



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

Appeal Number: VA/31860/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 24 June 2013
Prepared 24 June 2013**

**Determination
Promulgated
On 8 July 2013**

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Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

M A SHAHID

Appellant

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellant: Mr T Chowdhury of Messrs Kingdom Solicitors
For the Respondent: Mr J Parkinson, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Bangladesh born on 1 June 1984 appeals, with permission, against a decision of Judge of the First-tier Tribunal Hutchinson who in a determination promulgated on 20 March 2013 dismissed the

appellant's appeal against a decision of the Entry Clearance Officer Dhaka to refuse the appellant entry clearance to come to Britain as a family visitor.

2. Judge Hutchinson noted that the appellant had stated in the application form that he intended to visit a "blood related aunt" who was the sponsor and that he had listed the sponsor and three other family members of her family as his close family members in the United Kingdom. The judge asked the sponsor for details of her relationship to the appellant. She told the judge that the appellant was her mother's brother's daughter's son confirming, on further questioning that the appellant was in fact the son of her first cousin.
3. The judge pointed out that therefore she was not the appellant's aunt (nor indeed the appellant's cousin).
4. The judge went on to enquire of the sponsor the appellant's relationship to the other relatives he had mentioned in the application form. The sponsor had said that she was his closest relative and that the appellant intended to visit "my household and extended family". The judge concluded:-

"Although therefore I note that the appellant has stated that he also intends to visit a 'cousin' and two further aunts and a 'cousin sister' on the basis of all the evidence before me I am not satisfied that it has been demonstrated that these relatives are first cousins, or aunts or sisters as understood under the Regulations."

5. The judge went on to note that the appellant had made previous unsuccessful applications for visit visas and had had two previous unsuccessful visit appeals. He concluded:-

"Given the clear evidence from the sponsor *me (sic)* that he does not have any relatives in the UK closer than the sponsor who is a second cousin, I am not satisfied the appellant has demonstrated on this occasion that he is intending to visit family members as defined within the relevant Regulations. ... The onus is on the appellant to demonstrate that he intends a family visit as defined within the Regulations; despite the fact the appellant was on notice that the respondent was not satisfied in this case that the appellant intended a family visit as defined and was therefore entitled to a full right of appeal the appellant has failed to discharge that burden."

6. The judge therefore concluded that the appellant did not have a right of appeal and therefore did not go on to consider the substantive issues in the refusal.
7. The grounds of appeal asserted that:

"The sponsor stated that she was not asked any specific questions on the relationship with other cousin mentioned in question at 8.10. However, the said cousin Abdul Kaium is the appellant's first cousin. Mr Kaium is the son

of his father's brother. The name of the appellant's father is (late) Md Montaz Miah. Mr Kaium's father is (late) Moboshir Miah. The relevant documents as to the proof of their relationship are being provided herewith for your consideration. We herewith enclose the nikah nama (marriage contract) of the applicant's father Md Montaz Miah and the nikah nama of his cousin's father Moboshir Miah. Both the nikah namas show (paragraph 2) the name of their father is the same (Md Mokhrom Ullah) and the same address. Therefore; we submit the appellant's father and his cousin's (Abdul Kaium) father are siblings. As such the appellant and Mr Abdul Kaium are first cousins. In this regard, we also enclose the relevant pages of the Bangladeshi passports of the appellant and his cousin, Mr Kaium which show their respective fathers' name as well."

8. A bundle of documents was served very shortly before the hearing although it had not reached me on the date of hearing which contained the documents referred to in the grounds of appeal showing the appellant's relationship to Md Kaium.
9. The issue before me, is, however, whether or not the judge, on the evidence before him, was entitled to find that the appellant was not coming to Britain to visit a relative who fell within the categories set out in the visit Regulations.
10. The reality is that it is not an error of law for a judge not to take into account evidence which was not before him. In this case the judge did consider the evidence and reached conclusions which were open to him on the evidence. He did make enquiries of the sponsor regarding the other persons mentioned by the appellant in the application form and placed proper weight on the evidence which she gave. It is of note that the grounds of appeal against the refusal, which are detailed - stretching to four pages - do not claim that the other family members mentioned in the application were the appellant's cousins.
11. Therefore, while I consider that the documentary evidence which has now been put forward might well, had it been placed before the Immigration Judge, have resulted in a different conclusion the reality is that it cannot be said that there is any error of law in the determination of the Immigration Judge.
12. I therefore find that the decision of the Immigration Judge shall stand and this appeal is therefore dismissed.

Signed

Date

Upper Tribunal Judge McGeachy