



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/05194/2013
IA/05199/2013
IA/05203/2013
IA/05210/2013
IA/05207/2013

THE IMMIGRATION ACTS

Heard at Field House
On 27th February, 2014

Determination Promulgated
On 13th March, 2014

Before

Upper Tribunal Judge Chalkley

Between

SHAKIL AHMED KHAN
SAMINA SHAKIL
HUNAIN AHMED KHAN
SONIA KHAN
KHAN HUNZA

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Chhotu of Counsel instructed by Henneberry & Co
For the Respondent: Mr Tarlow a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are citizens of Pakistan. The first and second appellants are husband and wife and the third, fourth and fifth appellants are the children of the first and second appellants. They are all over the age of 18 and were at the date of their applications.
2. On 10th June, 2007, the first appellant and his son, the third appellant, entered the United Kingdom on a visit visa indicating that they wished to visit Danish Ahmed Khan who had entered the United Kingdom on a work permit in January 2007. Danish Ahmed Khan is the son of the first and second appellants.
3. The second appellant, accompanied by her two children, the fourth and fifth appellants, entered the United Kingdom on a visit visa some two months later, indicating that they were also coming to visit Danish. All the appellants overstayed.
4. On 10th January, 2013, the appellants applied for residence cards as the family members of an EEA national. The EEA national in question is the wife of Danish, Aksar Afsal Chowdhury. She and Danish were married in the United Kingdom in a ceremony according to Islamic tradition and rites in August 2012 and in December 2012 they underwent a civil marriage. Before coming to the United Kingdom on 25th June, 2005, Danish Ahmed Khan's wife, Aksar Afsal Chowdhury was living in Holland.
5. The applications made by the appellants were all refused by the Secretary of State and the reasons were set out in a 'Reasons for Refusal' Letter of 12th February, 2013. The Notices of Refusal to issue residence cards were dated 14th March, 2013, and the appellants appealed to the First-tier Tribunal.
6. It is clear from the file that the matter was brought to the attention of the Resident Upper Tribunal Judge at the hearing centre in Hatton Cross, because the parties were advised that the appeal had been assigned to a 'float' list. A float list is a list of cases which it is expected judges will take in the event that their lists fall short for some reason.
7. That was a mistake.
8. This matter should never have been listed as a float case.
9. It was a mistake because four bundles of evidence appear to have been submitted on behalf of the appellants and apart from the fact that reference is made to a "skeleton argument" which did not appear in the bundles, it would have taken somebody at least an hour and probably two, just to familiarise themselves with the content of the bundles.
10. Unfortunately, for the First-tier Tribunal Judge who heard this appeal, the skeleton argument did not appear in the bundle. I have now seen it and it is anything but a skeleton. It is a written submission. Undoubtedly it would have assisted the judge had she read it before the hearing. Unfortunately it was handed to her by counsel during the hearing. When documents are not submitted in advance of the hearing in strict accordance with directions, judges do not have the opportunity of being able to read the documents.
11. This judge clearly had not read the skeleton argument, (because it had not even been filed by the start of the hearing) but proceeded to deal with the appeal and gave to the representatives who appeared before her a copy of a case which she thought was on point. In fact it does not appear to have been.

12. Having heard some oral evidence, the judge indicated that as the issue was dependency; she could not understand how the evidence of other witnesses would assist her in determining that issue. I am told by Counsel today that he made a **robust** request that he should be permitted to call the other witnesses and that the judge should hear the evidence of the other witnesses, because it was relevant to the appeal. The judge dismissed the appellants' appeal and the first ground of challenge and, it transpires, the main ground of challenge, is as to procedural unfairness because, it is suggested, the appellants were denied the opportunity of giving evidence to the judge.
13. Mr Tarlow suggested that it appears, having read the Record of Proceedings that the judge simply said that she could not see how the evidence of the other witnesses would assist in determining the issue; that in effect there was an agreement between her and the representatives that no further evidence should be called. I rather agreed, but I am advised by Counsel who was present at the time that he made a **robust** submission to her and he is very clear about that. In the circumstances, I find that there is an error on a point of law in the determination.
14. I suggested to both representatives that the matter should be reheard afresh by the First-tier, because clearly it will be necessary for clear findings of fact to be made this appeal before the matter can be decided. Neither representative objected to the matter being remitted to the First-tier Tribunal and, mindful of paragraph 7 of the Senior President's Practice Statement, and having regard to the overall objectives set out in Rule 2 of the Procedure Rules, I am satisfied that this is a matter which falls squarely within paragraph 7 of the Senior President's Practice Statement given the length of time that the appellants would have to wait before the matter could be relisted before me at Field House. It could conversely be heard relatively speedily by the First-tier Tribunal. I decided therefore that the matter will be remitted for hearing by the First-tier Tribunal afresh before a First-tier Tribunal Judge other than Judge Margot Ford.
15. I am told that there will be five witnesses.
16. For listing purposes I am told that there will be a requirement for an Urdu interpreter for two of them.
17. Witnesses can of course adopt statements that they have made, but they will only be permitted to adopt statements where English is their first language, or, if English is not their first language, if their statement contains an endorsement by a suitably qualified interpreter that prior to signing the statement, the maker of it has had the statement read to them in their own language and that they first confirmed that they have no objections, alterations or comments to make on it and are content that the contents of it are true. If statements from witnesses whose first language is not English are prepared and endorsed in that manner and submitted to the First-tier Tribunal, then it will obviously save time in disposing of the matter. **Nonetheless, I believe that this appeal should be allocated a whole day for its disposal.**
18. Any documents should be submitted to the Tribunal no later than seven clear working days before the hearing in order that they can be properly read and considered by the judge before the start of the hearing.

Summary

- a. Remittal to the First Tier Tribunal (NOT before Judge Margot Ford)
- b. None of the findings to stand.

- c. Evidence to be given by 5 witnesses.
- d. Urdu interpreted required.
- e. 1 whole day to be allocated to the hearing.
- f. Documents to be submitted no later than seven days before the hearing.

Upper Tribunal Judge Chalkley