



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU084772015

HU084812015

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly

Decision

and

Reasons

On 10 August 2017

Promulgated

On 14 August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

FOUZIA [T]

[M T]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Raza counsel instructed by Fawad Law Associates

For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of these

Appellants. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The first Appellant (A1) was born on 21 June 1976 and is a national of Pakistan and is the mother of A2 who was born on 5 October 2015.
3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge G Tobin promulgated on 21 November 2016 which dismissed the Appellant's appeal against the decision of the Respondent dated 5 October 2015 to refuse the Appellants application for leave to remain in the UK based on their relationship with her British citizen younger child (HT)..
5. The refusal letters gave a number of reasons which were in essence that the Respondent did not accept that HT was the child of the British citizen as the A1 had failed to provide DNA evidence as requested and therefore A1 could not succeed under the parent route of Appendix FM or EX.1; A1 could not succeed under the private life requirements of paragraph 276ADE1 (vi) given the period she had spent in the UK; there were no exceptional circumstances to warrant a grant of leave outside the Rules taking into account the best interests of the children as the family would return together to Pakistan. In relation to A2he could not meet the requirements of Appendix FM or paragraph 276ADE.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Tobin ("the Judge") dismissed the appeal against the Respondent's decision under the Rules and on human rights grounds. Both parties before me conceded that there was no right of appeal under the Rules.
7. Grounds of appeal were lodged arguing: that the Judge was in error in that the reasons given for the adverse credibility findings were inadequate; that the Judge had failed to adequately address the rights of the British citizen child under s 117B6 of the Nationality Immigration and Asylum Act 2002.
8. On 13 June 2017 Upper Tribunal Judge Plimmer gave permission to appeal.
9. At the hearing I heard submissions from Mr Raza on behalf of the Appellant that:

(a) The Judges assessment of section 117B6 was inadequate because his assessment of whether HT was a British citizen was wholly inadequate failing to take into account the fact that there was evidence that the child had a British passport.

(b) The credibility findings were mere assertions without reasons.

10. On behalf of the Respondent Mr Harrison submitted that :

(a) He accepted that the reasons for the adverse credibility findings were inadequate at paragraphs 13, 14 and 15.

(b) He accepted that the nationality assessment was inadequate.

The Law

11. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigration Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of

significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

13. In relation to the adequacy of reasons MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC) in it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) 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.

Finding on Material Error

14. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.
15. By virtue of The British Nationality (Proof of Paternity) Regulations 2006 proof of paternity could be established for nationality purposes by a birth certificate on which the person is named as the father of the child where the birth certificate was issued within one year of the date of the child's birth. Alternatively the SSHD had to be satisfied and might have regard to DNA test reports or Court Orders. The British Nationality (Proof of Paternity) (Amendment) Regulations 2015 SI 2015/1615) which came into force on 10 September 2015 state that a birth certificate issued within 12 months of birth will no longer be sufficient in itself to establish paternity for the purposes of British Nationality does not to certificates issued before 10 September 2015 such as the birth certificate in this case.
16. The Judge therefore in suggesting that the issue of the HTs paternity was unresolved because A1 did not provide DNA evidence failed to consider why this was required when she had produced both a birth certificate naming the British citizen as father and by the time of the hearing a British passport. This was fundamental to a decision as section 117B6 of the NIA 2002 should have been considered.
17. In relation to the credibility findings generally I am satisfied that Mr Harrison was right to concede that the findings were inadequate so for example he found it

incredible that she would start a relationship with a male without finding out if he was married without explaining why. He also found that it was incredible that the Appellant left HTs father to register the child and make the immigration application to be incredible without giving reasons. I also note that at paragraph 16 he states that he 'did not believe a word she had to say' while accepting for example that she had a proper parental relationship with her children as she claimed. I have already indicated that given the provisions of the law relating to proof of paternity his conclusion that 'he was unconvinced about the father of her second child' was not one that was open to him.

18. It is a trite observation that a judge need not address in detail every single argument advanced before her, nor consider in isolation every single piece of evidence. She must weigh all of the evidence before her, and give clear reasons for her conclusions such that the parties, and in particular the losing party, can understand the reasons for her decision.
19. The failure of the First-tier Tribunal to address and determine the issue of nationality and give reasons for the adverse credibility findings constitutes a clear error of law. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply.
20. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:
 - (a) *the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or*
 - (b) *the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.*
21. In this case the parties were all agreed that the case should be remitted as there were error of law due to the failure to make proper findings on a central feature

of the case, HTs nationality. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.

22.I consequently remit the matter back to the First-tier Tribunal sitting at Manchester to be heard on a date to be fixed before me.

CONCLUSION

23.I therefore found that errors of law have been established and that the Judge's determination should be set aside and the case remitted to the First tier Tribunal for rehearing.

Signed

Date 13.8.2017

Deputy Upper Tribunal Judge Birrell