



The Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/20455/2013
OA/20457/2013

THE IMMIGRATION ACTS

Heard at Field House
On February 26, 2015

Decisions & Reason Promulgated
On March 4, 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

MR MOHAMMAD ALI KHALIK
MS SALMA BEGUM
(NO ANONYMITY DIRECTION MADE)

Appellants

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Khan, Counsel, instructed by Kalam Solicitors

For the Respondent: Ms Pal (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellants are citizens of Bangladesh. The appellants are 29 and 27 years of age respectively. They applied on June 11, 2013 for Certificates of Entitlement to the Right of Abode under section 2 of the Immigration Act 1971. The respondent refused both applications on October 8, 2013 on the grounds the appellants had failed to demonstrate they were related as claimed.
2. The appellants appealed under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on November 12, 2013.

3. The matter came before Judge of the First-tier Tribunal Flynn (hereinafter referred to as the "FtTJ") on July 4, 2014 and in a decision promulgated on August 1, 2014 he dismissed both appellants' appeals under the Immigration Rules and article 8 ECHR.
4. The appellants lodged grounds of appeal on August 27, 2014. Judge of the First-tier Tribunal Saffer refused permission to appeal on September 29, 2014 finding that the FtTJ made findings that were open to him.
5. The appellants renewed their grounds to the Upper Tribunal and on January 13, 2015 Upper Tribunal Judge Chalkley granted permission finding it was arguable the FtTJ had erred.
6. The respondent filed two Rule 24 responses dated January 21 and 23, 2015 in which she submitted the FtTJ had correctly addressed all the issues.
7. The matter came before me on the date set out above and on that date the appellant was represented by Counsel as detailed above.

ERROR OF LAW SUBMISSIONS

8. Mr Khan adopted his skeleton argument and submitted the FtTJ had failed to give reasons on issues central to the appeal. The Tribunal in the decisions of MK (Duty to give reasons) Pakistan [2013] UKUT 00641 and Budathoki (reasons for decisions) [2014] UKUT 00341 made clear a determination must disclose clearly the reasons for the Tribunal's decision and if a Tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons. Mr Khan submitted:
 - a. A former judge prepared the village report and greater weight should have been attached to this document or alternatively reasons for rejecting it should have been given.
 - b. The DNA report, the FtTJ felt should have been produced, would prove nothing because the sponsor and appellants were only cousins. The FtTJ wrongly placed too much weight on the lack of a report.
 - c. The FtTJ failed to give any reasons why he rejected the sponsor's evidence.
 - d. The FtTJ did not have regard to the fact the money transfers were 30 years ago. £20 was not insubstantial amount then and it was not reasonable to expect documents from that long ago to still be in existence.
 - e. The FtTJ should have looked at evidence overall. There was plenty of evidence the appellants' father was married as claimed as evidence such

as letters, passports and remittances all supported his claim. The FtTJ attached no weight to this evidence.

9. Ms Pal relied on the Rule 24 letters save she accepted that the FtTJ was wrong to have placed weight on the absence of DNA evidence. However, she submitted the error was not material because he had given numerous other reasons for rejecting their claim. The appellants needed to prove their relationship and the FtTJ considered the birth certificates and photographs and gave reasons for attaching little weight to them. He also had regard to the letter from the appellant's mother but he attached little weight to that because it pre-dated the first appellant's birth by six years. The FtTJ had regard to the sponsor's evidence but found it unreliable. At paragraph [32] the FtTJ referred to the village visit report and whilst he made no specific findings he said he had given it careful consideration but balanced that alongside other evidence and reached a conclusion that was open to him.
10. I reserved my decision.

ERROR OF LAW ASSESSMENT

11. The real issue in the grounds raised before was what weight or what consideration did the FtTJ have for the evidence. Mr Khan argued that the FtTJ either failed to consider certain evidence and if he did he failed to give reasons for rejecting the same. Ms Pal has submitted that whilst the decision was not perfect there was no material error because ultimately the FtTJ considered all of the evidence and reached findings that were open to him.
12. During submissions Ms Pal agreed that the FtTJ had been wrong to place weight on the failure to provide a DNA report.
13. I raised with Ms Pal that the FtTJ appeared to place considerable emphasis on the absence of DNA evidence and whether this would have affected the FtTJ's assessment of the evidence. I referred her in particular to paragraphs [36] and [39] where the FtTJ discussed the DNA evidence and concluded-

“In the absence of a DNA report I agree with the respondent that there is insufficient evidence to show that the appellants' father was a British citizen at the time of their birth....”

14. Ms Pal's argument was that the FtTJ was wrong to place weight on the DNA evidence and if he had rejected the claim for that reason alone then he would have erred. However, she submitted that the FtTJ, contrary to Mr Khan's submissions, did consider the evidence and concluded for separate reasons that there was insufficient evidence to prove the relationship.
15. I accept the argument that reliance on the DNA evidence can mean there is an error but in order to consider whether the error was material a thorough examination of the FtTJ's findings and consideration of the evidence submitted was required. This involves a consideration of all of the issues raised quite properly by Mr Khan.

16. I am satisfied the FtTJ was aware of all of the relevant evidence and salient issues because he refers to them in his determination. At paragraphs [2] and [3] he set out the respective positions of the parties up to and including the issuing of the refusal letter. He noted at paragraph [4] that great weight was to be placed on a village report prepared by a former judge.
17. This report is an important piece of evidence according to Mr Khan because it was an enquiry undertaken by an independent person albeit instructed by the appellants' solicitors. At paragraph [32] the FtTJ stated, "I have given careful consideration to the village visit report by Mr AKM Shafiuddin, Barrister-at-Law and a former High Court Judge in Bangladesh. Mr Shafiuddin spoke to a number of people in the village who all said that the appellants were the children of the late Abdul Khalick. He also visited their home and examined their documents which he regarded as genuine and considered to be strong evidence in support of the claimed relationship."
18. Mr Khan's criticism is that the FtTJ failed to give reasons for rejecting a document that supported the appellants' claims. The answer to that criticism is contained in the subsequent paragraphs when the FtTJ gave his reasons for rejecting the claims. He stated:
 - a. There was no evidence that linked the appellants with a British father directly.
 - b. The sponsor's evidence was unreliable because:
 - i. He found his claim that DNA testing was only undertaken because his solicitor made a mistake.
 - ii. His claim that he wrote to the respondent saying he was not a blood relative was inconsistent with other evidence including his claim he and the appellants are first cousins.
 - c. The appellants were unable to explain what living arrangements were proposed during their interview.
 - d. They had never previously attempted to visit the sponsor.
19. I am satisfied the FtTJ was aware of what the report said but found a number of factors undermined the content of that report and those factors outweighed the information being put forward. All of the points raised by the FtTJ were findings open to the FtTJ. The lack of direct evidence was a factor the FtTJ was entitled to take into account as was the explanation about the circumstances in which he was asked to take a DNA test. The necessity for a DNA test is a different point and has no bearing on this other finding. He gave reason for rejecting the sponsor's evidence and I cannot say those findings were not open to him. Clearly, it was open to him to have accepted the evidence of the village visit report but he rejected its findings and gave reasons as required by the Tribunal in MK.

20. The FtTJ then went on to consider other aspects of the appellant's grounds of appeal. He made a finding about the birth certificates and Mr Khan does not submit that finding was not open to him.
21. I referred earlier to my concerns over paragraph [39] of the determination. However, the FtTJ was not satisfied the evidence submitted demonstrated the relationship claimed. If there had been relevant DNA evidence then this may have assisted the appellants but there was none and I am satisfied his approach in paragraph [39] does not amount to an error in law.
22. The FtTJ considered the money receipts and there is nothing wrong with his actual finding in paragraph [39]. It is difficult to argue that two money receipts are proof of the relationship regardless of their value. The burden of proving their relationship lies with the appellants and the evidence submitted to him did not persuade the FtTJ. He had had regard not only to the money transfers but also the lack of photographs and letters.
23. He concluded at paragraph [42], "Looking at the evidence as a whole I find the respondent's decision was properly based and in accordance with the law."
24. I am not considering the evidence as a First-tier Judge. I am considering whether the FtTJ materially erred and having considered all of the above I am satisfied there is no error in law.

Decision

25. The decisions of the First-tier Tribunal did not disclose an error in law and I uphold the original decisions and I dismiss the appellants' appeals.
26. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) an appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order was made in the First-tier and I see no reason to amend that order.

Signed:

Dated: **March 4, 2015**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I uphold the original decision on fees.

Signed:

Dated: **March 4, 2015**

Deputy Upper Tribunal Judge Alis