



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

Appeal Number: HU/12139/2017
HU/12141/2017
HU/12143/2017
HU/12148/2017

THE IMMIGRATION ACTS

**Heard at North Shields
On 11 January 2019**

**Decision & Reasons
Promulgated
On 30 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPEYARD

Between

H B T (MRS)

First Named Appellant

and

H T (MR)

Second Named Appellant

and

M T (MISS)

Third Named Appellant

and

L T (MISS)

Fourth Named Appellant

(ANONYMITY DIRECTION MADE)

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Cleghorn, Counsel.

For the Respondent: Mr Diwnycz, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellants are citizens of Afghanistan. The first Appellant is the wife of Mr A S T and the other three Appellants are their children. All four Appellants entered the United Kingdom on 18 August 2014 as, respectively, the spouse and children of Mr A S T with leave to remain which was valid until 1 May 2017. On 13 March 2017 all four Appellants applied for leave to remain in the United Kingdom on the basis of their family life together and upon on private life grounds. Those applications were refused and the Appellants appealed. Following a hearing at North Shields, and in a decision promulgated on 13 April 2018, Judge of the First-tier Tribunal Duff dismissed their appeals.
2. The Appellants sought permission to appeal which was initially refused. However, a renewed application was subsequently granted by Deputy Upper Tribunal Judge Chapman. Her reasons for so granting were: -

“1. The Appellants seek permission to appeal, in time, against a decision of First-tier Tribunal Judge Duff who, in a decision and reasons promulgated on 13 April 2018, dismissed the Appellants’ appeal against a decision of the Respondent dated 3 October 2017 refusing their human rights claim

2. The grounds of appeal assert that the Judge erred at [12] in stating that there would be treatment for the first Appellant’s back pain and depression in Afghanistan, contrary to the evidence; in finding at [14] that the second Appellant could return alone and be able to integrate; at [19] in failing to take proper account of the youngest Appellants’ best interests in finding that they should remain with their family as a unit and in failing to find that the Appellants would face insurmountable obstacles and very significant difficulties reintegrating the family in Afghanistan.

3. It is arguable that in light of the UNHCR guidelines dated 30.8.18 and the background evidence which raises concerns as to the safety of Kabul, to which this family would return, that the Judge erred at [12] in failing to provide adequate reasons for finding that the hardship and difficulty that the first Appellant would experience would not amount to “very significant difficulties” within the meaning of EX2 of Appendix FM;

4. It is arguable the Judge erred at [14] in finding it “virtually unarguable” that there would be very significant obstacles to the second Appellant’s integration in Afghanistan for the reasons he provided.

5. It is further arguable that the Judge erred at [19] in failing to provide adequate reasons for finding that the best interests of the younger two Appellants would be met by returning to Afghanistan, bearing in mind the matters raised at [18] in respect of difficulties for girls in respect of education and employment and generally.

6. In light of the fact that the Respondent previously saw fit to grant the Appellants entry clearance to join the Sponsor in the United Kingdom and the only reason for refusal of the applications for further leave to remain was that the Sponsor's income as a taxi driver fell below the minimum financial requirement, it is arguable that the Judge's findings on proportionality at [20]-[21] are inadequately reasoned and fail to take account of the country situation in Afghanistan.

7. Permission to appeal is granted."

3. Thus, the appeal came before me today.
4. Ms Cleghorn highlighted the issues raised in the Upper Tribunal's grant of permission to appeal. In short that the Judge had failed to find that the Appellants would face insurmountable obstacles and significant difficulties reintegrating the family into Afghanistan, that the Judge erred in failing to find adequate reasons for finding that the hardship and difficulties that the first Appellant would experience would not amount to "very significant difficulties" within the meaning of EX2 of Appendix FM, erred in finding it "virtually unarguable" that there would be very significant obstacles to the second Appellant's integration into Afghanistan, failed to provide adequate reasons for finding that the best interests of the younger two Appellants would be met by returning to Afghanistan and, given that the Respondent previously granted the Appellants Entry Clearance to join the Sponsor in the United Kingdom and that the only reason for refusal of the applications for further leave was that the Sponsor's income as a taxi driver fell below the minimum financial requirement, the Judge arguably erred in considering proportionality.
5. Mr Diwnycz accepted that prior to hearing the issues raised within the grant had evaded him. Having considered the submissions of Ms Cleghorn he conceded that within the decision there are material errors of law as highlighted by Deputy Upper Tribunal Judge Chapman in her grant of permission to appeal as recorded above.
6. I share the analysis of both representatives. They each asked me to remit this matter for a de novo hearing as further evidence is now required. That is a course I intend in adopting.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Duff.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Appleyard

15 January 2019