

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

OA/11784/2012
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Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House, London

On 5th June 2013

Determination

Promulgated

On 21st June 2013

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

MS A K

AND

MISS A B

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Fransman QC

For the Respondent: Mr Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

1. In this determination I refer to Ms A K and her minor daughter Miss A B as the Appellants and the Secretary of State as the Respondent.

Background

2. The Appellants are citizen of Belarus (formally nationals of Kyrgyzstan). They are mother and daughter.
3. In summary, on 26th April 2010 the first Appellant applied for entry clearance as a Tier 1 Migrant. The second Appellant's application was dependant upon that of the first.
4. The applications were refused by the Entry Clearance Officer Minsk. The Appellants appealed that refusal on 18th June 2012.
5. On 19th October 2012 the Appellants applied for family reunion entry clearance as the partner and child of M B, a man who was granted refugee status in the UK on 5th October 2012.
6. The Appellants arrived in the UK on 21st November 2012. They were granted temporary admission initially and on 11th January 2013 the Respondent granted the Appellants leave to enter under the Family Reunion Provisions. Their appeals against the Entry Clearance Officer Minsk's decision remained outstanding.
7. Those appeals were heard by First-tier Tribunal Judge Jhirad on 13th February 2013 at Taylor House. The First-tier Tribunal allowed the Appellants' appeal essentially under the provisions of Article 8 ECHR. The Judge however in his decision stated,

"The appeal is allowed under the Immigration Rules. The human rights appeal is allowed".

This decision was despite an acceptance by the Appellant's representatives in the original grounds of appeal on 18th June 2012, acknowledging that any right of appeal was restricted to Section 6 Human Rights.

8. The Respondent sought to appeal the First-tier Tribunal Judge's decision and permission was granted. The matter was set down for a hearing to consider whether the First-tier Tribunal decision disclosed an error of law such that it would need to be set aside and remade. Thus the matter came before me.

The Hearing Before Me.

9. At the hearing before me Mr Avery on behalf of the Respondent stated that he now sought permission to withdraw the Respondent's appeal against the decision of First-tier Tribunal Judge Jhirad. His reasons for doing so were opaque and seemed to amount to a pragmatic approach which was that the Appellant (referring to the first Appellant) and her daughter were now in the United Kingdom with leave. The Entry Clearance Officer was therefore in effect abandoning the appeal because leave was already granted.

10. Mr Fransman on behalf of the Appellants, not surprisingly did not oppose Mr Avery's application. He did point out however that the Respondent could only withdraw the appeal with the Upper Tribunal's permission. That is governed by Rule 17 of the Upper Tribunal Procedure Rules.
11. Rule 17 which is entitled 'Withdrawal' states that;

"17 Withdrawal

- (1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it—*
- (a) ...by sending or delivering to the Upper Tribunal a written notice of withdrawal; or*
- (b) orally at a hearing.*
- (2) Notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal except in relation to an application for permission to appeal".*

There was nothing put before me to show why I should not consent to the withdrawal of the Respondent's appeal. The Respondent's appeal is therefore withdrawn and the decision of the First-tier Tribunal stands.

Direction regarding anonymity - rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

The appellant is granted anonymity throughout these proceedings, unless and until the Tribunal directs otherwise. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of Court proceedings.

Signature

Dated

Judge of the Upper Tribunal