



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/11487/2015**

**Appeal Numbers:**

**HU/11496/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated  
On 24 October 2017**

**On 10 October 2017**

**Before**

**THE HONOURABLE LORD BURNS  
DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**MR ATIQULLAH NASERI (FIRST APPELLANT)  
MRS FOUZIA SARDAR KHEL (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr S Jussab, Solicitor from Asghar and Co

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellants challenge the decision of First-tier Tribunal Judge R L Walker (the judge), promulgated on 9 June 2017, in which he dismissed their appeals. Those appeals arose from the Respondent's decision of 7 November 2015, refusing their respective human rights claims.

2. The Appellants, both citizens of Afghanistan, had arrived in the United Kingdom in January 2014 as visitors. The human rights claims were made on 14 July 2014 and these were initially refused by the Respondent on 11 August that year, without a right of appeal.
3. Following a judicial review claim the Respondent agreed to reconsider the applications and in due course an appealable decision was issued. In essence, the basis of the Appellants' claims was that they had established not only private life in the United Kingdom but also a family life in respect of various relatives present in this country.

### **The judge's decision**

4. The judge makes reference to Appendix FM to the Immigration Rules and then goes on to state that there were two factual issues in the appeals: first, whether there would be necessary support and accommodation for the Appellants were they to return to Afghanistan; and second, whether their health conditions would render a removal disproportionate (paragraphs 21 and 22).
5. In paragraphs 23 to 28 and 31 the judge makes a number of adverse findings in respect of the credibility of the evidence before him. In essence he found that the Appellants' particular circumstances were not as claimed to be. In addition, the judge found that there were no significant health issues in respect of either Appellant (paragraphs 33 to 36).
6. In the concluding paragraph the judge states that the Appellants could not meet the requirements of the Article 8-related Rules. The final sentence of that paragraph states: "their [the Appellants'] return will not result in any breaches of Article 8 of the ECHR".

### **The grounds of appeal and grant of permission**

7. The grounds of appeal assert that the judge failed to conduct a proper assessment of the Article 8 claim according to the well-known approach set out in Razgar. In particular it is said that the judge failed to have any or any adequate regard to the claimed family life aspect of the claims.
8. Permission to appeal was initially refused by the First-tier Tribunal, but then granted by Upper Tribunal Judge Finch on 18 September 2017.

### **The hearing before us**

9. Mr Jussab relied on the grounds of appeal and submitted that the judge had wrongly restricted himself to a consideration of the Article 8 claims

within the context of the Rules. There was no proper consideration of the family life aspect.

10. Mr Clarke candidly accepted that there had been no substantive consideration of the family life aspect of the Appellants' claims. He accepted that there had been no findings or analysis in respect of either the Appellants' own adult children or their grandchildren. He accepted not only that this was an error on the part of the judge, but that it was material. In light of this he accepted that the judge's decision should be set aside. He indicated to us that the appropriate form of disposal would be to remit the appeals to the First-tier Tribunal in light of the absence of factual findings related to the family life issue.
11. Mr Jussab did not demur from this course of action.

### **Decision on error of law**

12. In light of Mr Clarke's position in these appeals and having considered matters for ourselves, we conclude that there are material errors of law in the decision of the judge and we therefore set it aside.
13. Whilst the specific adverse credibility findings relating to the Appellants' own personal circumstances may have been open to the judge, it is clear that he failed to deal adequately with matters going to the family life claim. Whilst the outcome of a proper assessment of this issue would not necessarily favour the Appellants, it certainly cannot be said that the cases are bound to fail. We agree with Mr Clarke that the judge's failure to deal with the family life aspect of these appeals constitutes a material error of law.
14. We set aside the judge's decision.

### **Disposal**

15. We agree with both representatives that these appeals should be remitted to the First-tier Tribunal, having regard to the particular circumstances and paragraph 7.2 of the Practice Statement. There are inadequate findings of fact in relation to material matters (specifically those relating to familial relationships in the United Kingdom) for us to go on and re-make the decisions ourselves.
16. We have considered whether or not findings of fact made by the judge should be preserved in respect of the remitted hearings. Whilst seen in isolation these findings are not necessarily infected by errors of law, it would in our view be unhelpful to the First-tier Tribunal, and quite possibly artificial, to preserve these findings. It may be that evidence relating to the familial relationships will be interconnected with that relating to the Appellants' own personal circumstances, and *vice versa*. In our view the

sensible course of action is not to preserve any findings of fact, and for the First-tier Tribunal to consider these appeals afresh in due course.

**Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law.**

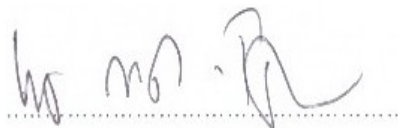
**We aside the First-tier Tribunal's decision.**

**We remit these appeals to the First-tier Tribunal.**

**Directions to the First-tier Tribunal**

- (1) these appeals are remitted for a complete rehearing with no findings of fact preserved;**
- (2) these appeals shall remain linked;**
- (3) it has been accepted by the Appellants throughout that their Article 8 claims cannot succeed with reference to the relevant Immigration Rules. Therefore the core issue is an assessment of Article 8 outside the context of the Rules.**

No anonymity direction is made.



Signed

Date: 21 October 2017

Deputy Upper Tribunal Judge Norton-Taylor