



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

Appeal Numbers: HU/21566/2016
HU/21568/2016

THE IMMIGRATION ACTS

**Heard at Field House and given
Ex tempore on 5th October, 2017
and signed and sent to promulgation
On 6th October, 2017.**

**Decision & Reasons
Promulgated
On 09 October 2017**

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[SM¹]

[SM²]

~~(ANONYMITY DIRECTION NOT MADE)~~

Respondents

Representation:

*For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondents: No appearance*

DECISION AND REASONS

1. In these two appeals the Secretary of State for the Home Department is the appellant and to avoid confusion I shall refer to her as being “the claimant”.
2. The respondents are twin sisters. They were born on [] 2004, and are Iranian nationals. They made application for entry clearance to join [KM], who they claim to be their father and who is a refugee in the United Kingdom.
3. Their application was refused by the Entry Clearance Officer in a notice dated 23rd August 2016, and they appealed to the First-tier Tribunal. Their appeals were heard on 1st April without an oral hearing by Judge K Swinnerton. The judge examined the evidence and considered the relevant Immigration Rules and concluded that on the evidence presented, the respondents could not meet the requirements of the Immigration Rules. He then purported to remit the appeal to the Entry Clearance Officer, so, to quote him, “that the Appellants (here meaning of course the respondents) have the opportunity to provide additional evidence in relation to their appeals”. The claimant sought and was granted leave to appeal.
4. There was no appearance by or on behalf of the respondents.
5. Immigration Judges are creatures of statute and their powers are governed by Parliament. Immigration Judges have no discretion to exercise. They may either allow an appeal, or dismiss it. They certainly have no power at all to remit an appeal to an Entry Clearance Officer or to the Secretary of State. If after having considered the relevant Immigration Rule and the evidence presented on behalf of the respondents, the judge was of the opinion that the respondents met all the requirements of the Rules, then he was required in accordance with his judicial oath to allow the appeal. If, on the other hand, as here he concluded that there was insufficient evidence to enable him to be satisfied on a balance of probability that the respondents met each of the requirements of the Rules, then his only choice was to dismiss the appeal.
6. The judge pointed out at paragraph 12 of his decision that the burden of proof was on the respondents to satisfy the Tribunal that they met the requirements for entry clearance on a balance of probabilities. At paragraph 18 he explained why they failed to discharge that burden. The judge has clearly erred in purporting to exercise a power which he does not have. I substitute my decision for his. **The respondents’ appeals are dismissed.**

Richard Chalkley
Upper Tribunal Judge Chalkley

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Richard Chalkley
Upper Tribunal Judge Chalkley