



st

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/04749/2014

THE IMMIGRATION ACTS

At Field House
On 18th September 2015

Decision and Reasons Promulgated
On 3rd December 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

UA
(ANONYMITY DIRECTION MADE)

Appellant

And

THE ENTRY CLEARANCE OFFICER FOR JAMAICA AT KINGSTOWN

Respondent

Representation:

For the Appellant: Ms S. Jegarajah, Counsel, instructed by PN Legal Services.
For the Respondent: Mr. T. Wilding, Home Office Presenting Officer.

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Introduction

1. I refer to the parties as they were in the First tier Tribunal.
2. The appellant is a national of Jamaica, born on 12 November 1997. On the 17th November 2013 he applied for entry clearance for settlement as a dependent of his mother, NA. She is originally from Jamaica and now holds British nationality through her husband ZA.
3. The online application form VAF4A at question 10 asks 'Do you hold, or have you ever held, any other nationality or nationalities?'. The appellant replied 'No'. Under the heading 'Passport information' question 18 asks 'Is this your first passport?' to which the response is 'No'. The next question, 19, then states 'You answered 'No' to the question 'Is this your first passport?'. Where the information is available, please provide full details of all passports held of the last 10 years, including where they are now'. The reply was: 'C1127535 - expired passport'. The appellant signed a declaration which included the statement 'I am also aware that my application will be automatically refused and I may be banned from going to the UK for 10 years if I use a false document, lie or withhold relevant information'.
4. The application was refused on 27 February 2014. The application was refused under paragraph 320(7A). The refusal notice states:

'In your application, you failed to disclose the following facts: Home Office records show that you submitted a false citizenship claim to US authorities and fraudulently obtained a US passport based on a falsified relation to US citizen JMJ. A falsified Jamaican birth certificate was presented to US authorities which showed that your parents were JMJ and ZA. I note that your stated father's name used in the fraudulent US application is the same as that of your step-father in this application. In the absence of any evidence to the contrary I am satisfied that this fraudulent application was submitted with the support of your step-father. You were not related as claimed to JMJ and therefore did not qualify for US citizenship. I am satisfied that these facts were material to the application because it seriously undermines your credibility as a genuine applicant and seriously undermines the credibility of both of your sponsors.'
5. The entry clearance officer went on to consider the application under paragraph 297 of the immigration rules and found that 297(i) (e), sole responsibility, was not satisfied. No other serious and compelling family or other considerations were identified which would make his exclusion undesirable (Para 297(i) (f)). The entry clearance officer stated that in making the decision regard was had to section 55 of the Borders, Citizenship and Immigration Act 2009 as well as Article 8 of the UNHRC.
6. The appellant's appeal in the First tier took place on the 2nd December 2014. Following a hearing on 27th May 2015 I set that decision aside and directed that the appeal be heard afresh by me at a later date.

The relevant immigration rules.

7. Para 297 sets out the requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent present and settled. Para 297(i) (e) and (f) provide that he:

(i) is seeking leave to enter to accompany or join a parent ... in one of the following circumstances:

...

(e) one parent is present and settled in the United Kingdom ... and has had sole responsibility for the child's upbringing; or

(f) one parent ... is present and settled in the United Kingdom ... and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care ...

8. Paragraph 320(7A) of the immigration rules is under the heading 'Grounds on which entry clearance or leave to enter the United Kingdom is to be refused'. It is as follows:

(7A) where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge), or material facts have not been disclosed, in relation to the application, or in order to obtain documents from the Secretary of State or a third party required in support of the application.

At the hearing.

9. The appellant gave evidence by way of video link. This followed a request from Ms S. Jegarajah, Counsel, so that he could express his views. He indicated he wanted to be with his mother and stepfather in the United Kingdom and was frustrated that this had not occurred and said his schoolwork was suffering because he could not concentrate.

10. The appellant's mother, whom I shall refer to as his sponsor gave evidence as did her husband, ZA, both adopting their statements.

