



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

Appeal Number: IA/34030/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 6<sup>th</sup> May 2014**

**Determination**

**Promulgated**

**On 26<sup>th</sup> June 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MASTER GHUFRAN MANZOOR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Ms A Everett (HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Traynor promulgated on 20<sup>th</sup> January 2014, following a hearing at Hatton Cross, which was a “paper hearing” on 16<sup>th</sup> January 2014. In the determination, the judge allowed the appeal of Master Ghufran Manzoor. The Respondent Secretary of State, applied for, and was granted,

permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a male, a citizen of Pakistan, who was born on 23<sup>rd</sup> January 2006. The Appellant had last been granted leave to enter the UK on 31<sup>st</sup> August 2011 as a Tier 1 (post-study work) dependent child until 14<sup>th</sup> July 2013. The Appellant's parents' Tier 1 (Entrepreneur) Migrant application had been refused and the Respondent was not satisfied that the Appellant was a child of the parent who had valid leave to enter or remain in the UK. The Appellant now argued that he should not be punished for the fact that his parents' applications had been refused. The Respondent should have applied the policy of "evidential flexibility" to make further inquiries on outstanding matters in order to acquire the information that was needed.
3. The appeal of the Appellant's parents, and his sister, was determined by Judge Cockrill, where no reference whatsoever was made to the Appellant. Judge Cockrill observed that the Appellant's father's leave to remain as a Tier 1 Migrant had expired six months earlier on 16<sup>th</sup> December 2012, than that of the Appellant, and that he had made his application for leave to remain as a Tier 1 (Entrepreneur) Migrant two days before the expiry of that leave.
4. In the instant case, Judge Traynor noted that it was unusual that the Appellant would have been granted leave beyond the period of leave granted to his parents, upon whose immigration status he was dependent.
5. However, the judge observed that:

"My inquiries have established that the address given for this Appellant and those named in the decision of Judge Cockrill is the same but that no attempt was made by the Appellants to link his appeal to those other appeals so that it could be considered at the same time" (paragraph 12).

The judge applied **Rodriguez (Flexibility Policy) [2013] UKUT 00042** and concluded that the Secretary of State should have made inquiries in order to establish the precise relationship and the information that was needed dependent on that. The appeal was allowed.

### **Grounds of Application**

6. The grounds of application state that the judge ought to have substantively determined the merits of the Appellant's appeal rather than allowing his appeal on the basis that the appeal of his family members had been allowed in an earlier appeal.
7. On 2<sup>nd</sup> April 2014, permission to appeal was granted on the basis that the judge had failed to properly consider the limited extent of the Respondent's policy of evidential flexibility, in placing reliance upon **Rodriguez**, when reaching conclusions in his determination.

## Submissions

8. At the hearing before me, however, there was no appearance by the Appellant, or of anyone on his behalf, nor was any explanation given. On the other hand Ms A Everett, appeared on behalf of the Respondent Secretary of State. She submitted that, having taken instructions, after reviewing the file, she would like to make an application to withdraw the decision of the Secretary of State dated 30<sup>th</sup> August 2013 in order to enable the Secretary of State to reconsider the matter again, because this is what was already being done in relation to the Appellant's parents and siblings. Judge Cockrill had allowed the appeal to the extent that the matter should be reconsidered by the Respondent Secretary of State.
9. Accordingly, it was entirely sensible that the entire family's position should be considered at one and the same time. It was not known how the Appellant had become separated from the appeals of his family members, but it was clearly in the interests of everyone that matters were consolidated together, and considered as one.
10. I have decided to accede to Ms Everett's request. Given that this Appellant's position was parasitic, and dependent upon that of his parents, it was entirely correct for the family's position to be considered as a whole and the files to be linked.

## Decision

11. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. This is because the judge allowed the appeal on the basis of the application of **Rodriguez (Flexibility Policy) [2013] UKUT 00042**, the application of which is limited. However, the judge did also find that:

“Given that the Appellants do not appear to have alerted Judge Cockrill at the hearing of 18<sup>th</sup> November 2013 to the fact that they have another child whose appeal was outstanding, then I find it is imperative that the Respondent brings the Upper Tribunal's attention to my decision in this appeal ...” (paragraph 16).

I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed to the extent that it is remitted back to the Secretary of State for a fresh decision in conjunction with the decisions in relation to this Appellant's family members.

12. No anonymity order is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

24<sup>th</sup> June 2014