



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

Appeal Numbers: OA/04297/2013
OA/04299/2013
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THE IMMIGRATION ACTS

Heard at Manchester

On 28th May 2014

Determination

Promulgated

On 4th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MISS BEDHANE JARSO DIDA (FIRST APPELLANT)
MR DIDA JARSO DIDA (SECOND APPELLANT)
MISS SAFIYA HALAKE BARISO (THIRD APPELLANT)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Singh
For the Respondent: Mr McVeety

DETERMINATION AND REASONS

Introduction

1. The Appellants born on 20th June 1997, 15th April 1999 and 1st February 1996 respectively are all citizens of Ethiopia. The Appellants are represented by Mr Singh. The Respondent was represented by Mr McVeety, a Home Office Presenting Officer.

Substantive Issues under Appeal

2. The Appellants had all made application for entry clearance to the UK as the children of Mr Fayo and Mrs Bariso who were married and were refugees. That application made under paragraph 352D of the Immigration Rules was refused by the Respondent. Further the Respondent had refused the applications under paragraph 320(7A) of the Immigration Rules on the basis that the Appellants had used false documents i.e. their birth certificates were forgeries.
3. The Appellants had appealed that decision and their appeal was heard by Judge of the First-tier Tribunal Thorne sitting at Manchester on 3rd December 2013. He had dismissed their appeal.
4. The Appellants made application for permission to appeal that decision and the Grounds of Appeal form documents on file.
5. Permission to appeal was refused by Upper Tribunal Judge Deans on 20th January 2014. Further permission was sought and permission to appeal was granted on 26th March 2014 and directions were issued in respect of the consideration of this case. This matter comes before me in accordance with those directions.

Submissions on Behalf of the Appellants

6. Mr Singh submitted in summary that paragraph 320 of the Immigration Rules did not apply to paragraph 352D contained within part 11 of the Immigration Rules and it was an error of law therefore for the judge to have refused this case under paragraph 320(7A). Secondly it was submitted that it was wrong of the judge to have refused the case under the terms of paragraph 352D(ii) of the Immigration Rules.

Submissions on Behalf of the Respondent

7. Mr McVeety had some uncertainty with regards to the first submission but submitted that the judge had made no error of law in terms of his findings under paragraph 352D(ii).
8. At the conclusion I reserved my decision to consider these matters. I now provide that decision with my reasons.

Decision and Reasons

9. The judge had carefully considered the terms of paragraph A320 and paragraph 320 of the Immigration Rules and concluded that because there was no specific exemption contained therein paragraph 320 applied to paragraph 352D of the Immigration Rules.
10. Paragraph 320 is contained in part 9 of the Immigration Rules. The heading for part 9 states "General grounds for the refusal of entry clearance, leave to enter, leave to remain, variation of leave to enter or

remain and curtailment of leave in the UK". That heading therefore gives a wide and unfettered basis for the general grounds of refusal contained within part 9 unless subsequently narrowed. That heading was inserted on 12th August 2010.

11. Under that heading is now inserted paragraph A320. That paragraph was inserted on 9th July 2012 at the same time as the significant changes to the Immigration Rules were made. Paragraph A320 in broad terms removes the application of paragraph 320 to family/private life applications made under Appendix FM and paragraph 276ADE of the Immigration Rules. It would appear the purpose of paragraph A320 is to exclude general grounds of refusal from those specific parts of the Immigration Rules so that family/private life applications can be considered on a standalone basis and as a complete code within those parts of the Immigration Rules.
12. Therefore neither the General heading inserted in August 2010 nor the new introductory paragraph A320 inserted in July 2012 restrict, on the face of it, the application of paragraph 320 to paragraph 352D of the Immigration Rules.
13. Paragraph 320 itself, which is of much longer standing within the Immigration Rules than those matters referred to above, states "In addition to the grounds for refusal of entry clearance or leave to enter set out in parts 2 to 8 of these Rules and subject to paragraph 321 below, the following grounds for the refusal of entry clearance or leave to enter apply". Mr Singh interprets that to mean paragraph 320 can only apply to parts 2 to 8 of the Immigration Rules. Whilst that is one possible interpretation of that heading it is not the only interpretation. It could perhaps more readily be interpreted as meaning that, additional to specific grounds of refusal within specific Rules contained within parts 2 to 8 there are generally applicable overarching grounds of refusal contained within paragraph 320 that apply to all Immigration Rules unless specifically excluded. That interpretation is also consistent with the heading inserted in August 2010 referred to above.
14. I have been provided with no authority on this matter and I note neither was the First-tier Judge.
15. Unfortunately as with much legislation in this jurisdiction it is not written in a simple and clear style. There is also the disadvantage that because of the plethora of legislative amendments there is the prospect of certain matters being overlooked resulting in incompatibility.
16. Looking beyond parts 2 to 8 of the Immigration Rules, part 10 is a very short section dealing with registration with the police, part 11 deals with asylum and applications and procedures following from asylum claims, part 12 deals with procedure and rights of appeal and finally part 13 deals with deportation.

