Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/03387/2016
HU/03392/2016
HU/03393/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 February 2018	**On 26 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

MUDASSRA [D] (FIRST APPELLANT)
[F D] (SECOND APPELLANT)
[K D] (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellants: Mr P Richardson of Counsel, Nasim & Co Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellants in this case are all citizens of Pakistan. The first appellant was born on [ ] 1978 and the second and third appellants are her sons, born on [ ] 2006 and [ ] 2009 respectively. The first appellant is married

to the sponsor, Tariq [D], a British citizen and the father of the second and third appellants. The appellants' application for entry clearance was refused by the respondent in a decision dated 19 January 2016. The only ground for that refusal was the failure by the first appellant to disclose in her application that she had been refused a UK visa on 22 September 2006. In a decision promulgated on 19 June 2017, Judge of the First-tier Tribunal Henderson dismissed the appellants' appeal on human rights grounds.

2. The appellants appeal with permission on the basis that the sole issue which caused the judge to dismiss the appeal was her conclusion in relation to the issue of whether or not the first appellant had made false representations.

3. The appellant's application had been refused by the respondent under S-EC.2.2.(b.):

> "S-EC.1.1. The applicant will be refused entry clearance on grounds of suitability if any of the paragraphs S-EC.1.2 to 1.8 apply.
>
> ...
>
> S-EC.2.2. Whether or not to the applicant's knowledge –
>
> (a) false information, representations or documents have been submitted in relation to the application (including false information submitted to any person to obtain a document used in support of the application); or
>
> (b) there has been a failure to disclose material facts in relation to the application."

4. Before the First-tier Tribunal, reliance was placed on **AA (Nigeria) [2010] EWCA Civ 773** to support the contention that the respondent was required to prove dishonesty in such cases; at paragraph [6] of the decision and reasons the Tribunal accepted this was the case. There was no challenge to that finding.

5. The judge found, at [15], that there had been no dishonesty on the part of the first appellant in failing to disclose that she had been refused a visa in 2006, the judge accepting the evidence, including the oral evidence of the sponsor on this point. However, the Tribunal then went on to conclude that the refusal under S-EC.2.2.(b) was justified because no dishonesty was required.

6. However Mr Avery conceded that the Tribunal was wrong in that conclusion. He accepted that there were no grounds for arguing that there was any difference between the wording under the suitability grounds in Appendix FM and the general grounds of refusal as considered in the applicable case law.

7. **Ahmed (general grounds of refusal – material non disclosure) Pakistan [2011] UKUT 00351 (IAC)** provides as follows:

> *"In order to have made false representations or submitted false documents so as to attract a mandatory refusal under Part 9 of the Immigration Rules, an applicant must have deliberately practised 'Deception', as defined at para 6. Failing to disclose a material fact is also classed as 'Deception'. It follows that such failure also requires dishonesty on the part of the applicant, or by someone acting on his behalf."*

8. That being the case, it was evident that if the First-tier Tribunal had reached the correct conclusion, that S-EC.2.2(b) did not apply as there was no dishonesty, the appeal would have been allowed. There was no dispute to the findings of the First-tier Tribunal findings that the remaining requirements of the Immigration Rules were met in this case. Those findings are preserved.

9. I also take into consideration, that in considering Article 8 outside of the Immigration Rules and reaching the conclusion that there were no compelling circumstances which would require consideration of Article 8 outside of the Immigration Rules, the First-tier Tribunal failed to give any consideration to the fact that the first appellant and sponsor have two further children who are British Citizens. In such circumstances, taking into consideration the best interests of all the children and where all of the requirements of the Immigration Rules are met, it is difficult to see how the respondent's refusal could be considered proportionate. In reaching such a decision regard must be had to the factors set out in Section 117 of the Nationality, Immigration and Asylum Act 2002. Maintenance of effective immigration control is in the public interest. However, it was not suggested that the appellants would be anything other than financially independent and the first appellant had provided evidence of compliance with the English language requirements of the Immigration Rules which was not disputed. There is therefore no weight to be given to the public interest in respect of these factors.

10. Taking this into account, together with the finding that the appellants meet all of the requirements of the Immigration Rules, the appeal under Article 8 must succeed. Mr Avery did not dispute that this was the case.

11. The decision of the First-tier Tribunal contains an error of law and the decision to dismiss the appeal is set aside. I re-make the decision allowing the appeals.

No anonymity direction was sought or is made.

Signed Date: 21 February 2018

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

No fee award application was sought or is made.

Signed Date: 21 February 2018

Deputy Upper Tribunal Judge Hutchinson