



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-004230
UI-2023-004232, UI-2023-004233
UI-2023-004234, UI-2023-004235
UI-2023-004236
First-tier Tribunal Nos:
HU/59462/2022
HU/59464/2022 HU/59465/2022
HU/59466/2022 HU/59468/2022
HU/59471/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 05 December 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

TOBA NIKSAD
BASHIR AHMAD NOORI
HASINAT NOORI
REZWANULLAH NOORI
AREZO NOORI
MOHAMMAD NOORI

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M West, instructed by Law Lane Solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 22 November 2023

DECISION AND REASONS

1. The appellants appeal, with permission, against the decision of the First-tier Tribunal dismissing their appeals against the respondent's decision to refuse their human rights claims for entry clearance to the UK.

2. The appellants are citizens of Afghanistan who are living in Pakistan. The first appellant is the sister-in-law of the sponsor, a British citizen living in the UK, and the wife/ mother of the other appellants. They all applied for entry clearance on the basis of their family life with the sponsor. The respondent considered the applications of the first two appellants under the adult dependant relative rules in paragraph EC-DR.1.1 of Appendix FM and the applications of the other appellants as dependent children under paragraph 297 of the immigration rules.

3. The appellants' applications were refused on 28 November 2022. The respondent did not accept that the appellants could meet the requirements of the immigration rules, did not accept that they could demonstrate that the refusal of their applications would result in unjustifiably harsh consequences under GEN.3.1 or GEN.3.2 and concluded that the decisions were not in breach of Article 8.

4. The appellants appealed against the respondent's decisions. The respondent provided a Respondent's Review for the appeal in which it was accepted, contrary to the initial refusal decisions, that the appellants had demonstrated adequate maintenance available to meet the maintenance requirements of the relevant immigration rules and that the third, fourth, fifth and sixth appellants were related to the sponsor. The respondent, however, did not accept that the other requirements of the rules were met and did not accept that there were exceptional circumstances for the purposes of GEN.3.1 and GEN.3.2 constituting a breach of Article 8.

5. The appellants' appeals came before First-tier Tribunal Judge Chana on 9 June 2023. In a decision dismissing the appeals, Judge Chana made adverse credibility findings against the sponsor and appellants. She found that the appellants could not meet the maintenance requirements of the immigration rules and considered that the sponsor's credibility was undermined by his evidence in that respect. She also found that the appellants had failed to demonstrate that the refusal of their applications would result in unjustifiably harsh consequences and she concluded that the refusal of their applications was proportionate and did not breach their Article 8 human rights.

6. The appellants sought, and were granted, permission to appeal to the Upper Tribunal.

7. In a Rule 24 response dated 29 September 2023 the respondent indicated that the appeal was not opposed. It was conceded that the judge had failed to have regard to the respondent's concession in relation to the appellants' ability to meet the maintenance requirements of the immigration rules and that her findings in that regard adversely impacted upon her credibility assessment for the sponsor and thus undermined her findings as a whole. The respondent accepted that the errors were therefore material and that a '*de novo*' hearing may be appropriate, so that a remittal to the First-tier Tribunal was not opposed.

8. In response, the appellants indicated that they were content for the matter to be remitted to the First-tier Tribunal and requested that the hearing be vacated. The hearing was not vacated, but the appellants were advised that they need not attend. In the event, Mr West did attend, but the matter was disposed of without the need for any submissions and it was agreed that the case would be remitted to the First-tier Tribunal for a fresh hearing. We have therefore set aside Judge Chana's decision in

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HU/59465/2022, HU/59466/2022,
HU/59468/2022 & HU/59471/2022)

light of the errors of law in her decision, as identified and agreed by the respondent in the rule 24 response. We agree that the appropriate course is for there to be a *de novo* hearing in the First-tier Tribunal.

Notice of Decision

9. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeals are 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 Statement 7.2(b), before any judge aside from Judge Chana.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 November 2023