
**UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER** **Appeal No.**
**OA/16668/2013**

**OA/16669/2013**
**OA/16670/2013**

**THE IMMIGRATION ACTS**

**Heard at: Birmingham** **Decision Promulgated:**
**On: 21 August 2014**

Before

**Upper Tribunal Judge Pitt**

Between

**Lilu Arjan Kuchhadiya**
**Jayshri Arjan Kuchhadiya**
**Arti Arjan Kuchhadiya**

Appellant

and

**Entry Clearance Officer – Mumbai**

Respondent

Representation:

For the Appellant: Mr Ruparelia, Just Legal Group
For the Respondent: Mr Dniwycz, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellants are nationals of India. They were born on 9 June 1997, 16 May 1999 and 11 November 2000, respectively. They are three minor siblings who applied for entry clearance to join their British mother in the UK.

2. These are appeals against the determination promulgated on 14 May 2014 of First-tier Tribunal Judge Gurung-Thapa which refused the appellants' appeals under the Immigration Rules and Article 8 ECHR brought against the respondent's decision of 25 July 2013 to refuse entry clearance as dependent children.

3. This appeal is misconceived. The applications were made for settlement as the children of someone settled in the UK. The relevant Immigration Rule is paragraph 297. The application form used showed that the children were applying for settlement as the children of a British national.

4. The applications were refused in decisions dated 25 July 2013 on the sole basis that the checks had shown that the company that the sponsor claimed to work for did not operate at the address given. The sponsor's claimed income was therefore not accepted.

5. The decisions, incorrectly, phrased the finding that the financial requirements were not met in terms of the requirements of Appendix FM-SE. Those requirements did not apply here where the relevant Immigration Rule was paragraph 297 and not Appendix FM.

6. Nevertheless, assisted, I should point out, by Mr Ruparelia and his firm, and the respondent's representative, the appeal before the First-tier Tribunal proceeded on the incorrect basis that the requirements of Appendix FM-SE had to be met.

7. The First-tier Tribunal judge found that the appellant's employer did exist and operate from the address she had given so did not find anything in the respondent's sole ground of refusal.

8. The judge went on, however, to find that other documentary requirements from Appendix FM-SE were not met.

9. The grounds of appeal prepared by Mr Ruparelia's firm, challenged the findings in relation to Appendix FM-SE but said nothing about the application having been considered on an entirely incorrect basis.

10. The grant of permission to appeal did not refuse permission on

the grounds relating to Appendix FM-SE but clearly considered that there was more merit in the grounds brought against the Article 8 decision.

11. At the hearing before me, Mr Ruparelia raised the issue of the application being made under paragraph 297 and not Appendix FM. He was not able to provide me with the legislation showing that his submission on this point was correct but sent part of the transitional provisions relation to Appendix FM after the hearing. He did not apply for permission to vary his grounds to include this point. He did not make submissions on the difficulty of this point becoming arguable before me where it was not argued before the First-tier Tribunal, did not form part of the grounds of appeal and was not being something upon which permission to appeal had been granted.

12. Be that as it may, I do not dispute that the application and appeal were considered by the respondent and the First-tier Tribunal on the wrong basis.

13. It remains the case that this is not a ground of appeal before me. The “Robinson-obvious” principle of taking points not previously argued relates to protection claims not settlement applications.

14. Further, even were this a ground before me, the appeals, whether considered under paragraph 297 or Appendix FM, had to fail. The maintenance or finance requirements for the children could not be met unless the sponsor’s husband’s income was taken into account. The First-tier Tribunal judge at [23] did not find that his income was available to maintain or finance the children.

15. This finding was open to the First-tier Tribunal. The husband had not signed the sponsorship documents for the children. There was nothing by way of a witness statement or any other document indicating that he was willing to support them financially or that he supported their settlement applications. The First-tier Tribunal judge was wholly entitled to find at [21] that the sponsor’s evidence at [13] to [15] on whether his bank statements were submitted with the entry clearance application was “inconsistent”. She stated first at [14] that her husband’s bank statements were submitted and then, at [15], that she did not know if they had been submitted.

16. The Article 8 appeal also had to fail and no material error can arise from the refusal of that part of the claim by the First-tier Tribunal. The situation was that the children would be coming to the UK where it had not been shown that they could be adequately maintained to live with a sponsor married to someone who had not

shown that he supported their applications. The evidence did not indicate that the children were living in difficult circumstances in India such that the decision could be disproportionate. The history of how the children came to remain in India and how long their mother has been in the UK, if there had been any visits and so on was entirely unevidenced.

17. For these reasons, I did not find that a material error arose in the decision of the First-tier Tribunal notwithstanding the incorrect consideration of the Appendix FM-SE criteria.

DECISION

18. The decision of the First-tier Tribunal does not contain an error on a point of law and shall stand.

Signed:  Date: 22 August 2014
Upper Tribunal Judge Pitt