



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

Appeal Number: VA/07566/2013

VA/07567/2013

**THE IMMIGRATION ACTS**

**Heard at FIELD HOUSE**

**On 2<sup>nd</sup> September 2014**

**Determination  
Promulgated**

**On 11<sup>th</sup> September 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

**ENTRY CLEARANCE OFFICER (RABAT) Appellant**

**and**

**MASTER FADL BAKKALI Claimants  
MISS LINA BAKKALI**

**Representation:**

For the Appellant: Mr N Bramble ( Home Office Presenting officer)

For the Respondent: No appearance

**DETERMINATION AND REASONS**

1. This matter comes before me to consider whether or not there is a material error of law in the First Tier Tribunal decision. This is an appeal by the Secretary of State for the Home Department (SSH D) against a determination promulgated on 24 April 2014 by First Tier Tribunal (Judge Stokes) who allowed the appeals under the Immigration Rules as family visitors pursuant to paragraph 41 HC 395(as amended).

2. The claimants are minors, whose dates of birth are 4.10.2010 and 24.6.2012, and are citizens of Morocco. Their father was the main claimant. His appeal and that of his wife (as dependent) was also allowed under the rules by the Tribunal. The father was the brother of the sponsor and met the requirements of Immigration Appeals (Family visitor) Regulations 2012.
3. The reasons for refusal in respect of the main claimant relied on paragraph 41(i)(ii)(vi)(vii) raising concerns as to finances circumstances. The same reasons for refusal were relied on for the claimants applications and reference was made to paragraph 46(a)(iv); failing to demonstrate suitable arrangements for travel. The notice of immigration decisions gave a limited right of appeal under section 84(1)(c) Nationality Immigration & Asylum Act 2002.
4. The Tribunal directed that the four appeals be heard together as the claimants were family members, pursuant to Rule 20 (b) of the Asylum & Immigration Tribunal Procedure Rules 2005 (as amended) [6]. The Tribunal Judge proceeded on that basis and had regard to the fact that the claimants were dependants [1]. The Tribunal Judge had evidence of finances and heard from the sponsor[19-21]. She allowed the appeal of the main claimant and his dependants including his wife and children. The Tribunal Judge found that the requirements under paragraph 46(vi) were met. The Tribunal Judge concluded that Article 8 was not engaged as family life in the UK had not been established between the claimants and the sponsor.

### **Grounds of appeal**

5. The grounds of appeal argued that the Tribunal had no jurisdiction to hear the claimants appeals which attracted a limited right of appeal only. Their applications were made after the introduction of Immigration Appeals (Family visitor) Regulations 2012. The claimants did not come within the class of persons defined as a family member. The sponsor was their uncle.

### **Permission**

6. Permission was granted on 13.6.2014 that the grounds were arguable and that the Judge failed to make findings under Article 8 ECHR.

### **Hearing**

7. At the hearing before me there was no appearance by or on behalf of the appellants. The Tribunal clerk made contact with the solicitors for the claimants who stated that the sponsor was out of the country and his return was delayed. Notices of hearing were sent to the solicitors as representatives. I decided that to proceed with the hearing. Not to do so would be unfair or prejudicial to the claimants having regard to the discreet nature of the legal argument in the grounds of appeal.

**Submissions**

8. I heard submissions from Mr Bramble. He accepted that this was a family application involving dependents. In the normal course of events the ECO would have automatically granted leave to the dependents of the main appellant following his successful appeal. That had not happened.
9. Mr Bramble submitted that the Judge ought properly to have considered the issue of jurisdiction and the limited right of appeal and whether Article 8 ECHR was engaged.

**Discussion and decision**

10. I am satisfied that the determination discloses no material error of law. The Judge properly treated the appeals as linked because they related to the same family and the claimants as young children were dependent on their parents in every sense of the word. The applications and appeals of the wife and claimants were dependant on the outcome of the appeal of the father who had a full right of appeal. This was not an application by child visitors under paragraph 46 of the Rules; the terms of which are drafted to cover applications made by children travelling independently of their parents or family members. It is arguable that the Secretary of State's decision under paragraph 46 was not in accordance with the law. The reasons for refusal given were premised on those given in respect of the main claimant, the father and treated as a joint application and appeal. The Judge in such circumstances was not required to consider section 84(1)(c) 2002 Act and it is of note that this was not raised by the Secretary of State at the hearing.

**Decision**

11. **I find no error of law in the determination.**
12. **The determination shall stand.**
13. **I direct that the Secretary of State to issue entry clearance for the claimants as family visitors in order to give effect to the Tribunal determination**

Signed

Date 9.9.2014

Deputy Judge of the Upper Tribunal

No anonymity order

**To the respondent**

Fee award in full made .

Signed

Date 9.9.2014

Appeal Number:

Deputy Judge of the Upper Tribunal