



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/20260/2019**

THE IMMIGRATION ACTS

**Heard at Field House
On the 9 February 2022**

**Decision & Reasons Promulgated
On the 29 March 2022**

Before

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE JUSS**

Between

ENTRY CLEARANCE OFFICER

Appellant

and

**MRS ISTAKLAL ABED HAMAD OBAID
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr C Williams, Senior Home Office Presenting Officer

For the Respondent: Mr D Adebayo, from A2 Solicitors

DECISION AND REASONS

Introduction

1. For ease of reference we shall refer to the parties as they were before the First-tier Tribunal. Thus, the Entry Clearance Officer is once more “the Respondent” and Mrs Obaid is “the Appellant”.
2. This is the Respondent’s appeal against the decision of the First-tier Tribunal (Judge Singer - hereafter “the judge”), promulgated on 23 August

2021, by which he allowed the Appellant's appeal against the decision of the Respondent, dated 4 September 2019, refusing entry clearance pursuant to paragraph 352A of the Immigration Rules.

3. These proceedings have a lengthy history stretching all the way back to March 2014 when the entry clearance application was originally made. We need not recount that history here, suffice it to say that the refusal of entry clearance was largely, if not wholly, predicated on the assertion that false documents had been used, in particular a certificate of entry of marriage and a Ministry of Health birth registration document.
4. Alongside the refusal of the Appellant's entry clearance application were the refusals of her four dependent children. It appears as though the allegation of the use of false documents was also made in respect of their applications and these were accordingly refused on the basis of false representations.
5. For reasons which remain unclear, the appeals of the four children were separated from that of the Appellant and were determined on the papers by Judge Moxon on 8 February 2021. All four appeals were dismissed.

The decision of the First-tier Tribunal

6. The Appellant's appeal came before the judge on 13 August 2021. In summary and having regard in particular to a DNA report, the judge concluded that there was a very good reason to depart from the findings of Judge Moxon, given the Respondent's acceptance that the family unit were related as claimed. The judge also expressed significant concerns about the two Document Verification Reports relied on in respect of the documents referred to earlier. Ultimately, the judge found the evidence of the Appellant and her Sponsor (her husband, a refugee with settled status in the United Kingdom) to be credible and that all of the requirements of paragraph 352A of the Rules were satisfied. This effectively disposed of the Appellant's appeal.
7. However, the judge took it upon himself to go on and address the circumstances of the four children. He deemed it appropriate to, as he described it, "make new findings" in relation to them in light of the evidence before him. He concluded that the four children met all the criteria set out in paragraph 352D of the Rules and at paragraph 45 stated that "the children should be granted entry clearance with the Appellant, to join the Sponsor, I find." Under the subheading "Notice of Decision" the judge stated in terms that he was allowing only the Appellant's appeal and this was on the basis of Article 8 ECHR.

The grounds of appeal and grant of permission

8. The Respondent drafted grounds of appeal which did not challenge any of the findings and conclusions relating to the Appellant herself. Rather, they focused entirely on the judge's consideration of the four children. It was

said that he had erred in going on to effectively remake the decisions in their appeals, appeals which had of course already been dismissed and had gone unchallenged. Towards the end of the grounds it was said that the judge should have “made a recommendation” that the children’s cases be reconsidered, rather than purporting to make findings and state that entry clearance should be granted.

9. Permission was granted by First-tier Tribunal Judge Parkes on 21 October 2021. He deemed it arguable that there had been a “material procedural irregularity” on the basis of what was said in the Secretary of State’s grounds of appeal.

The hearing

10. At the hearing before us we expressed our strong preliminary view that whatever the judge should or should not have said about the children’s circumstances, there was no challenge to the findings in relation to the Appellant and therefore any “error” in respect of the children could plainly not have had a material impact on the outcome of the Appellant’s appeal.
11. Mr Williams took the fair and entirely realistic position that this must be the case. In the circumstances, we did not need to hear from Mr Adebayo.

Conclusions on error of law

12. We would tend to agree with the Respondent that the judge should not have couched his consideration of the children’s circumstances in terms of “new findings” and a conclusion that they should be granted entry clearance. That was in a sense going too far. He would have been entitled to simply make observations, perhaps strongly worded, to the effect that in light of the new evidential landscape careful consideration should be given by the Respondent to the position of the children.
13. Be that as it may, there has been no challenge whatsoever to the judge’s consideration of the Appellant’s case. In light of this, we are concerned as to why grounds of appeal were put forward which plainly stood no prospect of success. The same concern attaches to why permission was granted.
14. There are clearly no material errors of law in the judge’s decision. We make the following observations. First, as previously stated, the judge was arguably wrong to have taken it upon himself to make “new findings” about the children. Whatever he might have said was only ever going to be *obiter* and he could not have made any legally binding findings or conclusions in respect of the children. Their appeals were and remain dismissed.
15. Second, it is, however, clear that in light of the Appellant’s appeal being allowed the Entry Clearance Officer who has now apparently had fresh entry clearance applications placed before him or her must give careful consideration to our decision and that of the judge. Given the lengthy history of this case, that consideration must be carried out expeditiously.

We understand that the fresh applications for entry clearance have been outstanding since August of last year. In our view, it is imperative that some finality is brought about and the Appellant's representatives, who also act for the children, will no doubt wish to press the responded for a decision sooner rather than later.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law and that decision shall stand.

The appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed H Norton-Taylor

Date: 22 February 2022

Upper Tribunal Judge Norton-Taylor