



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/08399/2014
IA/08404/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 30 January 2015**

**Sent to parties on:
On 12 February 2015**

Before

**THE HONOURABLE MR JUSTICE GOSS
Sitting as a Judge of the Upper Tribunal**

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS SABA MAHBOOB
MASTER TAHA BASHIR AHMAD
(NO ANONYMITY ORDER MADE)**

Respondents

Representation:

For the Appellant: Mr S Kandola, Home Office Presenting Officer
For the Respondent: Miss A Jones, Counsel, instructed by Lee Valley Solicitors

DECISION AND REASONS

1. The Secretary of State appeals with permission against the First-tier Tribunal decision, First-tier Tribunal Judge Monson, allowing the claimants' appeals under paragraph 319E(v) of the Immigration Rules HC 395 (as amended). The claimants sought leave to remain in the United Kingdom as the spouse and child of a person present and settled here.
2. The claimants are a mother and her 3 year old son, both Pakistani citizens. The principal claimant entered the United Kingdom as a Tier 4 dependant

partner on 23 March 2010; the second claimant was born here in April 2011. The first claimant had leave to remain until 25 October 2013, ending as a Tier 1 dependant because the status of the sponsor had changed. The sponsor then had an indefinite leave to remain application pending on long residence grounds under the old Rule 276B, and was granted indefinite leave to remain on 13 December 2013.

3. The claimants' settlement application was made in September 2013 but determined by the Secretary of State on 27 January 2014. The sponsor by then had indefinite leave to remain. The Secretary of State determined the application under paragraph 276ADE and Appendix FM (the new rules) and refused it. It is common ground that the pre-2012 Rules apply to these appeals and that the Secretary of State's decision was therefore taken on an incorrect basis.
4. The error was unfortunately compounded since the First-tier Tribunal proceeded to consider the application under paragraph 319E, the rule which would have applied had the sponsor still been a Tier 1 Migrant. For claimants whose sponsor is settled or has indefinite leave to remain, the correct Rules at that time were paragraph 284 for the principal claimant and paragraph 301 for the second claimant.
5. Having regard to the evidence which was produced at the hearing, Mr Kandola for the Secretary of State accepts that the claimants were able to meet the requirements of rules 284 and 301 at the date of decision and that therefore they were entitled to succeed in their appeals. We agree: although there is indeed an error of law in the First-tier Tribunal Judge's decision, we are satisfied that had these appeals been considered under the correct Rules, they would still have been allowed.

Conclusion

6. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. We therefore set aside the decision and remake it by allowing the claimants' appeals.

Signed:

Upper Tribunal Judge Gleeson

Date: