



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: OA/13927/2013  
OA/13929/2013  
OA/13931/2013  
OA/13934/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 4<sup>th</sup> June 2014

Determination Promulgated  
On 11<sup>th</sup> July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

ZJ	<u>First Appellant</u>
W	<u>Second Appellant</u>
B	<u>Third Appellant</u>
R	<u>Fourth Appellant</u>

(ANONYMITY DIRECTION MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Ms S Mardner of Counsel instructed by Kothala & Co, Solicitors  
For the Respondent: Ms S Vidvadhanan, Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The First-tier Tribunal made an anonymity order in respect of all appellants which I continue before the Upper Tribunal pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

2. Before the Upper Tribunal the Secretary of State becomes the appellant. However, for the sake of consistency and the avoidance of confusion, I shall continue to refer to the parties as they were before the First-tier Tribunal.
3. On 11<sup>th</sup> April 2014 Judge of the First-tier Tribunal Ransley gave permission to the appellants to appeal against the determination of Judge of the First-tier Tribunal Samimi who allowed the appeals against the decisions of the respondent to refuse entry clearance as an adult dependent relative in respect of the first appellant in accordance with the provisions of Appendix FM of the Immigration Rules and in respect of the second, third and fourth appellants as her children in accordance with the provisions of paragraph 297 of the Rules.
4. Judge Ransley granted permission because it was considered arguable that the judge failed to give adequate reasons for finding the sponsor credible and accepting all his oral evidence in relation to the claim that the sponsor was the only family member who could provide help to the first appellant when there were other family members in Pakistan providing care. It was also considered that other findings relating to the sponsor's financial position were tainted by conclusions about the latter issue. Judge Ransley also noted that the respondent's second ground of application alleged an error of law because of a failure to give reasons for accepting that the fourth named appellant died on 2<sup>nd</sup> February 2013.
5. At the hearing before me Ms Vidvadhan confirmed that the respondent relied upon the grounds. In addition, in relation to financial issues, she drew attention to paragraph 7 of the determination where the judge evidently considered financial information covering a period after the date of decision on 5<sup>th</sup> June 2013.
6. Ms Mardner stated that the appellant agreed the errors of law set out in the grounds including the additional matter referred to by Ms Vidvadhan in relation to financial issues. She also expressed the view that, as fresh findings of fact would have to be made on all issues, it would be appropriate for the matter to be fully re-heard in the First-tier Tribunal at Hatton Cross. Ms Vidvadhan expressed agreement with that proposal and also pointed out that the respondent had accepted (paragraph 5 of the grounds of application) that the fourth appellant (R), had sadly died although she argued that it was still wrong for the judge to have accepted that state of affairs without having any supporting evidence.
7. After considering the matter for a few moments I announced that I was satisfied that the determination showed errors on points of law such that it should be re-made. My own reasons for that conclusion follow.
8. Paragraph E-ECDR.2.4 of Appendix FM requires that an applicant in the first appellant's category must, as a result of age, illness or disability require long-term personal care to perform everyday tasks. Further and alternatively, paragraph E-ECDR.2.5 requires an applicant to show they are unable, even with practical and financial help from the sponsor, to obtain a required level of care in the country where they are living because such care is not available or there is no one in that country who can reasonably provide it or it is not affordable. Neither of these requirements has been fully considered in the determination even though there is reference to ECDR.2.5 in the refusal notice for the first appellant. At paragraph 8 of the determination the judge gives no reasons for accepting the sponsor's evidence as

credible nor is there consideration of any other support which might be available in Pakistan to the first appellant. Further, in paragraph 7 of the determination, the judge considers evidence about financial matters which postdates the decision but gives no reasons for doing so. Nor is there any consideration of the type of information which ought to have been provided to comply with the provisions of Appendix FM-SE of the Immigration Rules.

9. All of the above defects amount to material errors on points of law. The appeal will have to be heard on all issues again with fresh findings of fact and so it is appropriate for remittal to the First-tier Tribunal having regard to paragraph 7.2 (b) of the Senior President's Practice Statement of 25 September 2012.

## **DIRECTIONS**

1. The appeals are to be heard again on all issues although taking account of the respondent's acceptance that the fourth appellant has died.
2. Representatives should indicate to the First Tier Tribunal forthwith whether or not any application will be made having regard to the provisions of Rule 17(2A) of the Asylum and Immigration Tribunal (Procedure) Rules for the appeal on behalf of the deceased fourth appellant to be continued by a personal representative. The Tribunal will otherwise treat that appeal as withdrawn.
3. The matter is remitted to the First-tier Tribunal at Hatton Cross where it is to be heard on 7<sup>th</sup> November 2014. The appeal should not be heard before Judge of the First-tier Tribunal Samimi.
4. No interpreter will be required. The time estimate is 2 hours.
5. The appellants' representatives should provide a consolidated bundle of all documents to be produced at the re-hearing. Such bundle should be filed with the Tribunal and served on the respondent at least five days before the date of hearing.

Signed

Date

Deputy Upper Tribunal Judge Garratt