



(Immigration and Asylum Chamber)

Upper Tribunal  
Appeal Numbers: HU/03368/2015  
HU/03371/2015

THE IMMIGRATION ACTS

Heard at: Field House  
On: 2 October 2017

Decision and Reasons Promulgated  
On: 19 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

ENTRY CLEARANCE OFFICER: NEW DELHI

Appellant

and

MISS KAUSHILA RAI  
MISS SUMITRA RAI  
(NO ANONYMITY DIRECTION MADE)

Respondents

Representation

For the Appellant: Ms J Isherwood, Senior Home Office Presenting Officer  
For the Respondent: Ms N Nnamani, counsel, instructed by Howe & Co Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as “the ECO” and to the respondents as “the claimants”.
2. The ECO appeals with permission against the decision of First-tier Tribunal Judge Veloso promulgated on 18 January 2017.
3. In her decision with regard to Article 8 of the Human Rights Convention, Judge Veloso stated that the claimants failed to establish family life with their sponsor and their mother. She also found the respondent's decision to be proportionate. There was no suggestion that either claimant had any physical or mental health related

problems or are in any way unable to manage on their own with continued financial support from the sponsor and their brother.

4. Considering all the evidence in the round, she found that there are factors in the claimants' case which outweigh the consideration of historical injustice.
5. The claimants' appeals consequently failed under s.6 of the Human Rights Act 1998, with regard to Article 8 ECHR [41].
6. Notwithstanding those clear findings she stated under the notice of decision at the end of her decision that "the appeal under the Human Rights Act 1998 is allowed." She also stated that as she has allowed the appeal she decided not to make a fee award as there were documents put before the Entry Clearance Officer at the time of the decision. That was also clearly inconsistent with her prior finding that their appeals failed with regard to Article 8.
7. On 26 July 2017, First-tier Tribunal Judge I D Boyes granted the ECO permission to appeal. In paragraph 1 of the grant of permission to appeal, Judge Boyes incorrectly stated at paragraph 1 that Judge Veloso dismissed the appeal against the secretary of state's (sic) decision.
8. However, the Judge had regard to the grounds which asserted that Judge Veloso had erred by mistakenly indicating that the appeal is allowed whereas in the body of her judgment had made it clear that the appeal was not in fact allowed.
9. Ms Isherwood on behalf of the ECO submitted that the conclusion in the notice of decision that the appeal was allowed is contrary to all the previous findings made by the Tribunal and in particular at paragraphs 40 and 41, which found explicitly that the appeal fails. The decision thus contradicted all the previous findings. The ECO does not dispute the earlier findings.
10. It was contended that the problem could have been resolved under an application under the "slip rule" but this power is no longer available. In the alternative, the conclusion reached is irrational as it is quite clearly the opposite of all the substantive findings until then.
11. Ms Nnamani submitted that the sponsor and his wife had been sending the claimants some money. They also received money from their brother. They had shown something more than normal emotional ties between parents and adult children.
12. The Article 8 decision is not sustainable. She submits that the appeal should be remitted and re-made.

### **Assessment**

13. Judge Veloso clearly intended to dismiss the claimants' appeals under Article 8. She had expressly stated that in her assessment of the Article 8 claims. She found that the claimants failed to establish family life with the sponsor and their mother [36].
14. She found that the entry clearance officer's decision was accordingly proportionate [38].

15. The claimants had never sought to cross appeal Judge Veloso's findings. No application was ever made to file an application for permission to appeal either out of time, or at all.
16. Judge Veloso has given sustainable reasons for her findings under the relevant policy which she had considered. She properly directed herself in accordance with the authorities in respect of the weight to be given to the historical injustice [37]. In the event I am satisfied that she has given sustainable reasons for her findings under Article 8.
17. Nonetheless, the making of the decision by Judge Veloso involved the making of an error on a point of law, in that the notice of decision incorrectly records that the claimants' appeals were allowed. That needs to be altered to reflect her true decision.
18. I accordingly set aside the decision and re-make it, dismissing the claimants' appeals.

**Notice of Decision**

The appeal of the ECO is allowed.

The claimants' appeals are dismissed.

No anonymity directions are made.

Signed

Deputy Upper Tribunal Judge C R Mailer

Date 16 October 2017