



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

Appeal Numbers: OA/03409/2013
OA/03411/2013
OA/03413/2013

THE IMMIGRATION ACTS

Heard at Sheldon Court Birmingham

On 23rd June 2014

**Determination
Promulgated**

On 15th July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**J B (FIRST APPELLANT)
R R (SECOND APPELLANT)
A R (THIRD APPELLANT)
(ANONYMITY ORDER MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellants: Mrs S Rupra of Hasan Solicitors

For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction and Background

1. The Appellants appeal against a determination of Judge of the First-tier Tribunal Graham promulgated on 21st February 2014.
2. The Appellants are female nationals of Pakistan, born 1st January 1978, 20th September 2002, and 9th February 2001 respectively. The first Appellant is the mother of the second and third Appellants.
3. The Appellants applied for entry clearance to join the Sponsor, MR, who is a British citizen. The Sponsor is the husband of the first Appellant, and the father of the second and third Appellants.
4. The applications were refused on 21st November 2012. The Respondent was not satisfied that adequate maintenance and accommodation would be available for the Appellants, and was not satisfied that the first Appellant satisfied the English language requirement set out in paragraph 281 of the Immigration Rules. The Respondent was not satisfied that the second and third Appellants were the Sponsor's daughters.
5. The Appellants appealed against refusal of entry clearance, and their appeals were heard together by Judge Graham (the judge) on 4th February 2014. The judge was satisfied that the second and third Appellants are the children of the Sponsor, and was also satisfied that adequate maintenance and accommodation would be available for the Appellants.
6. The judge was not satisfied that the first Appellant satisfied the English language requirement set out in paragraph 281. The judge accepted that the first Appellant had an English language test certificate that showed that the first Appellant met or exceeded level A1 of the Common European Framework of Reference (CEFR) which pre-dated the date of refusal of entry clearance which was 21st November 2012. However the certificate had not been submitted to the Respondent, and the judge therefore found that the Respondent did not have confirmation that the first Appellant had satisfied the English language requirement, which meant that the Respondent's decision to refuse entry clearance on that ground was in accordance with the law. The judge dismissed the first Appellant's appeal on that basis, and because the first Appellant's appeal was dismissed, the appeals of the second and third Appellants were also dismissed. The Appellants applied for permission to appeal to the Upper Tribunal and the grounds are summarised in the grant of permission of Judge of the First-tier Tribunal Easterman which is set out below;

- "1. The applicants, a mother and her two daughters, seek permission to appeal, the decisions of Judge of the First-tier Tribunal Graham, sitting at Birmingham, dismissing their appeals against the decisions of the Entry Clearance Officer (ECO), refusing their applications for settlement with MR, the first applicant's husband and father to the second and third.

2. The grounds seek to argue that the Judge of the First-tier Tribunal made an error of law when failing to take into account an English language test certificate, issued prior to the date of decision, which was not sent to the ECO, but was sent subsequently to Entry Clearance Manager but was not considered further due 'to lack of staff'. The argument simply put is that the certificate pertains to the date of the decision and at that time the first applicant had the required qualification and certificate.
3. The Judge of the First-tier Tribunal found in the applicants' favour on a number of points and the appeal failed solely on the above issue. The judge was not impressed with the reasons given for not getting the certificate to the ECO but does not appear to have dealt with the suggestion that she was bound to consider it, and that with it the applicants met the Rule at the date of decision. This was not a points-based decision and there was no bar on considering evidence that had not been before the Secretary of State. The Rule from 6th April 2012 was as follows:
 - (ii) *the applicant provides an original English language test certificate in speaking and listening from an English language test provider approved by the Secretary of State for these purposes, which clearly shows the applicant's name and the qualification obtained (which must meet or exceed level A1 of the Common European Framework of Reference):*

It is in my view an arguable error of law for the judge not to have considered it, notwithstanding that the certificate was not before the ECO, as it was in existence from 13th August 2012 and the decision was not made until November 2012."

7. Following the grant of permission the Respondent lodged a response pursuant to Rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms;

"The Respondent does not oppose the Appellants' application for permission to appeal as it appears that the judge should have considered the English language certificate, applying Section 85A(2). Had he done so, it is clear that he would have allowed the appeals before him."

8. Following the grant of permission to appeal, the Tribunal issued directions that there should be an oral hearing before the Upper Tribunal to ascertain whether the First-tier Tribunal had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

9. Mr Smart conceded that the judge had materially erred in law. The original English language test certificate was produced. Mr Smart was satisfied that the appeals should be allowed.

My Conclusions and Reasons

10. The decision of the First-tier Tribunal is set aside. The judge erred materially in not considering the English language certificate which proved that the first Appellant had achieved the required standard. This

certificate had been obtained prior to the Respondent's refusal and therefore was admissible in evidence.

11. As conceded on behalf of the Respondent, the first Appellant had achieved the required standard in English, and that was the only issue which caused the appeals to be dismissed. I therefore re-make the decisions and the appeals are allowed.

Decision

The determination of the First-tier Tribunal contained an error of law and was set aside.

I substitute a fresh decision.

The appeals are allowed under the Immigration Rules.

Anonymity

The First-tier Tribunal made an anonymity direction. I make an anonymity order pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008, because the second and third Appellants are minors.

Signed

Date 4th July 2014

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT **FEE AWARD**

Because the appeals are allowed I have considered whether to make a fee award. It was accepted by the Sponsor that the English language certificate was not submitted to the Respondent by the time the decisions to refuse entry clearance were made. I therefore do not find it appropriate to make a fee award as there was insufficient evidence to prove that the Appellants satisfied the requirements of the Immigration Rules at the date of the Respondent's decision.

Signed

Date 4th July 2014

Deputy Upper Tribunal Judge M A Hall