



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

Appeal Numbers: IA/44247/2013
IA/44260/2013
IA/44273/2013
IA/44281/2013
IA/44284/2013

THE IMMIGRATION ACTS

**Heard at Bradford
On 14th August 2014**

**Determination
Promulgated
On 21st Aug 2014**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MUNIR AHMED
AZRA PARVEEN
SIDRA MUNIR
SAIRA MUNIR
MAHAM MUNIR**

Respondents

Representation:

For the Appellant: Mrs R Pettersen, Home Office Presenting Officer
For the Respondent:

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Cox made following hearing at Bradford on 1st May 2014.

Background

2. The claimants are national of Pakistan. The first claimant entered the UK on 18th September 2007 as a work permit holder and was joined by his family on 11th August 2010. Further applications for leave to remain were made until, on 14th December 2012, the Sponsor Licence Unit informed UKBA that claimant's employers had had their Sponsor licence revoked. A decision was made to curtail the claimants' leave to remain.
3. On 9th March 2013 they applied for indefinite leave to remain as Tier 2 (General) Migrant and dependants. On 3rd October 2013 they were refused and their appeal came before Judge Cox. In a detailed determination the judge concluded that the first claimant had failed to meet the requirements of the Immigration Rules and that the Secretary of State's decision was in accordance with the law. However he concluded, having regard to the situation of the family as a whole, and in particular the third claimant, who was about to sit her GCSEs, that the decision to remove was disproportionate in respect of her. He observed that a limited period of discretionary leave would be appropriate to enable the third claimant to sit her exams.
4. The Secretary of State sought permission to appeal that aspect of the judge's decision, submitting that the judge had failed to consider whether her circumstances were exceptional or compelling and failed to follow the guidance Nasim and Others (Article 8) [2014] UKUT 25 which states:

"The opportunity for a promising student to complete his course in this country however desirable in general terms is not itself a right protected under Article 8."
5. Permission to appeal was granted for the reasons stated in the grounds by Judge Kamara on 5th June 2014.

The Hearing

6. There was no appearance by the claimant. Mrs Petersen, for the Secretary of State, stated that she understood that he had found another sponsor and intended to make a fresh application, which was perhaps the reasons for the non-attendance. She relied on her grounds and asked me to reverse the decision.

Conclusions

7. The grounds are correct. The fact that the third claimant was about to sit exams is not a proper basis for allowing the appeal on Article 8 grounds. It may be a matter for the Secretary of State and her residual discretion but that is not justiciable by the judge. Since the exams have now taken place, there can in any event be no basis for remaking the decision in the family's favour.

Decision

8. The original judge erred in law. The decision is set aside. The claimants' appeals are dismissed.

Signed

Date

Upper Tribunal Judge Taylor