



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

Appeal Number: IA/00055/2017  
IA/00056/2017  
IA/00057/2017  
IA/00058/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20 March 2019**

**Decision & Reasons  
Promulgated  
On 26 March 2019**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**B S  
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S C S K  
P C S K**

(ANONYMITY DIRECTION MADE)

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Slatter, counsel instructed by KTS Legal Ltd  
For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

**DECISION AND REASONS**

## Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Boyes, promulgated on 10 July 2017. Permission to appeal was granted by the Vice President of the Upper Tribunal on 22 January 2019.

## Anonymity

2. An anonymity direction was made by the First-tier Tribunal and is reiterated below.

## Background

3. The first appellant arrived in the United Kingdom during March 2010 with leave to enter as a Tier 4 migrant. The second appellant was granted leave to enter the United Kingdom as a Tier 4 migrant in September 2010. The third and fourth appellants entered the United Kingdom on 8 June 2011 as dependents of the first appellant. The first appellant sought further leave to remain under Tier 4 in April 2012. The remaining appellants applied for further leave to remain as dependants. Those applications were refused, however their appeals against those decisions were allowed, to a limited extent, in a determination promulgated on 24 July 2013 for the respondent to reconsider the applications. It is the reconsideration of those applications which led to the instant appeal.
4. On 17 January 2017, the respondent refused the applications for further leave to remain. The respondent asserted that a false document was provided with the application of 3 April 2012, namely a TOEIC certificate from Educational Testing Service which related to the first appellant. Consequently, the application of the first appellant was refused under paragraph 322(1A) of the Immigration Rules and no points were awarded for a Confirmation of Acceptance for Studies (CAS) or maintenance. Brief consideration was given to the duty under section 55 of the Borders, Citizenship and Immigration Act 2009, however it was considered that the need to maintain the integrity of the immigration laws outweighed the effect on the appellant and her children which might result from having to re-establish family life outside the United Kingdom. The applications of the remaining appellants were refused because in view of the refusal of the first appellant's claim, they could not meet the requirements for leave to remain as dependants under paragraph 319 of the Rules.

## The hearing before the First-tier Tribunal

5. The First-tier Tribunal considered the appeals on the papers because insufficient fees were paid for the appeals to proceed as oral hearings as requested by the appellants in their notices of appeal. The judge concluded the generic evidence from the respondent shifted the evidential burden onto the appellant but owing to the paucity of evidence before him from the appellant, she had not discharged this burden. The appeal was

also dismissed under Article 8 ECHR based on the limited information before the judge.

### The grounds of appeal

6. The grounds took issue with the efforts made by the appellants to have an oral hearing, which they say was not acted upon. It was argued that the hearing had been unfair as the first appellant had not been given an opportunity to provide a witness statement or oral evidence regarding the allegation of dishonesty. Both the First-tier Tribunal and Upper Tribunal refused permission to appeal.
7. The appellants applied for judicial review of the refusal of permission to appeal by the Upper Tribunal. Their grounds focused on the procedural history, it being said that the appellants were waiting to be provided with a fee adjustment form and reference number in order to pay the additional fees, when the appeal was determined. In addition, the second ground was that the First-tier Tribunal Judge misdirected himself as to the legal burden of proof. Thirdly, it was argued that the first appellant was prevented from presenting her case and was, in effect, denied a right of appeal altogether. Permission to appeal was granted by the Administrative Court on 13 November 2018, the grounds being described as “arguable.”
8. Permission to appeal was granted by the Vice President in light of the order by Master Gidden dated 12 December 2018 quashing the refusal of permission to appeal.
9. There was no Rule 24 response from the Secretary of State.

### The hearing

10. Mr Slatter took me through the procedural history in this matter and referred me to evidence that two emails and two telephone calls were made by those representing the appellants in an attempt to pay the additional fees required for an oral hearing in the period preceding the paper consideration of the appeals. I indicated that there was no sign of any of this correspondence on the IAC case file.
11. Ms Willocks-Briscoe submitted that at [9] the judge noted that the requests for additional fees had not been attended to and that his decision to proceed was correct. As for the Tribunal’s email of 8 May 2018 acknowledging the appellant’s earlier email regarding fees, there was no explanation as to why the solicitors did not respond until 24 May 2018 and why payment was not made sooner.
12. In reply, Mr Slatter argued that there had been a fundamental misunderstanding as to the process of converting a paper hearing to an oral hearing in that there was a need to wait for an adjustment form and reference number before payment was made.

13. At the end of the hearing, I announced that the First-tier Tribunal judge had unwittingly made a procedural error in proceeding to determine the appeals on the papers. The error was material because the first appellant, in particular, was prevented from giving or providing evidence to address the allegation of dishonesty.

#### Decision on error of law

14. As indicated above, the judge unwittingly erred in considering these appeals on the papers. According to the correspondence pin on the IAC case file, the appellants had been asked to pay the full fee for an oral hearing on 6 March 2017 and had failed to do so. What was missing from the file was correspondence from the appellants' solicitors (KTS Legal) sent in response to the notice of 3 May 2017 stating that the appeal would be decided on the papers. On 5 May 2017, KTS Legal telephoned and then emailed the Tribunal to state that the appellants wanted an oral hearing and to request the necessary fee adjustment form. The Tribunal acknowledged that correspondence, by email, on 8 May 2017. That email included a request that no efforts are made to chase the matter for two weeks. On 24 May 2017, KTS Legal telephoned the Tribunal and were advised that a letter with details of the payment required and reference number would be sent. Having received no such letter, KTS Legal sent a further email on 30 May 2017 repeating the earlier request and requesting that the matter be looked into urgently. There was no response from the Tribunal and the appeals were passed to First-tier Tribunal Boyes for a decision on the papers.
15. I accept the argument that it was not a simple matter for the appellants to pay the fees because they required a form and a reference number so that any payment could be married with the correct appeal reference. There is also a satisfactory explanation as to why the outstanding fees were not paid in March 2017, that being the intervening indication that the appeals had been lodged out of time, to which the appellants needed to give priority. It was only after the Tribunal caseworker found in their favour on the timeliness issue (on 28 April 2017) that the outstanding fees were payable. Since that time, the appellants having been waiting in vain for a form and a reference number to pay the outstanding fees.
16. The judge could not have known any of the foregoing matters. Nonetheless, the result of the matter proceeding on the papers is that the first appellant has been unable to challenge the allegation of dishonesty and all four appellants have been denied a fair hearing of their appeals.

#### Decision

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

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Hatton Cross, with a time estimate of half a day by any judge except First-tier Tribunal Judge Boyes.**

**Directions**

1. The First-tier Tribunal is to send the appellants the relevant form and reference number to enable them to pay the outstanding fees within the next 28 days.
2. The Secretary of State is to decide, within the next 28 days, whether to give consent for the new matter raised in correspondence to be considered by the First-tier Tribunal. The new matter concerns the 4<sup>th</sup> appellant's 7-year plus residence in the United Kingdom and which was raised in the appellants' letter of 4 March 2019
3. The Secretary of State is to serve the respondent's bundle of evidence which was before the First-tier Tribunal on the appellants within the next 14 days.

**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 20 March 2019

Upper Tribunal Judge Kamara