Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/48619/2014
IA/48633/2014
IA/48642/2014
IA/48661/2014
IA/48667/2014

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham	**Decision & Reasons Promulgated**
On 5th July 2016	**On 18th July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

NEENA
RADIKA RADIKA
NISHA NISHA
[M]
[H]
(ANONYMITY ORDER NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M Ikhlak of The Law Partnership Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellants appealed against the decision of Judge Birk of the First-tier Tribunal (the FtT) promulgated on 20th March 2015.

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2. The Appellants are Indian citizens, and the First Appellant is the mother of the remaining Appellants.

3. The Appellants arrived in the United Kingdom on 4th May 2012 as dependants of Satpal Satpal (the Sponsor), the husband of the First Appellant, and the father of the remaining Appellants.

4. The Appellants had leave until 14th June 2014, and on 12th June 2014 applied for indefinite leave to remain in the United Kingdom.

5. The applications were refused on 18th November 2014 on financial grounds. The Respondent referred to paragraph 287(a)(v) in relation to the First Appellant, and paragraph 298(v) in relation to the remaining Appellants. The Respondent did not accept that the Appellants would be able to maintain themselves adequately. The relevant assessment was to compare the income of the Appellants with an equivalent family in receipt of income support. The Respondent contended that the Appellants' income fell £74.29 per week below what a family would receive by way of benefits.

6. The appeals were heard together by the FtT on 10th March 2015. The FtT refused an adjournment request which had been made on behalf of the Appellants, on the basis that they had made an application for working tax credit and child tax credit which they were entitled to receive, and this income could be taken into account, and would mean that adequate maintenance would be available. It was accepted at the FtT hearing that the shortfall without the working and child tax credit was £55.23 per week.

7. The FtT refused the adjournment request and proceeded to dismiss the appeals under the Immigration Rules and on human rights grounds.

8. The Appellants applied for and were granted permission to appeal to the Upper Tribunal contending that the FtT had erred in refusing the adjournment request.

Error of Law

9. At a hearing on 7th March 2016 I heard submissions from both parties regarding error of law. The Respondent did not accept that the FtT had erred in refusing the adjournment application. Full details of the application for permission, the grant of permission, the submissions made by both parties, and my reasons for setting aside the decision of the FtT are set out in my decision dated 7th March 2016 promulgated on 22nd March 2016. I set out below paragraphs 15-23 of that decision, which contain my conclusions and reasons for setting aside the FtT decision:

> "15. The FtT recognised that the appropriate Procedure Rules to be considered are rules 2 and 4 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, and that Nwaigwe gives guidance on the issues to be considered when an adjournment is requested.
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> 16. Nwaigwe makes it clear that when considering an FtT decision to refuse an adjournment, the question for the Upper Tribunal is not whether the FtT acted

reasonably, but the test to be applied is that of fairness, and whether there was any deprivation of the affected party's right to a fair hearing.

17. The issue before the FtT related to adequacy of maintenance. This was the only reason that the application had been refused under the Immigration Rules.

18. The Appellants' case was that they had, belatedly, made an application for tax credits, to which they were entitled, and the award of those tax credits would mean that adequate maintenance would be available.

19. Although it could not be said with certainty when the application for tax credits would be considered, the Appellants were not asking for an open ended adjournment, but requested an adjournment of between four and six weeks. The FtT was told that the application for tax credits was made in mid-January (although the letter from HMRC dated 3rd April 2015 awarding tax credits from 22nd February 2015 to 5th April 2015, indicates that the claim was only received on 25th March 2015). The FtT was not given any satisfactory reason as to why the Appellants had left it so late to claim tax credits, taking into account that the application for indefinite leave to remain was made on 12th June 2014, and refused on 18th November 2014.

20. It is certainly at least arguable, that the application for tax credits should have been made far earlier than it was.

21. However, the issue under the Immigration Rules related to adequacy of maintenance, and the adjournment application was made on the basis that if the case proceeded, the Appellants could not satisfy the Immigration Rules. Therefore the FtT needed to leave aside whether the Appellants had acted reasonably or not, and concentrate on whether there could be a fair hearing to decide adequacy of maintenance in the absence of the Appellants having evidence to prove their entitlement to tax credits.

22. My conclusion is that the Appellants could not have a fair hearing on adequacy of maintenance under the Immigration Rules without being given the opportunity to provide evidence that they were entitled to tax credits.

23. I therefore conclude that the FtT erred in law in refusing the adjournment application. The decision of the FtT is therefore set aside."

10. The hearing was adjourned to enable the Upper Tribunal to re-make the decision, as it was not clear that a supplementary bundle of documents provided by the Appellants, had been served upon the Respondent.

Re-making the Decision

11. At the hearing on 5th July 2016 Mr Mills, on behalf of the Respondent, conceded that the appeals should be allowed under the Immigration Rules. It was accepted that because of the award of tax credits, the Appellants could be adequately maintained without recourse to public funds. The income that they received exceeded what would be received by an equivalent family in receipt of benefits.

12. In my view the concession was rightly made and I therefore allowed the appeal on the basis that paragraph 287(a)(v) was satisfied in relation to the First Appellant, and paragraph 298(v) was satisfied in relation to the remaining Appellants.

13. As the appeals are allowed under the Immigration Rules, it is not necessary to go on and consider Article 8 of the 1950 European Convention on Human Rights.

Notice of Decision

The appeals are allowed under the Immigration Rules.

An anonymity order is not made.

Signed Date 8th July 2016

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeals I have decided whether to make fee awards. It is clear that at the time of the Respondent's decision, the Appellants could not satisfy the Immigration Rules. The appeals have been allowed because of evidence submitted after the decision to refuse. There are therefore no fee awards.

Signed Date 8th July 2016

Deputy Upper Tribunal Judge M A Hall