



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/11903/2013  
OA/11913/2013  
OA/11915/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 18<sup>th</sup> February 2014

Determination Promulgated  
On 18<sup>th</sup> February 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MRS SANA KASHIF  
MISS MINAHAL KASHIF  
MASTER MUHAMMAD UMAR KASHIF  
(NO ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

**Representation:**

For the Appellant: The Sponsor in person assisted by his Mackenzie friend, Mr Yasar Rafiq)

For the Respondent: Mr G Jack (Senior Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The Respondent appeals to the Upper Tribunal against a decision of the First-tier Tribunal (Judge Graham) by which, in a determination promulgated on 16th December 2013, she allowed the Appellants' appeals against the Entry Clearance

Officer's decisions to refuse them entry for settlement as the spouse and children of a person present and settled in the UK.

2. The relevant Immigration Rule is Appendix FM and the decision was taken on 10th May 2013.
3. The Entry Clearance Officer argues that the Judge erred when she found that as at the date of decision the Appellants met the requirements of the Rules on the basis of evidence that was produced to her but not to the Entry Clearance Officer.
4. The Entry Clearance Officer is correct and I find that the Judge did err. Whilst in an out of country appeal section 85 of the Nationality, Immigration and Asylum Act 2002 provides that the relevant date is the date of decision, that means that an applicant has to show that as at the date of decision they met the requirements of the Immigration Rules rather than at the date of hearing. Appendix FM requires an Appellant to have submitted the specified documents indicating they meet the requirements of the Rules with the application. Therefore in order to meet the requirements of the Rules at the date of decision they must have submitted all the documents with the application. They did not do so in this case and therefore the Appellants could not possibly succeed under the Rules. In allowing the appeal under the Rules therefore the judge has made an error of law. As that led to the appeals being allowed it is a material error of law and so I set aside the First-tier Tribunal's determination in its entirety.
5. As the facts are straightforward I proceeded to redecide the appeal. It is clear that the Appellants cannot succeed under the Rules and so the appeal under the Rules is dismissed.
6. So far as Article 8 is concerned, although it is true that by refusing the application this family are prevented from living together in the UK, that is a temporary state of affairs and I find that such decision is not disproportionate. It seems clear from the evidence before the First-tier Tribunal that this family can bring itself within the requirements of Appendix FM. Therefore they need to make a new application to the Entry Clearance Officer accompanied by the requisite documents. It is not a disproportionate interference to their right to family life to expect them to comply with the Immigration Rules. Thus the appeal also falls to be dismissed on human rights grounds.
7. Having found that the First-tier Tribunal made a material error of law in its determination I set it aside and I redecide it such that the Appellants' appeals are dismissed. Accordingly, the Entry Clearance Officer's appeal to the Upper Tribunal is allowed.

Signed

Date 18<sup>th</sup> February 2014

Upper Tribunal Judge Martin