



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

Appeal Numbers: OA/01833/2013
OA/01834/2013
OA/01835/2013
OA/18851/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 13 April 2015**

**Determination Promulgated
On 21 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS

Between

**JUMA AKTER MST NIHA
KOBIR MIAH
PIARA MST BEGUM
MONIRA BEGUM
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellants: Mr L Youssefzan of D J Webb & Co Solicitors
For the Respondent: Miss A Everett, Home Office Presenting Officer

DECISION AND REASONS

The History of the Appeal

1. The Appellants are a mother and her three children from Bangladesh. One of the children, who is the fourth Appellant, appeals against a decision of the Respondent of 1 September 2013 refusing an application for a certificate of entitlement to the right of abode in the UK. The other Appellants appeal against decisions of the Respondent of 21 November 2012 refusing their application for entry clearance to the UK as the wife and children of their husband and father as a person present and settled in the UK.
2. The appeal was heard by Judge Howard sitting at Hatton Cross on 28 July 2014. The Appellants were represented by Mr L Youssefzan, who appeared before me. In a determination promulgated on 22 August 2014 the appeals of the first, second and third Appellants were dismissed, whilst that of the fourth Appellant was allowed.
3. Permission to appeal was refused by Judge Davies on 20 October 2014 and granted to the first to third Appellants on second application by Judge Goldstein on 12 February 2014 in the following terms:
 - “1. The renewed grounds amplify but otherwise continue to rely upon the original grounds submitted in support of the first application for permission to appeal, and also challenge the reasoning of the First-tier Tribunal Judge who refused such permission.
 2. I am persuaded that it is arguable that the First-tier Tribunal, may have made an error of law in failing to give adequate reasons for its findings on material matters: failed to resolve the issue as to whether the Respondent’s refusal under paragraph 320(7A) was appropriate, not least in light of the concession made at the hearing; that in turn, raises arguable issues as to whether the First-tier Judge was entitled in law to reach the conclusions that he did for the reasons given.
 3. Further the First-tier Judge may have made mistakes of fact about matters arguably relevant to this appeal.
 4. In the circumstances permission is granted in respect of all of the grounds.”
4. In a Rule 24 response of 20 February 2015 the Respondent submitted, without access to the evidence, that Judge Howard had directed himself appropriately.
5. The Sponsor attended the error of law hearing before me. Parts of the proceedings were interpreted to him by somebody who accompanied him. The hearing took the form of submissions, which I have taken into account, together with the grounds for permission to appeal and the Rule 24 response. I reserved my determination, on the basis of deciding whether the decision contained a material error of law and, in that event, with the assent of both representatives, remaking the decision.

Error of Law

6. Mr Youssefzan and Miss Everett took the opportunity to discuss the appeal before the start of the hearing. In consequence Miss Everett said that she confined her defence of the decision of Judge Howard to one issue. Although the grounds for permission to appeal are lengthy and detailed, Mr Youssefzan moulded his submissions accordingly and I determine the application in that light.
7. At paragraph 16 of his decision Judge Howard wrote that the maintenance requirements needed to embrace the fourth Appellant. Mr Youssefzan submitted that this was legally incorrect. When the decision was made on 21 November 2012 in relation to the three other Appellants, the application of the fourth Appellant was still pending, and so remained until 1 September 2013. Section 85(5) of the 2002 Act required the Tribunal to take into account only evidence of the position at the date of the decision on 21 November 2012. I accept this submission, whose significance is that it feeds into the assessment of the adequacy of maintenance.
8. In the fourth indented paragraph of the decision in relation to the third Appellant, who is the mother, of 21 November 2012, the Respondent identified weekly deductions of £100 for rent and £66 for council tax. In a letter of 10 June 2013 the third Appellant explained that the council tax was in fact £88 per month. Mr Youssefzan said at the hearing that this equated to around £20.38 per week, before a council tax deduction. On that basis a schedule of weekly expenditure which was in evidence before Judge Howard discloses, as amended at the hearing, a net surplus of £91.15 per week.
9. A letter from HMRC showed the gross income of the Sponsor for the financial year 2012/2013 as £12,024. At paragraphs 4 and 5 of his statement the Sponsor explained how this was mistaken and his income for that period was in fact £20,350. This is substantiated by his payslips and his statements of Halifax Bank, which correspond with the payslips, for that period.
10. Judge Howard addressed the inconsistency at paragraph 19. He stated that it was not easy to reconcile the two figures. Both could not be right, and he must use the more reliable figure, which was one actually submitted to HMRC. This he did.
11. At the error of law hearing Miss Everett submitted that he was entitled so to do, and thus did not err in law. Mr Youssefzan submitted that in so doing he had not referred to or considered the evidence, both oral and written, of the Sponsor, nor the payslips or Halifax bank statements. Had he done so, he could not reasonably have concluded from the evidence that the figure submitted to HMRC and utilised by them was the more reliable one. His failure to take relevant evidence into account was an error of law. This I so find. As it happens, the submission is vindicated by a postdecision letter of 2 October 2014 from HMRC which Mr Youssefzan handed to me at the hearing showing the Sponsor's amended earnings for the year 2012/2013 as £20,350. Whilst noting this I do not take it into account.

12. The judge incorporated the fourth child into the maintenance calculation, overcalculated the council tax liability and through not taking account of relevant evidence undercalculated the Sponsor's earnings. The combination of these errors led him to conclude that the surplus was insufficient to enable the Sponsor to maintain his family. If these errors are corrected, the conclusion would have been that the Sponsor had demonstrated his ability to do so.
13. I accordingly set the determination aside in relation to the first to third Appellants.

Remaking the Decision

14. It follows that, satisfying the maintenance requirements, which are the only limb of the permission application to which the Respondent maintained opposition, the first to third Appellants have discharged the burden of showing their ability to maintain themselves adequately at the date of the decision. I accordingly substitute a decision allowing the appeals of the first to third Appellants.

Decision

15. The original determination contained an error of law. In relation to the first, second and third Appellants I set it aside. In relation to the fourth Appellant, whose appeal it allows, I preserve it.
16. In relation to the first, second and third Appellants I substitute a decision allowing the appeals.
17. No anonymity direction is made.
18. As fees have been paid, I make full fee awards in favour of the first, second and third Appellants.

Signed

Dated: 20 April 2015

Deputy Upper Tribunal Judge J M Lewis