



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

Appeal Numbers: VA/00626/2014  
VA/00627/2014  
VA/00628/2014  
VA/00629/2014  
VA/00630/2014  
VA/00631/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 September 2014**

**Determination  
Promulgated  
On 18<sup>th</sup> September 2014**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**ENTRY CLEARANCE OFFICER, ABU DHABI**

Appellant

**and**

**TASAWER SAMUEL PANDAYAR  
RUBINA TASAWER  
ANYA TASAWER  
DAVID TASAWER  
AARON TASAWER  
MAHSAHMEEN TASAWER**

Claimants

**Representation:**

For the Appellants: Mrs Shumaila John, Sponsor  
For the Respondent: Mr Bramble

**DETERMINATION AND REASONS**

1. The Entry Clearance Officer appeals with permission against the determination of First-tier Tribunal Judge Wellesley-Cole promulgated on 4 July 2014 in which she purported to allow the claimants' appeal against

the decisions of the respondent made on 29 December 2013 to refuse them entry clearance to the United Kingdom as family visitors. The applications in question had been made on 18 November 2013.

2. The appellant refused the applications on the basis that he was not satisfied that the claimants were genuinely seeking entry clearance in the United Kingdom as visitors or that they intended to leave the United Kingdom (in the case of the first and second claimants); and, that there would not be adequate arrangements for their support in the case of the minor claimants. The notices of refusal make it clear that there is in these cases no right of appeal except on the grounds referred to in Section 84(1) (c) of the Nationality, Immigration and Asylum Act 2002, that is, on human rights and/or race discrimination grounds alone.
3. The grounds of appeal are expressed in terms of human rights but also take issue with the bases on which adverse inferences were drawn by the appellant.
4. Judge Wellesley-Cole determined the appeals on the basis of the papers before her, and after making findings with respect to the claimants' intentions, concluded that they met the requirements of paragraph 41 of the Immigration Rules as amended, and allowed all the appeals on that basis.
5. The appellant sought permission to appeal on the grounds that the right of appeal in all of these cases was restricted to human rights and race relations grounds as the applications had been made after 25 June 2013, the date on which Section 55 of the Crown and Courts Act had come into force amending Section 88A of the Nationality, Immigration and Asylum Act 2002; and, that it had not been open to the First-tier Tribunal to consider whether the decision was in accordance with the Immigration Rules or otherwise in accordance with the law.
6. On 24 July 2014 First-tier Tribunal Fisher granted permission to appeal.
7. The sponsor was present as was Mr Bramble who acted on behalf of the respondent. The sponsors said they were aware that the grounds of appeal related solely to human rights and were understandably concerned that that issue had not been addressed in the determination. They did not resist Mr Bramble's submission that the determination of Judge Wellesley-Cole was clearly flawed and should be set aside, given that it was vitiated by a clear error of law.
8. It is unarguable that the right of appeal in these appeals was confined to the issues of human rights and race relations. Whilst it might arguably have been permissible for the judge in considering an assessment of proportionality whether the requirements of the Immigration Rules were met, that is not a freestanding ground of appeal and in any event the judge did not consider the issue of human rights in any way.

9. Judge Wellesley-Cole's decision therefore did involve the making of an error of law which as went to her jurisdiction, is clearly material. On that basis alone the determination must be set aside.
10. Given that Judge Wellesley-Cole made no findings at all with respect to human rights, there are no findings of fact in this determination which can be preserved. As both parties agreed, there needs to be a fresh judicial fact-finding exercise in respect of all relevant matters. It is therefore not appropriate for this matter to remain in the Upper Tier and I therefore remit it to the First-tier Tribunal for a fresh hearing.

### **Summary of Conclusions**

- (1) The determination of First-tier Tribunal Judge Wellesley-Cole did involve the making of an error of law and I set it aside.
- (2) I remit the decision to the First-tier Tribunal for a fresh oral hearing. For the avoidance of doubt none of the findings of fact of First-tier Tribunal Judge Wellesley-Cole are preserved.

Signed

Date: 18 September 2014

Upper Tribunal Judge Rintoul