The background.

11. The sponsor and her husband set out a chronology. There is limited corroborative evidence and having considered all matters my conclusion is that their evidence must be treated with considerable caution. I accept the following part of their account:

(a) The sponsor was born in Jamaica on 5 February 1979. Her father was a WE. Shortly after her birth the appellant's mother went to live in the United Kingdom and did not maintain contact. The sponsor was cared for by her grandparents and later by a church organisation.

(b) When the appellant was 18 she fell pregnant. She gave birth to the appellant on 12 November 1997. His father was a RS.

- (c) ZA is a British national who was on holiday in Jamaica in February 2002. He met the sponsor and the relationship developed.
- (d) The sponsor came to the United Kingdom on 17 May 2002 on a visit visa. The purpose behind the visit was to re-establish links with her mother and to make contact with ZA. When she came to the United Kingdom she left the appellant in the care of her father and his then partner, JG.
- (e) The sponsor cohabited with ZA. She obtained a student visa valid until 27 July 2003.
- (f) On 26 April 2003, the sponsor married ZA. On the basis of her marriage she was granted leave to remain until 6 January 2006 and indefinite leave to remain on the 7 February 2006.
- (g) In 2003 the sponsor made an unsuccessful application for entry clearance for the appellant.
- (h) Subsequently, he boarded.
- (i) On 21 July 2005 by deed poll in Jamaica the sponsor changed the appellant's surname from S to A.
- (j) On 17 December 2005 the sponsor gave birth to her first child by her husband, Rm.
- (k) In 2006 a second unsuccessful application was made by the sponsor for the appellant to join her.
- (l) On 29 March 2007 the sponsor travelled to the United States of America with her son Rm and the appellant. The appellant travelled on a visit visa. There, they met the former partner of her father, now known as JMJ. She had been living in the US and had obtained US citizenship through marriage. On 7 April 2007 the sponsor and Rm return to the United Kingdom, leaving the appellant behind in the care of JMJ.
- (m) An authentic American passport was obtained for the appellant by deception. Premised on a falsified Jamaican birth certificate showing his natural parents to be JMJ and ZA he had managed to obtain US citizenship.
- (n) In late 2008 he travelled to the United Kingdom using his American passport and stayed with the sponsor, her husband and his half brother. He then returned to America in 2009.
- (o) On 15 January 2009 the sponsor gave birth to her second child by her husband, Rz.
- (p) In late 2009 the sponsor, along with her two children by her husband, travelled to America where they met up with the appellant. In December 2009 they travelled to Jamaica accompanied by the appellant and JMJ. Subsequently an attempt was made to have the visa for Jamaica on the appellants US passport extended. This led to the Jamaican authorities questioning his entitlement to US citizenship resulting in the

confiscation of his US passport which was returned to the American authorities. The sponsor and her two other children remained in Jamaica until December 2012 when they returned to the United Kingdom.

Consideration.

12. The sponsor and her husband claim ignorance of the fraud on the American authorities. They claim that when the appellant was left with JMJ in America the intention was that she would seek to adopt him so that he could remain in America. However, this was not to be a true adoption and they would retain parental control. They claim they believed a legal adoption did take place and they were unaware falsified documents were used. They blame dishonest lawyers engaged in arranging the adoption. I do not believe this. I do not find it credible that an adoption could have taken place inter-country without checks being made upon the parents.
13. The refusal letter indicates the adoption claim is a figment. American citizenship and a passport was obtained on the basis the appellant was the natural child of JMJ evidenced by a birth certificate from Jamaica. There is no direct evidence from the American authorities about what took place but I believe the refusal letter contains an accurate summary.
14. The sponsor and her husband claim that after the deception came to light they sought advice from an American lawyer named as Gary Wright. He advised them that an option was to reapplying for entry clearance to the United Kingdom but not to disclose what had happened. The sponsor claims they then approached lawyers in the United Kingdom to make the application on their behalf and did not advise them of the full facts. I do not accept her claim that a lawyer told them not to declare the true situation. They were aware in the completion of the form that they were misrepresenting the situation and were failing to disclose material facts. I also note that question 48 of the application it was stated the appellant had not travelled to the United Kingdom in the last 10 years. This was untrue as he had been in the United Kingdom at the end of 2009. I also note in the sponsors statement she indicated he was only here over Christmas but in her oral evidence it was indicated he had been enrolled in a school here.
15. The decision of **Ahmed (general grounds of refusal - material nondisclosure) Pakistan [2011] UKUT 351 (IAC)** referred to the need for a dishonest intent on the part of the applicant or someone acting on their behalf. I find this established. I find that the application falls for refusal under the terms of paragraph 320(7A). I find that false representations were made in the application in relation to the appellant's history and material facts were not disclosed. These were deliberate omissions of material known to be relevant. The fact the form was completed on behalf of the appellant does not save him from the consequences of paragraph 320(7A). The application was made on his behalf and he was a potential beneficiary.

