



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/03641/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 24 February 2016**

**Decision & Reasons
Promulgated
On 30 March 2016**

Before

**THE HONOURABLE LORD BURNS
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
DEPUTY UPPER TRIBUNAL JUDGE MAILER**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

H K

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr P Duffy, Home Office Presenting Officer

For the Respondent: Mr D Balroop, Malik Law Chambers

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal promulgated 28 August 2015 which allowed the appeals of the appellant, his wife and his daughter against decisions of the Secretary of State to remove them from the United Kingdom.
2. The Secretary of State contended that the First-tier Tribunal had erred in law in a material respect by wrongly finding that the daughter's application under paragraph 276ADE of the Immigration Rules should be allowed. The judge had mistakenly found that the daughter complied with

that Rule on the basis that she had lived continuously in the United Kingdom for over seven years and it was not reasonable to expect her to leave the United Kingdom. That was a finding that was factually incorrect since the child had arrived with her mother in 2005 but had returned to India with her mother in 2009. She had then returned to the United Kingdom in October 2010. Accordingly, the daughter could not meet the requirements of paragraph 276ADE and the First-tier Tribunal erred in law in allowing her appeal on that basis. Further, in the context of the appeals in relation to the parents, the erroneous finding that the daughter complied with Rule 276ADE was carried forward into the proportionality assessment which was carried out by the judge in terms of the claim under Article 8 of the European Convention of Human Rights. Accordingly, the Secretary of State argued that the decision of the First-tier Tribunal in respect of the appellants was also fundamentally flawed.

3. Mr Balroop on behalf of the appellants submitted that we should distinguish between the appellants in this case. Independent assessments had been carried out under Article 8 which were not vitiated by the accepted material error of law in respect of the daughter.
4. Having considered the terms of the First-tier Tribunal's decision, and in the light of the accepted and correct concession that there was a material error of law in respect of the daughter's appeal by the First-tier Tribunal, we have concluded that that material error was carried forward into the Article 8 assessment carried out in respect of the parents. This is clearly seen at paragraph 79 of the determination in which the judge considers firstly that it is in the best interests of the daughter that she should remain in the UK and that the parents should also remain there as her parents. In our view, had the First-tier Tribunal appreciated that the daughter did not fulfil the requirements of Rule 276ADE, it is unlikely that it would have performed the proportionality assessment as was in fact done.
5. In the circumstances we find a material error of law in the determination of the First-tier Tribunal which has affected the decisions in each of these cases and we will remit each case back to the First-tier Tribunal for a fresh determination before a different judge.

Signed

Date

Lord Burns
Sitting as a Judge of the Upper Tribunal

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Lord Burns
Sitting as a Judge of the Upper Tribunal