



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: OA/17932/2013  
OA/17935/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 12 October 2015

Determination Promulgated  
On 15 October 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

ENTRY CLEARANCE OFFICER - DHAKA

Appellant

and

MR HABIB MD ALAMIN  
MASTER RABEL MD AL HAFIZ

Respondents

**Representation:**

For the Appellant: Mr Tom Wilding, Senior Home Office Presenting Officer

For the Respondent: Mr Taj Shah of Taj Solicitors

**DETERMINATION AND REASONS**

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.

2. The appellant (hereafter the ECO) appeals against the decisions of the First-tier Tribunal (Judge Davda) allowing the respondents' appeal against a decision taken on 14 August 2013 and later confirmed by an entry clearance manager on 14 October 2014 to refuse entry clearance for settlement following an application made on 20 May 2013. There are two decisions but they are materially identical, save for the details of the respondents.

### **Introduction**

3. The first respondent is a citizen of Bangladesh born on 9 February 1995. The second respondent is also a citizen of Bangladesh, born on 9 February 1999. The sponsor is their mother, Mrs Khatun, who is a UK citizen. Her husband, Mr Miah ("the father") and their eldest son, Sakib, have been granted leave to remain in the UK until 13 March 2016. The respondents were left in Pakistan because the sponsor's income was at that time inadequate to support an application for the whole family. Mr Miah works in the UK and is a second sponsor for financial purposes.
4. The ECO considered the applications under paragraph 297 and Appendix FM of the Immigration Rules ("the Rules"). The respondents had failed to submit the specified documents in relation to the sponsors' employments (6 months wage slips). It was unclear who was looking after the respondents and there was no reason why the family could not move back to Bangladesh. There were no exceptional circumstances.

### **The Appeal**

5. The respondents appealed to the First-tier Tribunal and the sponsor attended an oral hearing at Taylor House on 14 April 2015. They were represented by Ms R Akther, Counsel. The First-tier Tribunal noted that the Home Office Presenting Officer conceded that the sponsors now earned a total of £28,080 per year but the documents were not before the ECO. The judge found that the financial requirements of Appendix FM were met and that the father and Sakib had been in the UK since 2011. The sponsor had sole responsibility for the respondents and there were serious and compelling reasons which made exclusion undesirable. The sponsor and the father had temporarily delegated parental responsibility to an uncle but he died on 13 March 2014. Since then, the respondents had been looked after by an aging paternal step-grandmother. The appeals were allowed under the Rules and on human rights grounds.

### **The Appeal to the Upper Tribunal**

6. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law in finding that the respondents met the requirements of the Rules. The sponsor could not have sole responsibility because both parents were involved in the upbringing of the children, the judge incorrectly stated that the 6 month period for assessing the finances was April-October rather than the 6 month period prior to the application and the judge sought to water down the clearly high threshold in paragraph 297 by suggesting that the test was no more than a question of where the best interests of the children lay.

7. Permission to appeal was granted by First-tier Tribunal Judge Ransley on 13 July 2015. The judge had arguably erred in taking into account evidence that post-dated the decision by 7 months and appeared to have confused serious and compelling circumstances with best interests. The decision included material inconsistencies and arguable errors of law. Permission was granted on all grounds.
8. Thus, the appeal came before me

### **Discussion**

9. Mr Wilding relied upon the grounds of appeal and submitted that there were at least two clear errors of law. However, following discussions, it was also clear that everyone had missed the obvious point. As at the date of decision the sponsor had British citizenship and the father was in the UK as her spouse, entry clearance granted in 2011. The father's application for indefinite leave to remain as a spouse was made in time and so he has section 3C leave under the 1971 Act. He had leave with a view to settlement, under paragraph 281 of the Rules. Paragraph 301 avoids the problems with paragraph 297 of the Rules. The ECO muddied the waters by considering Appendix FM. Maintenance and accommodation should have been considered under KA and those requirements were met. Paragraph 301(i)(a) applies and the requirements were met as at the date of decision.
10. Mr Shah agreed that the requirements of paragraph 301 were met as at the date of decision. Appendix FM did not apply. In the alternative, there are compassionate grounds and Article 8 is engaged. Both parties agreed that I should set aside the decision of the First-tier Tribunal and remake the decision by allowing the appeal under paragraph 301.
11. Paragraph 301(i)(a) of the Rules states that the requirements to be met by a person seeking limited leave to enter the UK with a view to settlement as the child of a parent given limited leave to enter or remain are that one parent is present and settled in the UK and the other parent is being or has been given limited leave to enter the UK with a view to settlement. Those requirements are met by the sponsor and father. The remaining relevant requirements of paragraph 301 (age and lack of independence of the respondents, maintenance and accommodation) are also met. I find that leave to enter should have been granted by the appellant under paragraph 301 of the Rules. Both parties concur.
12. The decision of the First-tier Tribunal contains various material errors of law. The judge's finding that the sponsor had sole responsibility is a material error of law because it is clear that responsibility was shared between both parents. The judge materially erred in relation to the relevant period for financial evidence under Appendix FM and in any event Appendix FM did not apply to these applications. The judge further erred in law by equating the serious and compelling family or other considerations test from paragraph 297 of the Rules to the best interests of the respondents. Article 8 has no application because the respondents meet the requirements of paragraph 301 of the Rules. Thus, the First-tier Tribunal's decision to

allow the respondent's appeal under the Rules and Article 8 involved the making of an error of law and its decision cannot stand.

**Decision**

13. Consequently, I set aside the decision of the First-tier Tribunal. I remake the decision by allowing the appeals of the respondents under paragraph 301 of the Immigration Rules.

Signed



Date 13 October 2015

Judge Archer  
Deputy Judge of the Upper Tribunal