



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

Appeal Number: OA/10567/2014

THE IMMIGRATION ACTS

Heard at Birmingham

**Decision and Reasons
Promulgated**

On 2 December 2015

On 14 January 2016

Before

**UPPER TRIBUNAL JUDGE PITT
DEPUTY UPPER TRIBUNAL JUDGE O'RYAN**

Between

ENTRY CLEARANCE OFFICER - NEW DELHI

Appellants

and

AVTAR KUMAR

Respondent

Representation:

For the Appellant: Mr Mills, Senior Home Office Presenting Officer

For the Respondent: Mr Ahsan of Raghiv Ahsan Solicitors

DECISION AND REASONS

1. This is an appeal against the determination promulgated on 4 June 2015 of First-tier Tribunal Judge Butler which allowed the appeal against the respondent's decision dated 13 August 2014 to refuse to issue a family permit as the dependent adult son of an EEA national.
2. The application was made under Regulation 7 of the Immigration (European Economic Area) Regulations 2006 (the Regulations). The

appellant had to meet the requirements of Regulation 7(1)(b) which states:

“7. (1) Subject to paragraph (2), for the purposes of these Regulations the following persons shall be treated as the family members of another person—

...

(b) direct descendants of his, his spouse or his civil partner who are—

(i) under 21; or

(ii) dependants of his, his spouse or his civil partner

...”

3. The application was refused as the ECO did not accept that the appellant had shown that he was related as claimed to the EEA national. It was also refused as even if the appellant was related as claimed as he was over 21 he had to show that he was dependent on the EEA national but had not done so.
4. The appellant challenged the finding that he was not related to the EEA national and maintained that he was a dependent of the EEA national.
5. In the Entry Clearance Officer Review dated 16 December 2014, it was conceded that the appellant was related as claimed. The respondent remained of the view that the appellant had not shown that he was dependent on his father.
6. The appeal came before Judge Butler on Monday 11 May 2015. It was common ground before us that late on Friday 8 May 2015 the respondent had faxed the appellant’s legal advisers to give notice that the decision to which the appeal related had been withdrawn “with a view to grant leave”. The Tribunal file shows that a fax in these terms was received by the Tribunal at 16:51 on Friday 8 May 2015, date stamped as received at the Birmingham Hearing Centre on 11 May 2015.
7. There was no appearance for the appellant before Judge Butler on Monday 11 May 2015. Mr P Lawson appeared for the respondent. It was not entirely clear to us if Judge Butler had seen the faxed notice of withdrawal but he certainly knew that it was the respondent’s position that the decision was withdrawn. He records this at [2]:

“Prior to the hearing the respondent purported to withdraw the decision with a view to granting leave. No consent of the appellant to this course of action was received so the hearing proceeded.”
8. Judge Butler then allowed the appeal, finding that the Regulations were met but made no reference to the outstanding dispute concerning dependency.
9. The issue before us arises from his conclusion in the second sentence of [2] which appears to be to the effect that as the appellant had not consented to the withdrawal it could not be effective. That is wrong in law.

Rule 17 of The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 states:

17. — (1) A party may give notice of the withdrawal of their appeal

—

(a) by providing to the Tribunal a written notice of withdrawal of the appeal; or

(b) orally at a hearing,

and in either case must specify the reasons for that withdrawal.

(2) The Tribunal must (save for good reason) treat an appeal as withdrawn if the respondent notifies the Tribunal and each other party that the decision (or, where the appeal relates to more than one decision, all of the decisions) to which the appeal relates has been withdrawn and specifies the reasons for the withdrawal of the decision.

(3) The Tribunal must notify each party in writing that a withdrawal has taken effect under this rule and that the proceedings are no longer regarded by the Tribunal as pending.

10. It was common ground that the respondent here complied with Rule 17(2) by providing notice of withdrawal of the decision in writing to the Tribunal and the appellant. There is no requirement for consent from the appellant. The First-tier Tribunal was obliged to accept that the appeal was withdrawn unless there was good reason. Nothing before us suggested that any reason at all existed for declining to accept that the appeal was withdrawn.
11. Although the parties were in agreement that Judge Butler erred in law in proceeding with the appeal (and, for what it is worth, failing to deal with the outstanding dependency point) such that the decision had to be set aside, they differed as to the course of action we should then take. The appellant requested that the appeal be allowed outright, the respondent's intention to grant leave showing that it was accepted that the Regulations were met. The respondent continued to maintain that notice had been given of the withdrawal of the notice and that the appeal should be treated as withdrawn as a result.
12. Albeit we act under The Tribunal Procedure (Upper Tribunal) Rules 2008 and not the First-tier Tribunal Procedure Rules, and although we did not hear detailed submissions on the point, we accepted for the purposes of this appeal that where the respondent has withdrawn the decision giving rise to the appeal, there can be no valid appeal before us.
13. It now remains for the respondent to make a new decision on the appellant's outstanding application for a family permit, an indication having been given as long ago as June 2015 that this would be granted. There was discussion before us as to how long it might take for a family

permit to be issued but given that the application was made over a year ago we are confident that this is a matter the ECO will wish to expedite.

Decision

16. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside.
17. The respondent has withdrawn the decision. There is no appeal before us.

Signed: 
Upper Tribunal Judge Pitt

Date: 3 December 2015