



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/06474/2016
EA/06477/2016

THE IMMIGRATION ACTS

Heard at Field House
On 3rd November 2017

Decision & Reasons Promulgated
On 8th December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

JOSEPHINE [A] (1)
DORIS [A] (2)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. C Boaitey, Counsel
For the Respondent: Miss Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal (“FtT”) Judge Nicholls promulgated on 1st August 2017. The FtT Judge dismissed the appeals of the appellants against the refusals of their applications for an EEA family permit as family members of an EEA national exercising treaty rights in the UK. The applications were refused by the respondent for the reasons that were set out in a Notice of Immigration Decision dated 20 April 2016. The reasons given by the respondent are identical in each case.
2. The respondent states in the decisions to refuse the application that “..*You have stated that you propose to join your step-mother; [MP] in the United Kingdom who is a Dutch national and married to your purported father; [EA].*”. The decisions of the respondent then refer to a birth certificate relied upon by each appellant, which appear to show ‘[EA]’ as the father. The respondent raised a number of additional matters including telephone numbers not matching the telephone numbers provided by the appellants in their application forms, and a lack of other evidence of the appellants’ relationship with their sponsor(s) such as photos or evidence of any meetings between them. The respondent concluded:

“In view of your failure to provide satisfactory evidence, I am not satisfied that you are the family member of an EEA national in accordance with Regulation 7 of the Immigration (European Economic Area) Regulations 2006.”

3. It is clear from that decision, although not explicitly stated, that the relationship between the appellants and their father was in issue. Although the decision maker refers to the birth certificates, the respondent noted that the appellants propose to join their step-mother, a Dutch national married to the appellants “purported father”.
4. Regulation 7 of the Immigration (European Economic Area) Regulations 2006 provides that for the purposes of the Regulations the following persons shall be treated as the family members of another person:

(1) ...

- (b) direct descendants of his, his spouse or his civil partner who are –
 - (i) under 21; or
 - (ii) dependants of his, his spouse or his civil partner;

5. The FfT Judge correctly noted that the burden of proof is on the appellants to show, on a balance of probabilities, that their application complies with all the requirements of the Immigration (European Economic Area) Regulations 2006. The Judge sets out the evidence at paragraphs [4] to [8] of the decision. The findings and conclusions of the FfT Judge are set out at paragraphs [11] to [14] of the decision. At paragraph [13] of the decision, the Judge states:

“The burden of proof rests on the two Appellants to show their entitlement to a family permit on a balance of probabilities. To do so they must show that they are the direct descendants of the EEA national’s spouse and either aged under 21 or dependent. As it is not clear to me that the ECO accepts the claimed paternity of the children, without any evidence of the paternity of the two Appellants I find that I am not satisfied to the required standard of probability that they are the direct descendants of the spouse of an EEA national exercising Treaty rights in the UK. Although the sponsor testified about the identities of the two young women shown in two photographs included in the Appellants’ bundle of documents, I have no evidence to confirm those claims. Reference was made in the statement of the sponsor to a previous application by the Appellants but apart from the information given in answer to question 28 of the visa application forms, I have no other information.

6. At paragraph [14], the Judge concluded;

“Because of those difficulties with the evidence, I must find that the two Appellants have not shown to the required standard of probability that they are the direct descendants of the spouse of an EEA national exercising treaty rights in the UK and that they are, accordingly, entitled to the issue of a family permit to join that EEA national. Accordingly, I must also conclude that there are no grounds under article 8 of the ECHR which would support a conclusion that the decision of the ECO was in breach of the rights protected by article 8 of the ECHR.”

7. The appellant contends that in reaching the decision to refuse the applications for an EEA residence permit, the respondent must have been reasonably satisfied that there

was a genuine and subsisting marriage between the EEA national and [EA]. It is claimed that the Judge erred in dismissing the appeal on the basis of matters that were not questioned by the respondent in her decision.

8. Permission to appeal was granted by FfT Judge Holmes on 12th September 2017. The matter comes before me to consider whether or not the decision of the FfT Judge involved the making of a material error of law, and if the decision is set aside, to re-make the decision. At the conclusion of the hearing before me, I informed the parties that I dismiss the appeal. I informed the parties that I would give my full decision in writing. This I now do.
9. Before me, Ms Baoitey submitted that it was not clear to the appellants that their paternity was in issue. She submits that the respondent did not expressly state that she is not satisfied that [EA] is the father of the appellants. In those circumstances, the Judge should have adjourned the matter so that evidence of paternity could be provided by the appellants. The fact that proof of paternity had not been provided, she submits, is a matter that should not have been held against the appellants. Miss Ahmad accepts that the decision to refuse the applications did not expressly state that the paternity of the appellants is the issue. However, the decision maker did use the words “your purported father, [EA]” in the decision to refuse the applications. She submits it was for the appellants to satisfy the Tribunal that the requirements of the 2006 Regulations were met by them.
10. I reject the claim that the appellants paternity was not in issue. It may not have been clear to the appellants that their paternity was in issue, but carefully read, in my judgement, the decision to refuse the applications shows that the decision maker was not satisfied about the relationship between the appellants and their sponsor(s).
11. It is right to note, as Miss Ahmad accepts, that the respondent had not explicitly challenged the paternity of the appellant’s but the respondent had referred to [EA] as being the appellants’ “purported father”. The decision maker noted that the appellant had provided “..no other evidence of your relationship with your sponsor(s) such

as photos of the two of you and/or evidence of any meetings between you.”. The respondent had refused the application because the respondent was not satisfied that the appellants are the family member of an EEA national in accordance with Regulation 7 of the 2006 Regulations. It was plainly for the appellants, on appeal, to establish that they are a ‘family member’ as set out in the Regulations. Here, that they are direct descendants of [EA].

12. The Judge correctly noted, at [14], that the appellants must show that they are the direct descendants of the EEA national’s spouse, and either aged under 21 or dependent. In my judgement, the F/T Judge has correctly identified the issue that was before him. In my judgement, it was open to the Judge to conclude that without any evidence of the paternity of the two appellants, the Judge could not be satisfied to the required standard of probability, that they are the direct descendants of the spouse of an EA national exercising Treaty rights in the UK.
13. The decision of the First-tier Tribunal does not disclose in my judgment a material error of law and the appeal is dismissed.

Notice of Decision

18. The appeal is dismissed and the decision of F/T Judge Nicholls shall stand.
19. No anonymity direction is made.

Signed

Date

28th November 2017

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT
FEE AWARD

The appeal before me has been dismissed. There can therefore be no fee award.

Signed

Date

28th November 2017

Deputy Upper Tribunal Judge Mandalia