



**Upper Tribunal
(Immigration and Asylum
Chamber)** Appeal Numbers:
OA/09536/2013

OA/09524/2013

OA/09532/2013

OA/09522/2013

THE IMMIGRATION ACTS

Heard at Field House

On 6 November 2014

Decision & Reasons

Promulgated

On 14 November 2014

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

1 **JARAH IBRAHIM MOHAMED**
2 **ALI IBRAHIM MOHAMMED**
3 **MOHAMED IBRAHIM MOHAMMED**
4 **OSMAN ABDULLA IBRAHIM**
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER-AMMAN

Respondent

Representation:

For the Appellants: Mr I Palmer, Counsel

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. Although this case touches on the welfare of young people I see no need for any restraint on publication.
2. This is an appeal by four young people described as stateless Bidoons originating from Kuwait. I understand they are presently living in Jordan. They appealed to the First-tier Tribunal the decision of the Entry Clearance Officer refusing them entry clearance to join their sponsor, a refugee in the United Kingdom. The first three appellants are the children of the sponsor and the fourth appellant is the grandchild of the sponsor.

3. The appellants and their mother or grandmother as the case may be applied at the same time for entry clearance. They were all refused but when DNA evidence showed that they were related as claimed there was no reason to doubt the claim of their mother to be the wife of the sponsor. She entered the United Kingdom with permission and gave evidence before the First-tier Tribunal.
4. The appellants were not given entry clearance. In the case of the first three appellants it was not accepted that they were of the age claimed. In the case of the fourth appellant, the grandchild, it was not accepted that he would have established any rights under the Rules or on Article 8 grounds to join his grandparents.
5. I deal with the appeal of the fourth appellant first because it is rather different from the other three and I have no hesitation in saying that his appeal to the Upper Tribunal must be dismissed. The First-tier Tribunal did not believe the evidence given about his circumstances. Reasons were given for this. In particular there was a contrast in the evidence between that of the sponsor and that of the sponsor's wife. They could not agree about the age of the child when the child started to live with them. Neither could they agree with the reasons for only one of the grandchildren remaining and the other being taken apparently to the United Kingdom. These were points of considerable importance in which consistency could reasonably have been expected.
6. The First-tier Tribunal Judge also found the alleged arrangements for the care of the young child being given over to the grandparents to be unbelievably lax.
7. The main reason for challenging the findings raised in the grounds is an attack on a rather loose remark by the First-tier Tribunal Judge when he expressed himself "doubtful" about the fourth appellant's claim to be part of the sponsor's pre-flight family. Mr Palmer, who settled the grounds, was able to say that "doubtful" is an unfortunate phrase as it is not clear what kind of doubt the judge experienced. When the balance of proof is the balance of probabilities it is entirely possible that the judge might be "doubtful" but still may be satisfied.
8. However there was a correct self-direction about the burden and standard of proof at paragraph 5. Paragraph 26 has to be read with paragraph 28. The judge says in paragraph 26 that he is doubtful and goes on to say in paragraph 28 that it had not been shown properly that the fourth appellant was part of the sponsor's pre-flight family. Coupled with the correct direction in paragraph 5 about the burden of proof and the absence of anything to undermine the suggestion that the judge had failed to follow his correct self-directions other than the use of the word "doubtful" I see no basis for criticising that part of the decision.
9. Once the fourth appellant failed to establish the social (not biological) relationship alleged then the appeal had to be dismissed.
10. The other three appellants are in the same position as each other but in a different position from the fourth appellant. Their case turned entirely on

their age. If they were minors their appeals should have been allowed but if they were not then it should have been dismissed. The critical date was the date of application.