17. It is not the general experience in this jurisdiction that in terms of applications for asylum refusal of such applications is made with reference to paragraph 320(7A) or indeed other aspects of paragraph 320 of the Immigration Rules. Indeed if paragraph 320 was routinely applied to asylum applications there would be a significant change in the manner in which such cases were examined. Further to apply paragraph 320 to asylum claims would potentially breach the United Kingdom's obligations under the Geneva Convention. In my experience I have not come across any asylum case where it has been refused wholly or in part by reference to paragraph 320 of the Immigration Rules. Therefore in terms of practise it would seem most unlikely that paragraph 320(7A) applies to asylum claims which are contained within part 11 of the Immigration Rules. Paragraph 352D, is also contained within part 11 of the Immigration Rules and forms part of the Rules dealing with asylum claims.
18. I have concluded therefore, that whilst the general heading of part 9, paragraph A320 and the heading for paragraph 320 itself do not appear to restrict themselves merely to parts 2 to 8, to extend the application of paragraph 320 to asylum provisions contained within part 11 would be potentially incompatible with the United Kingdom's international obligations and something that by experience and practise indicates is not done. In the absence of case law provided on this matter I have therefore sought to read the Rules in a way that is compatible with practise and practical application. It is in those circumstances that I find paragraph 320(7A) does not apply to applications under paragraph 352D of the Immigration Rules.
19. Paragraph 352D itself contains certain requirements to be met before a person is granted entry clearance. The burden of proof is on the Appellant and the standard of proof in such a case under the Immigration Rules is a balance of probability. The requirement of paragraph 352D(ii) is the Appellant is under the age of 18. The judge had examined all the documentary and oral evidence presented. He concluded at paragraph 14 that the birth certificates were crude forgeries, Tippex being used to change significantly the dates of birth. He was entitled to conclude they were forgeries. Indeed the Appellants' representative accepted that they were false documents. In terms of the passports the Sponsor father himself in oral evidence accepted that the dates of birth on the birth certificates and passports did not match and further he said that the dates of birth contained within two of the Appellants' passports were in fact wrong. It was also the case that different dates of birth appeared on the Visa Application Forms.
20. In those circumstances the judge was entitled to conclude that the Appellants had not demonstrated that on balance they were below the age of 18 at the date of application.
21. I conclude therefore that whilst the legislation is not entirely clear and as written may point in one particular direction, reading that legislation in a pragmatic manner and for the reasons provided above I find that

paragraph 320(7A) does not apply to part 11 (asylum) of the Immigration Rules and therefore does not apply in this case to paragraph 352D. To that extent the judge made an error of law. It is unnecessary for me to remake the decision firstly because my finding does not require an examination of evidence but simply an interpretation of the legislation as given above. However, no error of law was made by the judge in his finding that the Appellants did not meet the specific requirements of paragraph 352D(ii) of the Immigration Rules.

Decision

22. An error of law was made by the First-tier Tribunal in finding that paragraph 320(7A) of the Immigration Rules applied to this case and to that extent I set aside the decision of the First-tier Tribunal and conclude that such paragraph does not apply in this case. However I uphold the decision of the First-tier Tribunal in concluding that the Appellants failed to meet the requirements of paragraph 352D(ii) of the Immigration Rules and find no error of law was made by the First-tier Tribunal in that respect.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Lever