



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

Appeal Number: IA/20162/2015
IA/20164/2015
IA/20168/2015
IA/20170/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 13 April 2016**

**Decision Promulgated
On 14 April 2016**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

SI, NI, JI and HI

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

(ANONYMITY DIRECTION MADE)

Representation:

For the Appellant: Mr M. Iqbal, Counsel instructed by West Ham Solicitors
For the Respondent: Mr T. Wilding, Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves minor children. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. The appellants entered the UK on 22 October 2011 with EEA family permits, which were valid until 27 March 2012. At the time their mother was the family member (spouse) of an EEA national. She was issued with a residence card in 2010, which was valid until 01 December 2015.
2. The appellants sought a residence card as family members on several occasions. An initial application made on 13 January 2012 was rejected. The second application made on 16 April 2012 was refused on 05 July 2012 and appeal rights were exhausted on 28 November 2012. On 02 February 2013 the appellants made a further application for a residence card, which was refused on 27 August 2013. The First-tier Tribunal allowed the appeal in a decision promulgated on 10 October 2014 but the Secretary of State appealed against the First-tier Tribunal decision. On 15 January 2015 the Upper Tribunal found that the First-tier Tribunal decision involved the making of an error of law. Unfortunately, the copy of the Upper Tribunal's subsequent reasons for remaking the decision promulgated on 10 April 2015 is incomplete so I do not know the exact outcome of the appeal.
3. It is unclear what happened to the appeal thereafter but it seems that the Secretary of State was required to reconsider the decision with reference to her duties under section 55 of the Borders, Citizenship and Immigration Act 2009. A further decision was made on 13 May 2015 refusing to grant residence cards "with reference to section 55". The decision seems to have been treated as an appealable decision and a further appeal was lodged indicating that the appellants wanted the appeal to be decided on the papers.
4. The appellants' representatives state that they made two written requests to the First-tier Tribunal on 24 June 2015 and 29 July 2015 for the appeal to be listed for oral hearing. The appellants produce copies of those letters and certificates of posting. It is not known whether that correspondence was lost in the post or there was an error on the part of the First-tier Tribunal but the case was not listed for hearing as requested. On 30 September 2015 First-tier Tribunal Judge Kanagaratnam dismissed the appeals on the papers.
5. The appellants appealed on the ground that the decision was procedurally unfair because the appeal was determined without an oral hearing.
6. By the time the appeal was listed before the Upper Tribunal the family circumstances had changed. There is evidence to show that the appellants' mother has been issued with a residence card recognising her right of permanent residence in the UK. Mr Wilding sensibly accepted that there was an error of law on procedural grounds, and in light of the further developments, suggested that it was no longer necessary for the appeal to

be relisted for hearing. He accepted that they are now able to show that they have a retained right of residence by virtue of regulation 10(6)(b) of The Immigration (European Economic Area) Regulations 2006 and suggested that the decision should be remade and the appeal allowed. The parties were in agreement.

7. For the reasons outlined above I am satisfied that the First-tier Tribunal decision involved the making of an error on a point of law in relation to a matter of procedural fairness. I set aside the decision and allow the appeal based on the concession made by the respondent that the appellants now meet the requirements of the EEA Regulations 2006.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

I remake the decision and ALLOW the appeal under the EEA Regulations 2006

Signed  Date 13 April 2016

Upper Tribunal Judge Canavan