11. It is often extremely to prove a person's age and the First-tier Tribunal Judge expressed his own frustrations of the unenviable and very difficult task before him. The evidence of their ages was comprised an assertion made out in the application form supported by the evidence of their parents and the evidence of birth certificates used to support the application.
12. None of that evidence was particularly good. The evidence in the application form and the documents merely shows consistency. It does not show truthfulness. The First-tier Tribunal Judge, I find for perfectly lawful reasons, did not feel able to give very much weight if any to the birth certificates. His point was that the mother and father of the appellants could not give a consistent sensible account about how the documents came to be in their possession. He was entitled to expect this to be something that they could explain easily. Certainly, absent extraordinary circumstances, it would not have been hard to have explained how regularly obtained genuine birth certificates were issued. The judge found that the parents had not been truthful and were unreliable witnesses about the appellants' ages.
13. There was one point in particular that the judge missed in his determination and I have reflected hard on it because it does concern me. When the appellants' father claimed asylum in the United Kingdom in 2011 he responded to a screening interview. Such interviews are brisk and intended to help categorise an application rather than establish the detail. Both applicants and immigration officers can often be excused for making mistakes about the details of the claim. Nevertheless the sponsor gave a detailed account of his family, not only about these appellants but about his grandchildren as well, that was consistent with his later evidence. I wish this point had been addressed in the determination. As I indicated in exchanges with the representatives, such consistency does not prove truthfulness but it does defeat a suggestion of recent fabrication.
14. The First-tier Tribunal Judge had a photograph of the three appellants. In fact there were two sets of photographs. One set were on the application forms. It was not clear when they were taken and so they do not really assist anybody. The second was a photograph of the three appellants standing side by side the embassy when their application was made. Mr Palmer said that when the photograph was taken the appellants should have been aged 14, 15 and 16 years.
15. The First-tier Tribunal Judge said at paragraph 19:

"I find the photographic evidence to be compelling in this case and I am of the firm view, having had the benefit of looking at this evidence, that these appellants were over the age of 18 years at the date of decision."
16. I am no hesitation in saying that the photograph does not appear to me to show boy aged 14, 15 and 16. They look to me like photographs of young men significantly older than that. However, I also remind myself that my

observation on the photograph is based on my experience of young people who have grown up in the United Kingdom and it is not obvious to me that that transfers necessarily fairly or accurately to young people who have grown up in the difficult circumstances of being stateless in Kuwait or Jordan or other places in between. It may not be entirely surprising if they matured more quickly but I do not know. That would be speculation on my part.

17. I also know because of guidance given in age assessment cases in the United Kingdom that a decision maker cannot give much weight to evidence based on appearance and particularly not to a photograph which can only give an impression based on an instant in time. Certainly those of us who have experience in, for example, prosecutions arising out of selling alcoholic drinks to people under the age of 18 know that a young person who wants to appear older than is really the case can often do that successfully, at least initially, although the pretence is much harder to sustain if the person is interviewed and examined.
18. It really comes to this. The judge had got before him photographic evidence tending, but only tending, to suggest that the appellants were older than they claim, consistent evidence from the father about the age of the children that was not supported by the mother's oral evidence, and documentary evidence that was unreliable. Mr Avery reminded me, perfectly properly, that the judge was not allowed the luxury of indecision. He had to come down one way or the other.
19. I remind myself, as I suspect the judge reminded himself, that this decision is of considerable importance. It is very undesirable indeed that young people who are entitled to be united with their parents in the United Kingdom are separated from them but it is also undesirable that three grown men living independently in Jordan should be allowed into the United Kingdom because they have pretended to be much younger than they really are.
20. Not for the first time in appeals of this kind I find it just slightly alarming how very important decisions have to be made on very unsatisfactory evidence.
21. Mr Palmer showed how the appeal could have been decided differently. Mr Avery reminded me that I have to ask myself if the judge was wrong in law. I am not persuaded that he erred. Rather, I find that he did the best that he could in very difficult circumstances. He did set the case in the matrix of the evidence as a whole. He did appreciate the poor quality of any of the evidence before him and he reached a permissible decision. It follows therefore that the appellants' appeals to the Upper Tribunal must be dismissed and are.
22. There is a rider I add to this. The determination contains rather alarming reference to photographic evidence being provided after the hearing. Mr Palmer very fairly and helpfully explained that black and white photocopies were available at the hearing but that the Presenting Officer had colour photographs on his mobile 'phone which he showed to the judge. No doubt in an effort to be helpful the Presenting Officer provided a


printed copy of those photographs after the event. Taken out of context the Presenting Officer's behaviour might have seemed alarming if not bizarre but was actually the result of someone trying to be helpful and fair. No-one suggested that there is anything improper about it or anything adverse turned on it. I only mention it because it concerned me when I read the papers and my concern was misplaced.

23. I also record here, as I explained to the parties at the hearing, the papers before me were incomplete. The appellants' bundle and the photographs were missing. I took time during the hearing to consider the bundle. I mention its absence in case the files attract attention elsewhere.
24. Neither party asked for a fee award and so I make no order.

Notice of Decision

The appeal is dismissed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 12 November 2014