



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

Appeal Number: IA/31216/2013

THE IMMIGRATION ACTS

Heard at Manchester

**Determination
Promulgated**

On 11 June 2014

On 18 June 2014

Before

**Deputy Upper Tribunal Judge Pickup
Between**

Secretary of State for the Home Department

Appellant

and

**Jayasree Surabhi
Kanditha Naga Vaishnavi Ajit Surabhi
[No anonymity direction made]**

Claimants

Representation:

For the claimants: No attendance

For the appellant: Ms C Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The claimants, Jayasree Surabhi, date of birth 28.8.79, and Kanditha Naga Vaishnavi Ajit Surabhi, date of birth 10.1.09, are mother and daughter citizens of India.
2. This is the appeal of the Secretary of State against the determination of First-tier Tribunal Judge Clapham, who allowed the claimants' appeals against the decision of the respondent, dated 20.8.13, to refuse the claimants' applications made on 28.4.13 for leave to remain as the dependants of the partner and father Ajit Surabhi, and to remove them from the UK by way of directions under Section 47 of the Asylum Immigration and Nationality Act 2006.

3. The Judge heard the appeal on 21.2.14 (although the determination claims it was heard in 2013).
4. First-tier Tribunal Judge Wellesley-Cole granted permission to appeal on 11.4.14.
5. Thus the matter came before me on 11.6.14 as an appeal in the Upper Tribunal.

Error of Law

6. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Clapham should be set aside.
7. The applications were refused by the Secretary of State because the partner and father Ajit Surabhi's application for leave to remain as a Tier 4 (General) Student under the Points Based System (PBS) had been refused. The appeals of the partner and child claimants stood or fell with that of Mr Surabhi.
8. Judge Clapham allowed the appeals because it appeared to him that Mr Surabhi's visa had been extended and was valid from 5.8.13 to 5.4.14.
9. However, the judge may not have been aware that following the lodging of the appeals to the First-tier Tribunal on 29.8.13, the mother and first-named claimant indicated that she wished to voluntarily leave the UK and requested flight assistance for three individuals. The claimants left the UK on 21.10.13.
10. Section 104(4) of the Nationality, Immigration and Asylum Act 2002 provides that an appeal brought by a person while he is in the UK shall be treated as abandoned if the appellant leave the UK. There was no valid appeal before the First-tier Tribunal and no jurisdiction to determine the appeal as it should have been treated as abandoned. This amounts to an error of law requiring the decision of the First-tier Tribunal to be set aside and remade.

Conclusion & Decision:

11. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

The appeals are to be treated as abandoned and thus there are no valid or extant appeals before the Tribunal.



Signed:
Deputy Upper Tribunal Judge Pickup

Date: 11 June 2014

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: There are no valid appeals before the tribunal



Signed:

Date: 11 June 2014

Deputy Upper Tribunal Judge Pickup