



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
OA/17984/2012

Appeal Number:

OA/17985/2012

**THE IMMIGRATION ACTS**

**Heard at Field House on  
Determination promulgated on  
1 July 2013**

**Before**

**UPPER TRIBUNAL JUDGE GOLDSTEIN  
and**

**DEPUTY UPPER TRIBUNAL JUDGE DIGNEY**

**Between**

**SAJID AHMED (MASTER)  
RASHEDA KHANAM (MRS)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER -DHAKA**

Respondent

**Representation:**

For the appellants: Mr Choudhury

For the respondent: Ms Pal, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellants are a minor child and his mother, citizens of Bangladesh. Together with a second child, Rifat Ahmed, they applied to join their father/husband, Jamal Ahmed, the sponsor, as dependents of a relative present and settled in this country. The applications were all rejected on 26 August 2012, and all three people appealed to the First-tier Tribunal.
2. It became apparent at the hearing on 17 April 2013 before the First-tier Tribunal that adequate means were not available to comply with the financial requirements of the rules in relation to all three appellants. It is not entirely clear what means were available, but it is inherent in the appellants' position, as put forward by Mr Choudhury, both at that hearing and this, that adequate means were available to meet the requirements of the rules with regard to two of the appellants, but not with regard to all three. Mr Choudhury has not suggested to us that adequate means were available to satisfy the requirements of the rules with regard to all three of the original appellants.
3. Mr Choudhury said at the original hearing that he wished to withdraw the appeal of one of the children in the event of the judge concluding that the requirements could not be met for all three appellants.
4. The judge ruled in his determination that as there had not been a formal withdrawal of the appeal of Rifat Ahmed he was obliged to consider it. There was a letter, from the sponsor, purporting to withdraw the appeal. The grounds of appeal argue that the judge was wrong to require a formal withdrawal of the appeal, and the judge granting permission points out that under paragraph 17 of the procedure rules an appeal may be withdrawn orally at a hearing.
5. The grounds do say that the judge wrongly concluded that Mr Choudhury had conceded that the financial requirements were not met. It is possible that the judge did misunderstand Mr Choudhury, but there can be no doubt that the conclusions as to a shortfall in paragraph 15 of the determination was one that the judge was entitled to reach, and Mr Choudhury has not argued to the contrary.
6. Mr Choudhury argues that the judge was wrong not to allow the appeal of Rifat to be withdrawn. We are prepared to accept that, as the child's father, the sponsor, Jamal Ahmed, may have been in a position to withdraw his son's appeal. There are problems when the boy's mother has played no part in the decision, and the result of the decision might have meant that Rifat may have been left on his own in Bangladesh; the fact that Rifat is now sixteen suggests that he could have had some say in the decision to withdraw his appeal. However, in the light of our subsequent conclusions, we do not propose to deal with this aspect further and accept that the sponsor could have withdrawn his son's appeal.
7. There are other problems. The letter that Jamal Ahmed wrote states:

I Mr Jamal Ahmed sponsor in the above appeal wish to state that in the event of the Tribunal finding that I do not have sufficient income to maintain all three appellants then I wish to withdraw the appeal of Rifat Ahmed OA/17983/2012 and proceed with the two other appeals.

8. The problem with this letter is that it is a conditional withdrawal that only comes into effect after the judge has made a negative decision, which is something that only happens when the decision is promulgated.
9. Again, for the sake of argument we are prepared to act on the supposition that Rifat's appeal was withdrawn at the hearing, and that the judge erred in law in not allowing the appeal to be withdrawn. The question is whether that error is in any way material.
10. The judge who granted permission clearly saw the problem that faced the remaining appellants. He said, in paragraph 3 of his grant:

However in this particular appeal the finances in issue as considered by the Entry Clearance Officer were considered as at the date of the Respondent's decision on 26 August 2012. In that context it is questionable as to whether the withdrawal of the appeal at the hearing of one of the Appellants was an appropriate way to proceed. Permission to appeal is being granted because I consider that it is an appropriate matter for the Upper Tribunal to consider.

11. In other words, the normal rule in out of country cases is that the facts are looked at as at the date of the decision, and in a case such as this, those facts include the number of dependants who have to be supported in accordance with the requirements of the rules. We asked Mr Choudhury how he got round this problem. He said that the effect of the withdrawal of an appeal is that the party drops out of the case *ab initio*; it is as if that party had never been involved in the case. We do not accept that argument. Even where an appeal is withdrawn, and precisely the same principle would apply if one of a number of family members who had applied to come together did not appeal, a judge has to look at a decision in the light of all those who made the application.<sup>1</sup>
12. It follows that we are satisfied that the original judge did not make a material error of law and the original decision shall stand.

## **The appeal is accordingly dismissed**

Designated Judge Digney  
Deputy Judge of the Upper Tribunal  
1 July 2013

---

<sup>1</sup> This is of course very apparent from the Immigration Rules where maintenance has to cover a spouse and "dependants"; see , for example, paragraph 281(v) .

Appeal Number: