



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/11400/2012

THE IMMIGRATION ACTS

Heard at Bradford
on 18th October 2013

Determination Promulgated
on 1st November 2013

Before

UPPER TRIBUNAL JUDGE HANSON

Between

DMY
(Anonymity order in force)

Appellant

and

ENTRY CLEARANCE OFFICER (NBI/370825)

Respondent

Representation:

For the Appellant: Miss Khan instructed by Parker Rhodes Hickmotts Solicitors.

For the Respondent: Mr Spence – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. Following a hearing at Bradford on 21st August 2013 I set aside the determination of First-tier Tribunal Judge Upson promulgated on 30th January 2013 for the reasons set out in the error of law finding and directions document of the same date.
2. Having considered the evidence and representations made by the advocates I announced in court that I allow the appeal. I now give my reasons.
3. In addition to the evidence that was before the Upper Tribunal at the error of law stage, the appellant has now provided an expert report written by Ticky

Monekosso dated 16th October 2013 which is admitted is pursuant to Rule 15 (2A) of the Upper Tribunal's procedure rules.

4. The appellant is a national of the Democratic Republic of Congo who claimed to have been born on 25th February 1995. His mother arrived in the United Kingdom on 28th June 2007 and claimed asylum. She was granted refugee status on 1st July 2008. In February 2012 she made an application for family reunion of her three children, the appellant and his two siblings. All three applicants relied upon birth certificates issued in 2011 and passports issued in 2010. The appellant's passport was issued on 20th August 2010, his long birth certificate on 5th July 2011 and a short birth certificate on 6th May 2011. His brother AY, born 30th March 2007, was issued with his passport on 19th August 2010 and his long and short birth certificates on the same date as the appellant. The third child PA was born on the 11th September 1999. Her passport was issued on 13th May 2010 and her long and short birth certificates issued on the same day as her siblings.
5. The Entry Clearance Officer (ECO) granted the applications of both AY and PA raising no issue with regard to the validity of the documents they relied upon, but refused the appellant's mainly by reference to his appearance in photographs he submitted. The ECO was not satisfied that the appellant could meet the requirements of 352D(ii), as it was not accepted that he was under the age of 18.
6. Miss Khan submitted it is notable that the application was not refused under the mandatory paragraph 320 (3) which provides :

“(3) failure by the person seeking entry to the United Kingdom to produce to the immigration officer a valid national passport or other documents satisfactorily establishing his identity and nationality “

And nor was the application refused under paragraph 320 (10).

7. The appellant's date of birth shown in the documents he relied upon in support of his application show him to have been under the age of 18 at the date of application.
8. I find the fact the ECO did not rely upon the mandatory grounds of refusal, or other grounds available, is a matter for the ECO. Not relying on such grounds does not in itself mean that the concerns raised can be ignored.
9. Assessing an individual's age solely from photographic evidence is a very difficult exercise without specific expertise. There is no indication that the ECO has such skills. Indeed in B, R (on the application of) v London Borough of Merton [2003] EWHC 1689 (Admin) (14 July 2003), paragraph 37, the High Court specifically found that except in clear cases a decision maker cannot determine age solely on the basis of the appearance of an applicant.

10. The refusal of entry clearance, in effect, put the appellant to proof of the reliability of the documents he submitted as proof of his age. He now also relies upon the expert report which confirms that the documents are genuine. There was no challenge to the status of Mr Monekosso and having considered the weight of evidence Mr Spence accepted he was in some difficulty opposing the appeal.
11. Having reviewed all the evidence made available to me, and in light of the unchallenged statement by the expert that the appellant's passport and birth certificates recording his date of birth as 25th February 1995 are genuine, I find he has discharged the burden of proof upon him to the required standard to show that at the date of application he was able to satisfy the requirement of paragraph 352D (ii) in that he was, at that time, under the age of 18.
12. I allow the appeal under the Immigration Rules. Although it is not necessary to consider Article 8 ECHR this is a ground of appeal and in light of my finding under the Rules I find it will be a disproportionate interference with the right to family life not only of the appellant but also his siblings and mother should he not be permitted to join them in the United Kingdom.

Decision

13. **The First-tier Tribunal Judge materially erred in law. I have set aside the decision of the original Judge. I remake the decision as follows. This appeal is allowed.**

Anonymity.

14. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008) to protect the identity of the minor children.

Signed.....
Upper Tribunal Judge Hanson

Dated the 31st October 2013