remain in the UK as a Tier 1 (General) Migrant and his dependents. The application was refused and the Appellants appealed.
3. The matter came before Judge Holmes on the papers on 12th May. In his determination he noted that the Respondent had failed to provide her bundle of documents despite directions to do so.
4. The Judge, referring to Cvetkovs (visa - no file produced - directions) Latvia [2011] UKUT 00212 (IAC), allowed the appeal without any consideration of the substantive issues.
5. Cvetkovs provides, as set out in the head note thereto:-

“ Where a visit visa application is refused because the Visa Officer is not satisfied of the appellant’s intentions as a result of only limited documents being produced and translated; and the respondent breaches Procedure Rules by failing to send documentation to the Tribunal, directions can be given indicating that unless the respondent complies with the rules it may be that the Tribunal will assume that the appeal is unopposed”.

6. This case was not a visit appeal and also there had been no direction to the effect that if the Secretary of State did not produce a bundle it would be assumed she did not defend the appeal.
7. Both representatives before me agreed that the Judge had made a material error of law and should have determined the substantive appeal.
8. As it cannot be said that this case was properly dealt with by the First-tier Tribunal it was agreed that the appropriate course is to remit it for rehearing before that Tribunal.
10. The appeal to the Upper Tribunal is allowed and the appeal remitted to the First-tier Tribunal to be heard afresh at an oral hearing before any Judge other than Judges Fisher or Holmes.

Signed

Date 18th July 2014

Upper Tribunal Judge Martin