



IAC-FH-CK-V1

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

Appeal Number: OA/20204/2013  
OA/20224/2013  
OA/20227/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 August 2015**

**Decision & Reasons Promulgated  
On 7 September 2015**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**MD RAJU AHMED  
FARZANA BEGUM  
MUHAMMAED RAYHAN AHMED  
(NO ANONYMITY DIRECTIONS MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER, DHAKA**

Respondent

**Representation:**

For the Appellant: Mr S. Karim, Counsel instructed by Taj Solicitors  
For the Respondent: Ms. A. Fijiwala, Home Office Presenting Officer

**DECISION AND REASONS**

1. The 1<sup>st</sup> Appellant, who was born on 24<sup>th</sup> December 1996, is a national of Bangladesh. The 2<sup>nd</sup> Appellant, who was also born on 24<sup>th</sup> December 1996 and is a national of Bangladesh. The 3<sup>rd</sup> Appellant, who was born on 20<sup>th</sup> May 1998, is also a national of Bangladesh.

2. Their mother, Afia Khatun, who was born on 10<sup>th</sup> June 1963, was granted a certificate of entitlement to a right of abode on 2<sup>nd</sup> August 2012 and entered the United Kingdom on 9<sup>th</sup> September 2012. The Appellants remained in Bangladesh in the care of their father, Sundor Ali.
3. Sundor Ali died on 20<sup>th</sup> April 2013 and on 16<sup>th</sup> July 2013 the Appellants applied for entry clearance to join their mother in the United Kingdom for the purpose of settlement. Their applications were refused on 23<sup>rd</sup> October 2013. The Entry Clearance Officer asserted that the death certificate, which they relied upon, was not genuine and that their mother did not have sole responsibility for them for the purposes of paragraph 297 of the Immigration Rules. He also asserted that the decision to refuse them entry clearance did not give rise to a breach of Article 8 of the European Convention on Human Rights.
4. They appealed and their appeals were heard by First-tier Tribunal Judge Whalan on 6<sup>th</sup> November 2014. He dismissed their appeals and First-tier Tribunal Judge Fisher refused them permission to appeal on 2<sup>nd</sup> February 2015. But Upper Tribunal Judge Goldstein granted them permission to appeal on 22<sup>nd</sup> May 2015 on the basis that the First-tier Tribunal Judge may have made an error of law in his approach to paragraph 297(i) of the Immigration Rules in the light of *TD (Paragraph 297(i)(e): "sole responsibility") Yemen* [2006] UKAIT 00049.
5. In her Rule 24 response the Respondent asserted that the First-tier Tribunal Judge had directed himself appropriately and that the grounds amounted to a mere disagreement with the Judge's findings.

#### ERROR OF LAW HEARING

6. The Appellants' counsel had submitted a skeleton argument in preparation for the appeal hearing, which was dated 25<sup>th</sup> August 2015. He also sought to amend the Appellants' grounds on the basis that under paragraph 297(i)(d) of the Immigration Rules should have been applied. The Home Office Presenting Officer did not object to him doing so and, therefore, I found that it was fair and just to use my case management powers under Rule 5(3)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to permit the Appellants to amend their grounds of appeal.
7. This then became the ground of appeal on which the Appellants relied. It is clear from the wording of sub-paragraph 297(i) of the Immigration Rules that there a number of alternative basis upon which the children of a parent settled in the United Kingdom may seek entry clearance for the purpose of settlement. As the Entry Clearance Officer did not accept that the Appellants had provided a genuine death certificate for their father, he had considered their case under sub-paragraphs 297(i)(e) and (f) of the Immigration Rules. However, at paragraph 24 of this decision and reasons the First-tier Tribunal Judge found that he was "satisfied on a balance of probabilities that the Appellants are the children of Mrs Afia Khatun and

Mr. Sundor Ali. Mr. Ali died suddenly in 2013, about eight months after Mrs Khatun left Bangladesh and settled in the United Kingdom. The written, oral and documentary evidenced in this regard his not challenged by Ms Lecointe” [the Home Officer Presenting Officer].

8. Therefore, at that point the First-tier Tribunal Judge should have gone on to consider the Appellants’ appeals under sub-paragraph 297(i)(d) which applies when one parent is present and settled in the United Kingdom and the other parent is dead”. The fact that he did not do so is a material error of law.
9. However, this error of law did not vitiate other findings of fact made by the First-tier Tribunal Judge in relation to sub-paragraphs 297(ii) to (vii) of the Immigration Rules. In particular, he found in paragraph 25 of his decision and reasons that the Appellants would be accommodated adequately without recourse to public funds and that they would also be adequately maintained without recourse to public funds. The Respondent had accepted that they met the other requirements of the Rule and did not seek to challenge the First-tier Tribunal Judge’s findings on accommodation and maintenance. Therefore, I do not set these factual findings aside but retain them as the factual basis upon which to remake the decision.
10. In the light of the factual findings made by the First-tier Tribunal Judge and now that it is accepted that the Appellants do not have to show that their mother had sole responsibility for them, I find that the Appellants are entitled to entry clearance as their mother is settled here, their father is dead and they meet the other requirements of paragraph 297 of the Immigration Rules.

### **Notice of Decision**

1. The First-tier Tribunal Judge’s decision and reasons did include material errors of law and I set aside his decision.
2. However, these errors did not undermine the positive credibility findings made by the First-tier Tribunal Judge in his decision and reasons and I do not set these aside.
3. I remake the decision under Section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007 and allow the Appellants’ appeals against the decision by the Respondent to refuse to grant them entry clearance to join their mother in the United Kingdom for the purpose of settlement.



Signed

Date 27<sup>th</sup> August 2015

Upper Tribunal Judge Finch