



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000757
UI-2023-000759
UI-2023-000760
First-tier Tribunal No:
EA/03869/2022
EA/03872/2022
EA/03873/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 01 November 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

KHATERA BALUCH
BIBIZAHRA AHMADI
SALIMA AHMADI
(NO ANONYMITY ORDER MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Ilahi instructed by Pearl Valley Solicitors.
For the Respondent: Ms Z Young, a Senior Home Office Presenting Officer.

Heard at Bradford Magistrates Court on 26 October 2023

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Roger ('the Judge'), promulgated on 18 January 2023, in which the Judge's dismissed the appeals of the above appellants, a mother and her two children, against the refusal of their applications for EUSS Family Permits. The applications were made on 29 June 2021 and refused on 23 March 2022.
2. The Judge sets out findings of fact from [12] of the decision under challenge. The issue of false documents was set out in the refusal letter on the basis of a Document Verification Report (DVR) concerning documents issued by Wise Bank.
3. At [15] Judge writes:
 15. Having reviewed the appellant's bundle, there is no persuasive evidence in response to the allegation of false documents having been submitted and relied upon. There is no witness statement from the sponsor but it is said in the skeleton argument that the sponsor opened the account before the application and that he is a genuine account holder of Wise bank and therefore that his bank statements are

genuine. Having read the email dated 22/02/22 [p26 R bundle] it is clear that the sponsor does have an account with Wise Bank, with the same sort code and account number as that on the bank statements submitted for the application. Therefore it is not disputed that the sponsor has an account with them but the authenticity of the bank statements could not be confirmed as they did not match the records held by Wise Bank. I am satisfied that it would have been open for the sponsor to have obtained copies of his bank statements directly from Wise Bank or for clarification from Wise Bank as to how the submitted statements did not match their records but the appellants have failed to submit such evidence.

4. The appellants sought permission to appeal on the basis the Judge had failed to consider the evidence provided in a supplementary bundle which showed that the documents were in fact genuine. Permission to appeal was granted by another judge of the First-tier Tribunal.
5. At the outset of the hearing before the Upper Tribunal Mr Ilahi was asked whether he had any evidence to show when the supplementary bundle was sent to the First-tier Tribunal. It is within the documents received for the purposes of the Upper Tribunal hearing, but this specific piece of information could not be ascertained.
6. Mr Ilahi provided a hardcopy of a letter dated 16 August 2022 addressed at the First-tier Tribunal referring to an email filing the supplementary bundle.
7. Although not information that was available at the time of the hearing it transpires that there is an entry on the First-tier Tribunal case management system, Aria, accessed by the Upper Tribunal clerk, indicating receipt of the supplementary bundle by the First-tier on 5 September 2022.
8. There is no mention of these documents in the Judge's decision indicating that either the Judge was unaware of the content of the supplementary bundle or chose to completely ignore the same. I have no reason to believe it is the latter and so conclude that as a result of a procedural irregularity, for which the Judge is not responsible, the existence of the supplementary bundle was not brought to the Judge's attention.
9. I find such is a procedural irregularity which has led to unfairness, in that the appellants' case has not been properly considered on the basis of all the material that was available.
10. The Court of Appeal have made it abundantly clear that when a procedural unfairness arises there can be no preserved findings and the matter needs to be heard afresh. On that basis, and in light of extensive fact-finding required in relation to this matter, I find it appropriate to set the decision of the Judge aside. There shall be no preserved findings.

Notice of Decision

11. Through no fault of the Judge a procedural irregularity has arisen sufficient to amount to material error of law. The appeal shall be remitted to the First-tier Tribunal sitting at Bradford to be heard de novo by a judge other than Judge Roger at a face-to-face hearing.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

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26 October 2023