



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-004718
UI-2022-004719

First-Tier Tribunal Nos:
HU/54639/2021; IA/11619/2021
HU/54640/2021; IA/11622/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 21st March 2024**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**KOMAL MALIK
ALI RAZA
(NO ANONYMITY ORDER MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellants appeal, with permission, against the decision of First-tier Tribunal Judge Ali dismissing their appeals against the respondent's decision to refuse their applications for entry clearance to the UK.
2. The appellants are citizens of Pakistan and are sister and brother. They applied for entry clearance on the basis of their family life with their mother, a refugee with indefinite leave to remain in the UK. The respondent considered the applications under the adult dependant relative rules in paragraph EC-DR.1.1 of Appendix FM, concluding in decisions of 22 July 2021 and 15 July 2021 that the appellants could not meet the requirements of the immigration rules, that they could not demonstrate that the refusal of their applications would result in unjustifiably harsh consequences under GEN.3.1 or GEN.3.2 and that the decisions were not in breach of Article 8.
3. The appellants appealed against the respondent's decisions. In a decision promulgated on 3 July 2022, Judge Ali did not accept that the appellants met the requirements of the immigration rules and found that the respondent's decision was not in breach of their Article 8 rights. In so doing, the judge attached little weight to a psychiatric report from a Dr Karum in relation to the first appellant's mental health, which in turn was relevant to the first appellant's state of health and personal care

needs and her dependency upon her mother. He found that that was also relevant to the second appellant and he dismissed both appeals.

4. The appellants sought, and were granted, permission to appeal to the Upper Tribunal.

5. In a Rule 24 response dated 13 July 2023 the respondent indicated that the appeal was not opposed. It was conceded that the judge had made material mistakes of fact which affected the assessment of the weight to be given to the expert evidence, and that the judge had provided inadequate reasoning on Article 8 proportionality. The respondent accepted that the errors were material and that a 'de novo' hearing was appropriate, so that a remittal to the First-tier Tribunal was not opposed.

6. In light of that concession in the Rule 24 response, the Upper Tribunal issued a Notice and Directions on 28 August 2023 in the following terms:

"3. In light of the concession made by the respondent, and having considered the reasons provided, I am minded to set aside the decision of First-tier Tribunal Judge Ali and remit the case to the First-tier Tribunal for a *de novo* hearing before a different judge.

4. Any reasonable objection to this course is to be made in writing to the Upper Tribunal not later than 5 days from the date this decision is sent out. Following that period, and in the absence of any satisfactory response, the Upper Tribunal will proceed as set out at [3] above."

7. There does not appear to have been any response to the directions and there is therefore no objection to the course suggested at [3] of the directions. Accordingly, I have set aside Judge Ali's decision in view of the errors of law therein, as identified and agreed by the respondent in the rule 24 response, and I remit the case for a *de novo* hearing in the First-tier Tribunal.

Notice of Decision

8. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeals are remitted to the First-tier Tribunal to be dealt with afresh pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Ali.

S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 March 2024