



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

Appeal Number: HU/10419/2017
HU/07980/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 19 December 2018**

**Determination & Reasons
Promulgated
On 9 January 2019**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

ENTRY CLEARANCE OFFICER

Appellant

And

**ALTAF [E]
[S A]**

Respondents

Representation:

For the Appellant: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

For the Respondent: Mr A Adebayo, A2 Solicitors

DECISION AND REASONS

BACKGROUND

1. The Appellant in this appeal is the Entry Clearance Officer. However, for ease of reference, I refer to the parties as they were in the First-tier

Tribunal. The Respondent appeals against a decision of First-Tier Tribunal Judge Devittie promulgated on 30 August 2018 (“the Decision”) allowing the Appellants’ appeals against the Respondent’s decision dated 19 March 2018 refusing their application to join their sponsor under the Immigration Rules (“the Rules”) applying to Family Reunion.

2. The Respondent relied upon paragraph 320(7A) of the Rules on the basis that the Appellants had produced two documents which were not genuine, namely a Certificate of Entry of Marriage apparently signed by Jasim Abdullateef Al Ghanem as the “Emam and Khateeb” of Al Jaharaa Mosque dated 1 May 2008 (“the Marriage Contract”) and a birth certificate purportedly issued by the Ministry of General Health dated 24 September 2007 in relation to the registration of the First Appellant’s birth on 26 May 1988 (“the Birth Certificate”). The Respondent’s decision also refused an Article 8 ECHR claim and it is that refusal which gave rise to the right of appeal.
3. The Appellants claim to be nationals of Kuwait and undocumented Bidoons. Their sponsor is [SM] (“the Sponsor”). The Sponsor is the husband of the First Appellant and the father of the Second Appellant. He has been recognised as a refugee in the UK.
4. The Appellants appealed against an earlier refusal of entry clearance. Their appeals were allowed by First-tier Tribunal Judge Flynn in a decision promulgated on 3 September 2015 (“the First Decision”). The Appellants rely on the First Decision and the documents relied upon in that earlier appeal (which included the Marriage Contract and the Birth Certificate) as evidence that they are entitled to entry clearance and that therefore their appeals should be allowed.
5. Judge Devittie, relying on the First Decision, found that the Marriage Contract and the Birth Certificate supported the Appellant’s case to be entitled to entry clearance. He therefore concluded that the refusal of entry clearance amounted to a disproportionate interference with their Article 8 rights and that the appeals should be allowed.
6. The Respondent relied in the current appeals on two Document Verification Reports dated 9 May 2016 in relation to the Marriage Contract and the Birth Certificate (“the DVRs”).
7. The Respondent’s raises three grounds of challenge to the Decision. First, he says that the Judge failed to consider the DVRs when assessing the case in relation to deception and/or failed to give adequate reasons for rejecting the evidence contained in the DVRs.
8. Second, the Respondent submits that the Judge has failed properly to understand the case as regards the Marriage Contract and the Birth Certificate. The case was not based on the fact that the Marriage

Contract was not issued by the authorities in Kuwait but that the Mosque which had purportedly issued the Marriage Contract said that it was not genuine and that, in relation to the Birth Certificate, it was the Appellants' case that the document emanated from the Ministry of Health who said that the document was not in the proper form. The Judge's finding that the Appellants could not obtain an official document was therefore in error.

9. Third, although the Respondent accepts that the First Decision was the appropriate starting point in these appeals, it is submitted that the Judge failed to recognise that there was additional evidence in the form of the DVRs and to consider how that evidence affected the earlier findings.
10. Permission was granted by First-tier Tribunal Judge Foudy on 17 October 2018 in the following terms so far as relevant:

“... 2. The grounds argue that the Judge erred in failing to make findings on a document verification report that suggested that the Appellant had submitted false documents in support of her application.

3. The Judge gave no reasons for attaching little weight to the document verification report. In **SS (Sri Lanka) [2012] EWCA Civ 155** the Court of Appeal found that the weight to be given to an expert report was a matter for the Judge as long as the evidence had been carefully considered and reasons given for discounting it. This decision does not satisfy those requirements.

4. The grounds disclose an arguable error of law.”

11. The matters come before me to decide whether the Decision contains a material error of law and, if I so find, either to re-make the Decision or remit the appeal to the First-tier Tribunal to do so.

