



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

Appeal Numbers: IA/27930/2014
IA/27931/2014
IA/27932/2014

THE IMMIGRATION ACTS

**Heard at Birmingham Employment Centre
On 31 March 2015**

**Decision Promulgated
On 22 May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

**SHAZA QAZI (1)
SHAHZAD AMIR (2)
AROON SHAHZAD(3)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Haji, instructed by European Solicitors
For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

DECISION AND REASONS

1. As I announced at the end of the hearing, I have found that the decision of First-tier Tribunal Judge Juss, promulgated on 12 September 2014 contains an error on law that requires it to be set aside and for the appeal to be remitted to the First-tier Tribunal for an entirely fresh hearing. Although I indicated my reasons at the end of the hearing, they are as follows.

2. Judge Juss came to the appeal on the papers, the appellants having elected for that approach. He had no opportunity to explore the evidence other than to examine the documents on the appeal file. Unbeknown to him, and in fact to the appellants, the papers submitted were incomplete. The appellants had sent documents to the Home Office with the applications that included evidence from the first appellant's accountant confirming her role as a director and of the financial investment she had made.
3. The appellants had not been legally represented at the time and would have been entitled to assume that the Home Office had complied with rule 13 of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (that applied at that time). They did not know that the documents were not with the Tribunal. In fact, Mr Smart candidly admitted that it would appear that not all of the documents submitted to the Home Office had actually made it to the Home Office file. The attachments mentioned in the accountant's letter seem to have become separated.
4. It is clear that these documents would have been material insofar as they might have shed light on the first appellant's activities and whether she met the NQF level 4 whilst holding leave as a Tier 1 (Post Study Work) Migrant. Mr Smart accepted that it was a procedural failure that the documents had not been presented to Judge Juss and that undermined the determination. He agreed that in such circumstances the proper approach would be to remit the appeals to the First-tier Tribunal.
5. Ms Haji agreed. Like all of us, she had been taken by surprise by the fact that there had been a procedural error. It had not been part of the grounds of appeal but was uncovered whilst we discussed the case in detail because the grounds of appeal and her skeleton argument seemed so at odds with the decision. Once it was realised that a relevant piece of evidence had unwittingly been omitted from the Home Office bundle the problems became clear and easy to resolve.

Decision

The determination of First-tier Tribunal Juss contains an error on a point of law and is set aside.

The appeal is remitted to the First-tier Tribunal to be heard afresh by any judge other than Judge Juss.

I direct that the appeals in the First-tier Tribunal should proceed by way of an oral hearing.

The parties are at liberty to submit additional evidence as long as it is submitted more than 14 days prior to the next hearing.

Signed

Date

Deputy Upper Tribunal Judge McCarthy