



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

Appeal Numbers: HU/14391/2017
HU/14396/2017
HU/14401/2017
HU/14405/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 13 September 2018**

**Decision & Reasons
Promulgated
On 10 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**RB
MM
AM
BM**

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr S Shah, Legal Representative, 786 Law Associates
For the Respondent: Mr P Deller, Home Office Presenting Officer

DECISION AND REASONS

1. There are four appellants. The first appellant, who was born on 26 March 1980, is the mother of the other three, who were born respectively on 9

January 2003, 3 March 2004 and 29 August 2006. The appellants are citizens of Pakistan. They applied for leave to remain in the UK on the basis of their private and family life and their application was refused. They appealed to the First-tier Tribunal and their appeal was determined on the papers at Bradford by Judge Ince who, in a decision promulgated on 2 March 2018, dismissed the appeal. The appellants are now appealing against that decision.

2. The parties are in agreement that the decision of the First-tier Tribunal contains a material error of law such that the appeal should be heard afresh. The reason for this agreement, in summary, is that the judge appears to not have had before him - and to have determined the appeal without having regard to - evidence adduced by the appellants that was material to the appeal. The judge stated that "all that is before me is the notice of refusal and the notices and grounds of appeal." However, it is plain from the file that there was a bundle of evidence submitted by the appellants concerning the private and family life of the children.
3. Mr Deller noted that the appeal of the father of the family had been separated from the other appeals and this may account for why an incomplete picture was before the First-tier Tribunal. In any event, irrespective of the reason why the relevant documents were not considered by the judge, and as agreed by Mr Deller, the failure to consider the evidence constitutes an error of law which renders the decision unsafe such that it will need to be heard afresh.
4. Mr Shah argued that because of the length of time the children have been in the UK I should remake the appeal in their favour without hearing further evidence. I do not accept this submission. There are a range of factors that need to be considered and the fact that the children have been in the UK for over seven years is an important, but by no means determinative, consideration. Therefore the matter will need to be heard afresh with up to date evidence concerning the children submitted in order for their rights under Article 8 ECHR to be evaluated.
5. Given that there has not been a proper consideration by the First-tier Tribunal of the appellants' appeal this matter should be remitted to the First-tier Tribunal to be heard afresh.

Decision

- a. The decision of the First-tier Tribunal contains a material error of law and is set aside.
- b. The appeal is remitted to the First-tier Tribunal to be heard afresh by a different judge of the First-tier Tribunal.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 1 October 2018