



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/28126/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 24th February 2014

Determination Promulgated
On 01st April 2014

Before
UPPER TRIBUNAL JUDGE ROBERTS
UPPER TRIBUNAL JUDGE C LANE

Between

S M A S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Singh
For the Respondent: Mr Wardle, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal brought by S M A S a citizen of the USA (born 15th January 1949) against the decision of the First-tier Tribunal (Judge Kelly) which in a determination promulgated on 13th December 2013 dismissed his appeal

against the Respondent's decision of 27th June 2013 refusing to grant him further leave to remain in the UK.

Background

2. The relevant parts of the Appellant's immigration history are as follows: The Appellant entered the United Kingdom on various dates with lawful authority as a visitor. In April 2009, he once again entered the UK as a visitor and during this period of entry married Mrs S M S (the Sponsor) in an Islamic ceremony, with the marriage being registered at the parish church in Leeds on 6th June 2009.
3. Following this period of leave, the Appellant returned to the USA but was last granted leave as a visitor for six months from 17th March 2012. By 10th May 2012 he applied for further leave to remain with a view to settlement. He has remained in the UK since his last entry on 17th March 2012.
4. The Appellant and Sponsor's first child A was born on 11th March 2010 and their second child N was born on 21st December 2012.
5. Both the Appellant and the Sponsor have children from previous relationships. The Appellant has three adult children living in the USA and the Sponsor has a son S born on 3rd May 1995 and who resides with her and the Appellant in the United Kingdom.
6. On 9th May 2012 the Appellant applied to vary his leave to remain in order to settle. This was refused by the Respondent on 27th June 2013. It is against this refusal that he appealed to the First-tier Tribunal.

The First-tier Tribunal Decision

7. The appeal came before Judge Kelly who heard evidence from both the Appellant and his Sponsor. Judge Kelly noted that the Appellant accepted that he is unable to meet the requirements of the Immigration Rules for leave to remain and that the only issue before him was whether removal of the Appellant in consequence of the Respondent's refusal, would be incompatible with his rights under Article 8 ECHR.
8. The Judge set out his findings in his determination and the relevant one so far as this appeal is concerned are paragraphs 16, 17 and 22.

"I also have no reason to disbelieve the testimony of the appellant and sponsor concerning their present circumstances in the United Kingdom. I therefore accept that A is settled at a pre-school nursery, and that the family have a good relationship with their neighbours at their rented property in Leeds. I also accept that the appellant receives a US pension in the sum of \$623 a month, and that the sponsor receives £130 a week by way of Child Tax Credit plus Child Benefit for their two children. Both children are British nationals. They are also entitled to US citizenship. The appellant has already registered A's citizenship at the US Embassy in London. However, whilst S is also entitled to US citizenship, it has not been possible to register this due to the

amount of time that the appellant has spent in the United Kingdom following his most recent arrival in March 2012.

I must first consider the position under Appendix FM of the Immigration Rules. For reasons that I are (sic) considered in detail below, I have concluded that it would be reasonable to expect the appellant's children, A and S, to leave the United Kingdom in order to reside in the United States of America. I also consider that it would be reasonable to expect the sponsor to do so. It follows from this that the appellant cannot meet the requirements for leave under Section Ex of Appendix FM to the Immigration Rules.

I have also concluded that it would be reasonable to expect the sponsor to live with the appellant and their children in the USA. She entered into her relationship with the appellant knowing that he might not be permitted to settle in the United Kingdom. Moreover, she soon afterwards learnt that he would not be permitted to do so unless she found reasonably well-paid employment. Indeed, as recently as 2009, it had been her intention to settle in the USA. This was notwithstanding the fact that she was by then aware of her pregnancy with the Appellant's child. The only factor that caused her to change her mind was S's refusal to leave the United Kingdom. However, S is now aged 18 years. He is thus capable of making his own decision as to where and with whom he wishes to live. He will not always necessarily exercise that choice in favour of living with his mother. It is therefore unreasonable for the sponsor to expect that considerations of general public policy and the prospects of those others who may be affected thereby should take second place to her decision to remain with her adult son in the United Kingdom. This is particularly so, having regard to the fact (as became plain at the hearing) that her view of these matters will remain unchanged, "however old he is".

9. Judge Kelly went on to dismiss the appeal.
10. The Appellant sought permission to appeal to the Upper Tribunal. In granting permission Upper Tribunal Judge Renton said as follows.

"The Judge also dismissed the appeal on Article 8 ECHR grounds. He found that the Appellant had a family life with his wife and their two British-born children. He also found that that family life would be interfered with by the Respondent's decision to such a degree of gravity as to engage the Appellant's Article 8 rights but that such interference was proportionate. In reaching that conclusion the Judge mistakenly believed that the Appellant's children were entitled to US citizenship. Further throughout the Determination the Judge confused the name of the Appellant's youngest child with that of his step-son. These errors of fact and in particular the latter one amount to an error of law following the decision in *ML (Nigeria) v SSHD* [2013] EWCA Civ 844".