16. I also am not satisfied that the sponsor has had sole responsibility for his upbringing. In reaching this conclusion I am conscious that the sponsor's credibility has been seriously damaged by her actions and consequently her evidence must be treated with caution. The early applications of 2004 and 2007 were refused on the basis that sole responsibility was not established. There is no evidence of regular contact between the sponsor and the appellant from when she left Jamaica in 2002. The evidence produced of contact and financial support does not commence until 2011. I am not satisfied that it has been established the appellant's natural father has had no involvement in his life. For similar reasons, principally the damaged credibility of the sponsor, I do not find established there are serious and compelling considerations which make the appellant's exclusion undesirable. The evidence would indicate that the appellant has been attending a private school and has boarded with families in Jamaica.
17. In considering the appeal I have borne in mind the spirit of section 55 of the Borders, Citizenship and Immigration Act 2009 which requires the decision maker to be properly informed of the position of a child affected by the decision. There is an obligation to promote the best interests of the child, irrespective of their nationality.
18. In tandem with this it is the Article 8 assessment. The welfare of a child is a primary but not a paramount consideration. A decision maker is required to consider the family as a whole. Any health issues have to be taken into account. In **Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640 (IAC)** the Upper Tribunal said only if there are arguably good grounds for granting leave to remain outside the rules is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under them: **R (on the application of) Nagre v Secretary of State for the Home Department [2013] EWHC 720 (Admin)**.
- “The rules provide a mechanism for access to the United Kingdom to be with a parent. Here, the requirements are not met and I see no compelling features which would require a freestanding Article 8 consideration. If I am wrong and the matter does require further consideration then any family life is weak. The appellant has lived all his life in Jamaica, save for a short period in America and the Christmas holiday in the United Kingdom. He has been away from direct contact with his mother from 2002 until she met up with him in 2007. They subsequently had time together in Jamaica from August 2009 until his mother returned to the United Kingdom at Christmas 2012. He has had limited contact with his stepfather and stepbrothers. The appellant is approaching adulthood. The new section 117B Article 8 provides the maintenance of effective immigration controls is in the public interest. If the final limb of the Razgar test could be reached then I find the respondent's decision is proportionate.”
19. I do not see anything about his medical condition which would result in a different conclusion. The fact the letter from a psychiatrist can be produced would indicate there are medical services in Jamaica. No evidence has been produced to indicate he could not receive treatment. The actions of his sponsor and stepfather in relation to the immigration

authorities in America must call into question their suitability. In **MK (section 55 - Tribunal options) Sierra Leone [2015] UKUT 223 (IAC)** it was held that the onus rests on the appellant and the civil standard of the balance of probabilities applies where it is contended that the duties enshrined in section 55 of the Borders, Citizenship and Immigration Act 2009 have been breached. There is no onus on the Secretary of State.

Decision

The appeal under the immigration rules is dismissed.

No breach of Article 8 occurs.

Signed

Deputy Upper Tribunal Judge Farrelly