DISCUSSION AND CONCLUSIONS

12. I begin by setting out the relevant findings from the First Decision as those are accepted to be the appropriate starting point for Judge Devittie's findings:

“25. I accept that the marriage and birth certificates are not officially issued documents, but I am satisfied that the appellants were not entitled to official documentation and that they produced the best available evidence.

26. Looking at the evidence as a whole, I find that the appellants demonstrated that they met the requirements of paragraph 352A and D. I do not agree with the respondent that the evidence of identity and nationality was insufficient. I find his decisions were not properly based on the evidence or in accordance with the law. I allow the appeal of each appellant under the immigration rules.”

13. Mr Adebayo confirmed that the Marriage Contract and the Birth Certificate are the self-same documents as referred to at [25] of the

First Decision. I therefore asked how it was that Judge Flynn found that the Birth Certificate was not an official document. That document purported to be issued by the Ministry of Health which appears to be an official body. Mr Adebayo said that Kuwaiti Bidoons were able to get documents prior to 1990. That was therefore an error by the Judge, but he said that Judge Flynn may have misunderstood the Appellants' case as the Sponsor appeared unrepresented in the first appeals.

14. I turn then to the DVRs. An issue arose at the start of the hearing before me as the copies of the DVRs included only every other page and were missing what I now understand to be the crucial page (four). I was supplied with a complete copy of the DVRs. Mr Adebayo had a complete copy of both DVRs. Although the copies on file are incomplete and it is therefore not entirely clear to me whether the copies I had were all that was before Judge Devittie, the hearing before him was an oral one and it was evident from the copies I had that pages were missing due to the pagination of those documents. Ms Willocks-Briscoe applied to amend her grounds in the event that I decided that an error had arisen in this way but, having considered that issue, I am satisfied that the Judge must have had the full copies as otherwise he would have requested the omitted pages during the hearing or thereafter when he came to write the Decision as the omission would be evident.

15. In relation to the DVR referring to the Marriage Contract, the crucial paragraph is as follows:

“... 2. I have examined the copy of the Certificate of Entry of Marriage presented with this application. This Certificate of Entry of Marriage is NON GENUINE for the following reasons:

- The document presented is the same format and bears the same signature as Certificates of Entry of Marriage submitted as part of Family Reunion visa applications by claimed Bidoon whom Ralon Amman, have been able to establish are Iraqi nationals.
- On 29/01/15, a representative of the British Embassy in Kuwait provided the Chief Administrator of the Al Jahra mosque with a copy of these certificates. He confirmed that Jassim Abdul Latif Al Ghanim (the signatory of these certificates) was not and never had been an officiating Imam at the mosque. The Administrator confirmed that the certificates were not genuine and there was no corresponding entry in the mosque ledger confirming the marriages had taken place. The Chief Administrator confirmed that any certificates signed by Al Ghanim should not be considered genuine.

I am satisfied to a high degree of probability that the certificate of Entry of Marriage presented with this application is NON GENUINE and this has been confirmed through enquiries made with the appropriate source.”

The DVR is prepared by a verifier said to be an Immigration Liaison Assistant who has worked at the British Embassy Amman since June 2013 in that capacity. His duties include verifying supporting documents submitted with applications. The DVR is dated 9 May 2016.

16. The DVR referring to the Birth Certificate reads as follows so far as relevant:

“... 2. I have examined the copy of the Ministry of Health birth registration presented with the application. As only a photocopy of the document has been produced I am unable to comment on the colour and type of paper. However, the document in question is an identical format to a document sent to the Kuwaiti authorities for verification. On 26 July 2015 Mr Jassim Al Akari from the registry office advised that the document sent for verification was forged as a genuine birth record printed from the MOH is of a different format.”

The DVR appears to have been prepared by the same person as the other DVR as the same experience is noted.

