



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

**Appeal Numbers:
UI-2022-000233 [HU/08073/2020]
UI-2022-000236 [HU/08075/2020]**

THE IMMIGRATION ACTS

**Heard at Field House
On the 27 July 2022**

**Decision & Reasons Promulgated
On the 15 September 2022**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

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(ANONYMITY DIRECTION MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R K Rai, Counsel instructed by Colindale Law

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellants. Failure to comply with this order could amount to a contempt of court. The appellants are minors and there is no legitimate public interest in their family circumstances.

2. This is an appeal by two appellants, who are nationals of Afghanistan, against a decision of the First-tier Tribunal dismissing their appeals against the decision of the Entry Clearance Officer refusing them leave to enter the United Kingdom as the children of their father.
3. The First-tier Tribunal rightly directed its mind to the requirements of the Rules and recognised the importance of determining if the father in the United Kingdom was the solely responsible parent but did not discharge that duty in a satisfactory way. In particular, there is no clear finding on the contention that the children's mother is alive and that is of considerable importance. There is also no clear finding on what role the grandparents have played in the lives of the children other than providing a home, which is consistent with their having parental responsibility or something approaching it, but most certainly, on its own, does not prove that they have parental responsibility.
4. It follows that there is no clear finding on appellants ability to satisfy the requirements of the Immigration Rules
5. I was urged by Mr Rai to read the determination in a particular way and deduce that the judge accepted that the children's mother was dead I cannot do that. There is no finding to that effect.
6. I am aware of a piece of evidence entitled "Islamic Republic of Afghanistan Supreme Court Death and Inheritance Certificate", which, if it is what it purports to be, is a very interesting document because it certainly identifies the appellants and identifies their mother and confirms that, sadly, she has died. However, that document on the face of it has its curiosities. In particular, it is a death and inheritance certificate that does not identify the date of death of the deceased, stating only that she died in 2015. I have simply no idea how reliable it is. It is neatly presented and endorsed with apparently official stamps; it is not an obviously rubbishy document. It may be that the appellants, if there were a further opportunity, would adduce some evidence that helps us understand and evaluate the document but that is entirely a matter for them.
7. I am entirely satisfied that the first ground of appeal has established. The judge gave no clear findings on the first part of the Rule.
8. There is another error. It is long-established law in cases involving sole parental responsibility that sometimes whatever the situation about parental responsibility there are "serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care". There is no finding on this part of the rule. There are things to be said. On the face of it the children are living with grandparents and, it is said, the grandparents are not able to cope anymore. That is a potentially strong reason. There is evidence that the father has been in frequent contact, attending their home in Afghanistan as often as he could but that is closed now because of notorious change in circumstances in Afghanistan and government advice that people should not travel to Afghanistan.

9. Further, although there is no contemporary evidence before the Tribunal on life in Afghanistan now it probably is the case that a judge would not need a lot of persuading that the Taliban taking over control has not improved conditions for these young people. We do not know. I am sorry to say that the failure to make findings on this part of the Rule is a serious omission.
10. Mr Rai suggested that if there was an error of law I should go on to allow the appeal immediately. He has a duty to his client and it is, with respect, a sensible suggestion but not one that I can accept. There are too many things here that are just uncertain and vague and need clear and proper findings that have not taken place.
11. Mr Tufan did all the good we expected of him and did point out how some findings were suggested and pointed out, properly, that there was no evidence of financial transfers which might have been helpful to the appellants' cases and a matter of fair comment for the respondent that they were not there. However, he could not get around the fact that there were no findings on either of two points both of which required findings to be made.
12. This is a fundamentally unsatisfactory decision for the reasons I have given, and, although I have considered repairing it now, I cannot. There has to be a rehearing and in the circumstances I find it right that it goes back to the First-tier Tribunal for proper findings to be made.
13. I find an error of law. I set aside the decision of the First-tier Tribunal and I direct that the case be heard again in the First-tier Tribunal. That is my decision.

Notice of Decision

14. The appeals are allowed to the extent that I direct they be redetermined in the First-tier Tribunal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 28 July 2022