



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

Appeal Number: IA/00052/2014  
IA/00058/2014  
IA/00065/2014  
IA/00070/2014

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On 23 October 2014**

**Decision & Reasons Promulgated  
On 7 November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**P.P. CHAVAN  
P.S. CHAVAN  
R.P. CHAVAN  
P.P. CHAVAN**

**(ANONYMITY DIRECTIONS NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Mr S Whitwell, Senior Presenting Officer  
For the Respondent: Mr N Mallick of Counsel

**DECISION AND REASONS**

1. The appellant before the Upper Tribunal is the Secretary of State for the Home Department and the respondents are citizens of India. They are mother father and two children. However, for the sake of convenience I shall refer to the latter as the “appellants” and to the Secretary of the State as the “respondent”, which are the designations they had in the proceedings before the First-tier Tribunal.
2. The appellant’s appeal to the First-tier Tribunal was against the decision of the respondent to refuse their applications to remain in the United Kingdom pursuant to paragraph 276 ADE and under Article 8 of the European Convention on Human Rights.
3. A Judge of the First-tier Tribunal, P Telford allowed the appeals under paragraph 276 ADE for the third appellant and pursuant to Article 8 for the other appellants.
4. Permission to appeal was granted by First-tier Tribunal Judge Cheales who stated that it is arguable that the Judge’s finding that the third appellant was born in 2005 when his correct date of birth is 1995 was central to the Judge’s reasoning and influenced his decision to allow the appeal.
5. At the hearing it was accepted by both parties that the first-tier Tribunal Judge fell into material error when he made a finding of fact that the third appellant was born in 2005. It was further accepted that the Judge allowed the third appellant’s appeal under paragraph 276 ADE because he was under the mistaken impression that the third appellant was a minor.
6. It is a very obvious that a mistake of fact made by the first-tier Tribunal Judge and I find that there is a material error of law in the determination. Consequential to my finding that there is a material error of law, I set aside the determination of Judge preserving none of the findings.
7. Both parties agreed in such an event, the appeal ought to be sent back to the First tier- Tribunal so that findings of fact can be made. I agreed that this was the proper course of action to take in this appeal in accordance with section 7. 2 (b) (i) the Senior President’s Practice Statement of 25 September 2012 as we were of the view that the appeal requires judicial fact-finding and should to be considered by the First-tier Tribunal.

8. The re-making of the decision on appeal will be undertaken by a First-tier Judge in the First-tier Tribunal other than by First-tier Tribunal P Telford on a date to be notified.

**Decision**

The case is remitted to the First-tier Tribunal for re-determination

Signed by

A Deputy Judge of the Upper Tribunal  
Mrs S Chana

The 7<sup>th</sup> day of November 2014