

**Upper Tribunal
(Immigration and Asylum
Chamber)**
IA/37783/2013,



Appeal Number:
IA/37792/2013,
IA/37816/2013,
IA/37800/2013,

IA/37810/2013

THE IMMIGRATION ACTS

**Heard at Bradford
On 22nd October 2014
Prepared**

**Determination
Promulgated
On 31st October 2014**

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR MAQSOOD REHMAN - FIRST APPELLANT
MRS SUMYIA HINA - SECOND APPELLANT
MISS YUSRA MAQSOOD- THIRD APPELLANT
MISS ZAIMA MAQSOOD - FOURTH APPELLANT
MASTER MEWAH MAQSOOD REHMAN - FIFTH APPELLANT
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss L Mair, of Counsel
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Pakistan. The first and second Appellants are husband and wife and the third fourth and fifth Appellants their children.

2. By a decision dated 2nd September 2013 the Respondent refused the applications of all appellants to vary their leave to remain in the UK. The first Appellant had originally arrived in the UK on a student visa which was continually renewed until 23rd June 2013. The other Appellants arrived as his dependents.
3. They appealed the Respondent's refusal on the basis that by the time of their applications to vary their leave to remain, the third Appellant, Yusra, had been in the United Kingdom for eight years and the fourth Appellant, Zaima, for almost seven.
4. The appeals came before Judge Hillis who in a determination promulgated on 13th May 2014, dismissed all appeals, it would appear essentially, under Article 8 ECHR. However under a heading in his determination entitled 'Summary of Decision' it seems the Judge also dismissed the appeals under the Immigration Rules.
5. Permission to appeal Judge Hillis' determination was granted. The relevant parts of the grant of permission reads as follows,

"The Appellants seek permission to appeal, in time, against a decision of the First-tier Tribunal (Judge J Hillis) promulgated on 13 May 2014 whereby it dismissed the Appellants' appeals against the Secretary of State's decision to refuse to vary leave to remain and to remove from the UK by way of directions.

The grounds assert that the judge made a number of material errors of fact amounting to a material error of law. He incorrectly said that the decision to remove was under s. 10 of the 1999 Act. He incorrectly said that the appeal proceeded solely on the basis of Article 8 ECHR whereas it was also made under the Rules. He failed to note that at the date of the hearing a second child had been in the UK for 7 years and he wrongly said that the Appellants had previously applied for asylum on two occasions. He failed to make findings on the first Appellant's entitlement for ILR under the Rules on the basis of 10 years' residence, which had accrued by the date of the hearing and his consideration of the situation of the two eldest children was flawed.

In paragraph 31 the Judge refers to the previous dismissal of the first Appellant's asylum appeals. It appears that there were no such appeals. There may also be merit in the argument regarding the lack of consideration of the situation of the second daughter. However it would seem that the decision itself "stopped the clock" on the first Appellant's 10-year residence. Nevertheless all grounds may be argued and permission is granted."

Error of Law Hearing

6. Before me Mr Diwnycz on behalf of the Respondent, sensibly accepted that not only did the grounds seeking permission have merit, but there was nothing he could put forward to defend Judge Hillis' determination. His Rule 24 response accepts as much. In these circumstances I did not need to hear from Miss Mair.

7. I am satisfied that the determination of the First-tier Tribunal is legally unsustainable for errors of material fact amounting to an error of law. The Judge wrongly asserted that the Appellants were appealing on the basis of Article 8 ECHR only whereas it is clear from the documentary evidence that they were also appealing the Respondents refusal on the basis that the decisions were not in accordance with the Immigration Rules. This error on the Judge's part led him to make no assessment of the Appellants' cases under the relevant Immigration Rules. In addition there is a failure to note relevant facts namely that the fourth Appellant had been in the UK in excess of seven years at the date of hearing.
8. Furthermore for unknown reasons the Judge refers, on two occasions, to the Appellants having applied for asylum and having had those appeals dismissed [27] and [31] This is not the case and it is hard to where the evidence for that conclusion came from.
9. In addition I find the determination inadequate in terms of findings and reasons for findings. All of these matters render the determination legally unsustainable.
10. So far as disposal is concerned, both representatives were of the view that the determination is infected by error to the extent that nothing could be preserved from it. In these circumstances, this leaves me with no alternative but to set aside the determination and remit the matter to the FtT (not Judge Hillis), to undertake a new fact finding exercise. None of the findings made by Judge Hillis shall stand.

Decision

11. The determination of the FtT dated 13th May 2014 is set aside. These appeals will be heard in the FtT (not Judge Hillis) and that Tribunal will remake the decision.

No anonymity direction is made

Signature
Judge of the Upper Tribunal

Dated
31st October 2014