17. Judge Devittie dealt with the Marriage Contract and Birth Certificate at [5] of the Decision as follows:

“[5] In considering this appeal I bear in mind that it is for the respondent to establish on a balance of probabilities that the appellant’s marriage and birth certificates are forged. The respondent has provided a verification report. In oral evidence the sponsor explained that they were not permitted as Bidoons to gain formal marriage certificates in Kuwait. They had no status. This is not open to dispute because the 1st immigration judge made a specific finding that the documents relied upon had not been officially issued. She further found as a fact that this was because Bidoons were not entitled to official documents. The 1st immigration judge’s finding that the appellants, not being entitled to official documents as Bidoons, had produced the best evidence of marriage and birth available to them, I believe largely exonerates them from the charge of deception and forgery. The evidence of the sponsor at this hearing was clear - that they had asked the village elder to issue their marriage certificate. It was the best they could do. I accept his evidence. In the light of this finding I find that the refusal of leave constitutes disproportionate interference with the article 8 rights of the parties. I would accordingly allow this appeal on human rights grounds.”

18. Judge Devittie was of course entitled to take the findings in the First Decision as a starting point as the Respondent accepts. However, even leaving aside the DVRs, there is an error in the Judge’s reliance on the earlier findings because as Mr Adebayo indicated, one of the documents namely the Birth Certificate, is purportedly issued by the authorities. As Ms Willocks-Briscoe pointed out, the Judge needed to deal with this document because either the Appellants would not be able to get the Birth Certificate as they are not entitled to it which Mr Adebayo says is not the case but Judge Flynn found to be the position (a finding which Judge Devittie accepted) or, if the Appellants were entitled to it then the issuing authority says that the document is not in the right format. Either way, Judge Devittie’s findings do not take into account those concerns and resolve the conflict of evidence.

19. Mr Adebayo submitted that Judge Devittie took the DVRs into account as those are referred to in [5] of the Decision. However, other than a reference to them, there is no consideration of the substance of them. It may be, as Mr Adebayo submitted, that Judge Devittie preferred the evidence of the Sponsor to the DVRs. It may be, as he also submitted, that the content of the DVRs can be overcome by other evidence such as the birth certificate at [AB/16-17] being in a different format or a submission that it was not the Marriage Contract which was itself examined by the Mosque but rather one in a similar form. However, that is all speculation because the Judge simply does not deal with the evidence contained in the DVRs.
20. For those reasons, although the findings in the First Decision formed the starting point for the Decision, Judge Devittie has erred by failing to take relevant evidence namely the DVRs into account, to make findings about that evidence and to decide what weight to accord to it.
21. I add a further observation which arises from the difference in the issues before Judge Devittie and Judge Flynn. As appears from [4] of the First Decision, the Respondent's case at that stage was that the evidence could not be accorded weight because the documents were not officially registered (although that appears not to be the case at least as regards the Birth Certificate). The reference to paragraphs 320(3) and 320(10) of the Rules relates to a failure to provide identity documents and not, as paragraph 320(7A) that false documents have been provided. As such, Judge Flynn was not dealing with an assertion that the Marriage Contract and Birth Certificate were not genuine documents. It is not apparent from [5] of the Decision that Judge Devittie recognised the difference in the issues. He appears to have considered Judge Flynn's findings in relation to the Marriage Contract and Birth Certificate to be determinative of the issue of deception and forgery. However, that was not an issue before Judge Flynn and the findings in the First Decision in relation to those documents could not possibly determine that issue.
22. I am therefore satisfied that the Decision contains an error of law by reason of the Judge's failure to take relevant evidence into account and failure to provide adequate reasons or findings in relation to that evidence. I therefore set aside the Decision.
23. In relation to the appropriate forum for the re-making of the decision, I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal. That reads as follows:

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless 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."

24. My reasons for setting aside the Decision concern the Judge's failure to make adequate findings about evidence which lay at the heart of the Respondent's case. That evidence needs to be considered alongside the evidence produced for the Appellants and findings reached about the weight to be given to each party's evidence and therefore whether the allegations concerning the genuineness of the documents are made out. In fairness to both parties, it is appropriate for those findings to be made in the first instance by the First-tier Tribunal.

DECISION

I am satisfied that the Decision contains material errors of law. I set aside the decision of First-tier Tribunal Judge Devittie promulgated on 30 August 2018. I remit the appeal to the First-tier Tribunal for re-hearing before a Judge other than Judge Devittie.



Signed
2018
Upper Tribunal Judge Smith

Dated: 19 December