



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

Appeal Numbers: OA/10886/2013
OA/10888/2013

THE IMMIGRATION ACTS

Heard at Field House

On 20 August 2014

Determination

Promulgated

On 27 August 2013

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**ADHARSH GEORGE SHARMILA SHANTHI
JINOY GEORGE**

Appellant

Respondents

Representation:

For the Appellant (Secretary of State): Mr S Walker (Senior Home Office
Presenting

Officer)

For the Respondent: Mr F Kodagoda (Counsel)

DETERMINATION AND REASONS

1. In this determination, I shall refer to the parties as they were in the First-tier Tribunal. Mr Adharsh George Sharmila Shanti, and his brother, Mr Jinoy George, will be referred to as the appellants and the Secretary of State as the respondent.
2. The appellants' appeals against decisions to refuse them entry clearance, as dependent children of their sponsors here, were allowed by First-tier Tribunal Judge Grant ("the judge") in a determination promulgated on 4 June 2014. In issue were the requirements of paragraph 297 of the Immigration Rules.
3. In refusing entry clearance, the Entry Clearance Officer ("ECO") put in issue the claimed relationship between the appellants and their sponsors here and the maintenance and accommodation requirements of the rules. The judge made findings of fact in the appellants' favour in relation to all the issues and allowed the appeals.
4. The respondent, the Secretary of State, applied for permission to appeal. One challenge was made. At paragraph 7 of the determination, the judge made findings in the light of colour photographs which appeared in the appellants' bundle, showing the appellants with their sponsors at various stages of their lives. In the grounds, it is contended that the judge erred. He made reference to only two of the photographs and failed to give adequate reasons for finding that this evidence showed that the sponsors were the appellants' parents, as claimed.
5. Permission to appeal was granted by a First-tier Tribunal Judge, who found that it was arguable that the judge had failed to give anxious scrutiny to the evidence and arguably failed to give adequate reasons for his finding in this context.

Submissions on Error of Law

6. Mr Walker said that the Secretary of State's grounds focussed on one aspect, the photographs relied upon by the appellants. No adequate reasons were given showing that the appellants were indeed the children of their sponsors here. In the last sentence at paragraph 7 of the determination, the judge found that the evidence would have made a difference to the decision maker. Mr Walker said that, in fact, the evidence was clearly not before the ECO. The judge's reasoning was brief and it might be argued that paragraph 7 only referred expressly to photographs of one of the children.
7. Mr Kodagoda handed up a copy of part of Phipson On Evidence (including paragraph 1-14). He said that it would be wrong in law for the Upper Tribunal to substitute its own judgment for the First-tier Judge, who clearly

set out at paragraph 7 his reasons for his finding of fact. He saw the photographs and noted that they appeared to show significant matters in the lives of the appellants. Findings were made after the evidence was considered. At paragraph 6, the judge summarised the evidence before the Tribunal. There was no challenge to the authenticity of the photographs and the determination did not reveal that any submissions were made by the Presenting Officer on the issue. The genuineness of the photographs was not in dispute. The notice of decision referred to the absence of family photographs and the appellants produced evidence meeting this point. The judge made impeccable findings and was entitled to conclude as he did.

8. Mr Walker had nothing to add to his earlier submissions.

Conclusion on Error of Law

9. The determination has been prepared with characteristic care by a very experienced judge. At paragraph 6, he summarised the evidence before him. This included oral evidence from the sponsors, and documents contained in the appellants' bundles and colour photographs. At paragraph 7, the judge described two in particular. One showed Mrs Shanthy with her oldest son at his baptism and another showed the same son with his father, Mr Rose, on a motorbike outside their home. It is readily apparent that the judge did not find that the appellants were indeed the children relying on the photographs in isolation. He weighed those items with the sponsor's oral evidence and with the other evidence. This included passports showing visits made annually, so that parents and children were united, as claimed. The photographs predated refusal of entry clearance.
10. It is also apparent that the photographs were produced as a direct response to the ECO's adverse finding regarding the claimed relationship. The notice of decision expressly refers to the absence of family photographs and this deficiency was made good on the appellants' behalves by their parents.
11. The determination is fully reasoned and I have no hesitation in concluding that the judge was entitled to make the findings of fact that he did. Again, he did not weigh one part of the evidence in isolation from the rest. In the light of the oral evidence, the photographs, the passports and the other evidence before him, the judge was entitled to conclude that the appellants and their sponsors were related as claimed. He did not err in law in so doing.
12. No challenge has been made to the judge's other favourable findings of fact, regarding maintenance and accommodation. His reasoning appears at paragraphs 8 and 9 of the determination and is free from any error.

13. In summary, the judge was entitled to make the findings of fact he did in the light of the evidence before him. No material error of law has been shown. The decision of the First-tier Tribunal shall stand.

DECISION

14. No material error of law having been shown, the decision of the First-tier Tribunal in which the appeals were allowed shall stand.

Signed

Date: 21 August 2014

Deputy Upper Tribunal Judge R C Campbell