

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

OA/00622/2013,  
OA/00633/2013,

OA/00639/2013



Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Field House, London**

**On 7<sup>th</sup> May 2014**

**Determination**

**Promulgated**

**On 21<sup>st</sup> May 2014**

.....

**Before**

**UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

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

Appellant

**and**

**MR ZARYAB TASADDIQ  
MR KHASHAM MAHMOOD  
MISS ALISHBA TASADDIQ  
(ANONYMITY DIRECTION NOT MADE)**

Respondents

**Representation:**

For the Appellant: Mr G Jack, Home Office Presenting Officer

For the Respondent: Miss J Iqbal, of Counsel

**DETERMINATION AND REASONS**

1. In this appeal, for ease of reference, I shall refer to the Secretary of State as "the Respondent" and Mr Zaryab Tasaddiq, Mr Khasham Mahmood and Miss Alishba Tasaddiq as "the Appellants".

2. The Appellants are citizens of Pakistan. They are the minor children of Tasaddiq Mahmood, a Pakistani national who is currently in the UK with limited leave to remain "the Sponsor". They applied for entry clearance to join their father who at the date of their applications, had limited leave to enter the UK only.
3. The Entry Clearance Officer who dealt with the Appellants' applications refused them, on the sole ground that he could not be satisfied that the sponsor had sole responsibility for their upbringing Paragraph 301(i)(b) of the Immigration Rules. The Sponsor and the Appellants' mother separated in 2008. She remains in Pakistan. The Sponsor left Pakistan on 22<sup>nd</sup> February 2012 in order to join his present wife in the United Kingdom, leaving the Appellants in the care of his brother.
4. The Appellants' applications were refused on 21<sup>st</sup> November 2012 and following those refusals, the Appellants appealed to the First-tier Tribunal.
5. The First-tier Tribunal in a determination promulgated on 17<sup>th</sup> March 2014 allowed the appeals of all three Appellants making favourable findings, not under the sole responsibility Rule but under Paragraph 301(c). The relevant finding is contained in paragraph 22 of the First-tier Tribunal's determination wherein the Judge says,

"Having considered the totality of the evidence, I have come to the view that whilst the sponsor may not have had sole responsibility for the appellants' upbringing up to the point of decision of these applications, I find that the appellants' exclusions from the United Kingdom to be undesirable".

6. The Respondent sought and was granted permission to appeal. The grant of permission states:

"The Respondent seeks permission to appeal, in time, against a decision of the First-tier Tribunal (Judge Hussain) who, in a determination promulgated on 17<sup>th</sup> March 2014, allowed the Appellants' appeals against the Respondent's decisions to refuse to grant them entry clearance for settlement.

The decisions to refuse were all under Paragraph 301(b) of the Immigration Rules. At paragraph 16 of his determination the Immigration Judge found that the Appellants could not meet the Immigration Rules under this paragraph. However he then went on to consider, in part, the provisions of Paragraph 301(c) of the Immigration Rules. It would appear from the determination he did not indicate to the Respondent that this is what he intended to do. In such circumstances he should have adjourned the hearing in order that the Respondent may be prepared to deal with that paragraph of the Immigration Rules. Further, the Judge only considered part of the paragraph and not all of the provisions. As a result he made no findings in respect of the whole of Paragraph 301(c)

Accordingly I find there is an arguable error of law in the determination".

7. Thus the matter comes before me to decide whether the First-tier Tribunal's determination discloses an error of law such that it needs to be set aside and the decision remade.
8. At the hearing before me the Appellant was represented by Miss Iqbal, the Respondent by Mr Jack. I heard briefly from both representatives. Miss Iqbal handed in a belated Rule 24 response which I note contained, what appeared to be an attempt to issue a cross appeal and was done without notice to the Respondent
9. Following submissions I announced to the parties that I was satisfied that the First-tier tribunal's determination must be set aside for legal error. My reasons for doing so are as follows. The Respondent in her grounds seeking permission states that the First-tier Tribunal's determination contains a procedural unfairness. I am satisfied that this is correct. The decisions to refuse the Appellants' applications were all made under Paragraph 301(b) of the Immigration Rules. The grounds appealing those decisions were all on the basis of that part of the Rules.
10. At paragraph 16 of his determination the Judge found that the Appellants could not meet the Immigration Rules under this paragraph. However instead of disposing of the appeal at that point, he went on erroneously to consider in part only the provisions of Paragraph 301(c) of the Immigration Rules. Nowhere in the determination, can it be shown, that the Judge indicated to the Respondent that this is what he intended to do. That must amount to a procedural unfairness because a finding or comment that is inflicted on a party unheard is unjust.
11. Further the Judge compounded the error in that he only considered part of the paragraph and not all of the provisions. As a result he made no findings in respect of the whole of Paragraph 301(c). Those factors alone amount to the determination disclosing legal error such that it cannot stand. But added to this, Article 8 ECHR was raised in the grounds of appeal and I see no consideration of that ground in the determination.
12. It follows that such findings of fact that have been made cannot stand since they are tainted by procedural unfairness. It is necessary to set aside the whole of the First-tier Tribunals determination and for the matter to be heard afresh with new findings of fact made. Any application to vary the grounds must be made in the appropriate manner following the Procedure Rules.

## **DECISION**

13. The First -tier Tribunal made an error of law and its decision is set aside. The appeal is remitted to the First-tier Tribunal at Hatton Cross on a date to be fixed.

No anonymity direction is made

**Signature**  
Judge of the Upper Tribunal

**Dated**