



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: OA/09493/2015  
OA/09403/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 8 June 2018

Decision & Reasons Promulgated  
On 14 June 2018

Before

DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL

Between

MASTER MD ALI HUSSAN (FIRST APPELLANT)  
MASTER ABDUL MOSSOBIR (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: None  
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Bangladesh. On 13 May 2015 the respondent refused their applications for a Certificate of Entitlement to the Right of Abode in the UK as children of the late Abdul Karim. They appealed against those decisions. In a decision sent on 12 December 2017 First-tier Tribunal (FtT) Judge L Mensah dismissed their appeals.

2. In the course of dismissing the first appellant's appeal, the judge declined to treat his appeal as withdrawn. From the judge's decision it is clear there were two requests: one, oral; the other written. The oral one is dealt with at paragraph 9 as follows:

"The representatives made oral submissions which I have again carefully considered. Mr Hasan was not instructed to make any submissions for the first appellant as he had been told by the sponsor the appeal had been withdrawn. I checked the file and there was no evidence of any withdrawal. I therefore informed the sponsor I would proceed to determine both appeals unless a formal withdrawal was made by the first appellant along with reasons why he wishes to withdraw. I also gave the sponsor an opportunity to give any evidence she wished in relation to the first appellant. I have again recorded that in my record of proceedings. In essence she confirmed the relationships for both appellant's (sic) were that of Step-brothers and that they shared the same father but had different mothers; albeit she had no DNA evidence for the first appellant as they for the Home Department thought they had withdrawn that appeal."

3. The written request is dealt with at paragraph 21:

**"NOTE: After preparing this decision but before promulgation I received a written request to withdraw the first appellant's appeal. Unfortunately, no reason was given for the withdrawal and in those circumstances my determination stands. [4.12.17 Judge Mensah".**

4. The appellants applied for permission to appeal. This was refused in relation to the second appellant but granted in relation to the first, the judge (Judge Birrell) stating that it was "arguable that she failed to take into account paragraph 17 of the 2014 Procedure Rules which allow such an application to be made orally".
5. On 22 May 2018 the appellants' representatives wrote saying they were unable to represent the appellants at the hearing "because the sponsor in this case instructed us to make a request that the appeal should be considered on the file".
6. Since the appeal remained listed for hearing before me, I decided to proceed to decide it in the absence of one of the parties. I heard very brief submissions from Mr Walker.
7. I see some force in Judge Birrell's observation when granting permission that the judge did not appear to understand that the Procedure Rules permit oral applications to withdraw. Although stating at the outset of paragraph 9 that she heard submissions on the matter, the judge proceeded on the basis that a request to withdraw had to be made in writing. However, the judge also relied on another reason for deciding not to treat the appeal as withdrawn, namely the failure of the appellants (or sponsor) to produce any reasons for the request. In that regard the judge was entirely right. The Tribunal Procedure Rules 2014 prevent a judge accepting an appeal as withdrawn unless reasons are given: Rule 17 provides:

“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

...”.

8. In the absence of any reasons being specified either orally at the hearing (paragraph 9) or in writing (paragraph 21) the judge was not entitled to treat withdrawal as having taken effect under Rule 17(3).
9. Accordingly the only remaining ground of appeal raised by the appellants against the decision of the judge must fail. The decision of the FtT judge has not been shown to contain legal error and must stand.
10. No anonymity direction is made.

Signed:

Date: 13 June 2018



Dr H H Storey  
Judge of the Upper Tribunal