The Upper Tribunal Hearing

11. Before us Miss Singh relied on the grounds of application together with a skeleton argument. She followed the lines of the skeleton argument and submitted that the Judge had failed to consider relevant and material evidence from the Appellant, which had resulted in an absence of quality reasoning. It is correct to say that at the outset, as shown in her skeleton argument, she conceded that the Judge's confusion

in wrongly referring to the Appellant's son N, as S (the name of his step-son) did not amount to a material error.

12. We consider that Miss Singh's reasons for submitting that the Judge erred in law were four fold.
 - (i) A failure to properly account for the Appellant's continuous period of stay in the UK.
 - (ii) A finding that the Appellant's youngest child is entitled to US citizenship and encompassed in this the finding that the Appellant's youngest child is entitled to dual-nationality and encompassed in this a failure to assess the consequences of maintaining the refusal decision with respect to resettlement of the children in the US.
 - (iii) A failure to take into account that the Appellant's step-son S, albeit that he is an adult, is a "troubled child involved in low level criminality and is in need of the guidance and support offered by his mother".
 - (iv) Failure to properly assess the economic well-being of the United Kingdom with regard to this particular case in that the presence of the Appellant has contributed economically to the UK economy. This is because he receives his US pension in the United Kingdom and therefore spends it here.
13. We deal with points (i), and (iv) firstly. So far as point (i) is concerned we find paragraph 4 of the Judge's determination sets out the issues and the criteria for meeting the Immigration Rules. We agree that the Judge has misquoted the decision maker's conclusion in the last sentence of paragraph 4. However nothing turns on this because paragraph 4 must be read in conjunction with paragraph 5 which sets out that the Appellant (and he accepts this) is unable to meet the Immigration Rules. It is perfectly clear from the body of the determination that the Judge when referring to his decision was fully aware that the Appellant had been in the UK for a continuous period in excess of fifteen months because he clearly sets out the Appellant's immigration history.
14. So far as point (iv) is concerned namely that the Judge failed to properly assess the economic wellbeing of the UK, we find no favour with that challenge. Miss Singh's argument with respect is a circular one. She submits that the Appellant contributes to the economic wellbeing of the United Kingdom because his United State's pension is being received and spent here. This has the effect of his wife's income support of £71 per week being stopped. Thus there is a saving to the UK Treasury. As Judge Kelly pointed out the Appellant cannot satisfy the financial requirements of the Immigration Rules. This was accepted by the Appellant.
15. We turn now to what are perhaps the more weighty arguments put forward by Miss Singh and are contained in points (ii) and (iii) These matters revolve around the status of the Appellant's youngest child N; the best interests of the children and their family relationship of the Sponsor and the Appellant and their children with the

Sponsor's eldest son S. Miss Singh's challenge amounts to this. She states that the Judge erred when he said in paragraph 20,

"Whilst there is what I understand to be a temporary impediment to the registration of S's (sic) American citizenship, I am satisfied that both children possess dual nationality".

According to Miss Singh N does not possess dual nationality. However neither party before us was able to assist us on how the Judge obtained his information. We look at paragraph 16 where the Judge states in his findings,

"Both children are British nationals. They are also entitled to US citizenship. The Appellant has already registered A's citizenship at the US Embassy in London. However whilst S (sic) is also entitled to US citizenship, it has not been possible to register this due to the amount of time that the Appellant has spent in the United Kingdom following his most recent arrival in March 2012".

16. It is clear to us that the Judge has obtained this information from evidence placed before him. We therefore consider that nothing much turns on whether or not the Appellant's youngest child actually has dual nationality. The relevant point is that the Judge was informed that the youngest child would be entitled to US citizenship. There has been nothing put before the Judge, nor before us, by way of documentation from the US Embassy to say that the youngest child who is after all the child of an American citizen is not entitled to American citizenship, provided the necessary registration is put in place.
17. The final point raised by Miss Singh concerns the relationship of the family members with the Sponsor's son S.
18. S is now an adult. He does not wish to relocate with the other family members to the USA. His mother does not wish to leave him in the UK. That is a matter of choice.
19. Miss Singh urged upon us that S is a troubled child who has engaged in low level criminal activity. We see no reference to this in the evidence before the Judge and it is hard therefore to see how the Judge can be said to have erred in not factoring this in when considering the proportionality exercise under Article 8 ECHR.
20. We accept that S has a relationship with his younger siblings but there was nothing before us to show that it was anything other than the normal emotional ties which can exist between adult family members and their younger siblings.
21. Bringing all these factors together we are satisfied that the First-tier Tribunal did not err in the conclusions reached, for the reasons given.

DECISION

The decision of the First-tier Tribunal stands. The Appellant's appeal is dismissed.

Direction regarding anonymity - rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

The appellant is granted anonymity throughout these proceedings, unless and until the Tribunal directs otherwise. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of Court proceedings.

Signature
Judge of the Upper Tribunal

Dated