



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/18403/2016
HU/18408/2016
HU/18406/2016

THE IMMIGRATION ACTS

Heard at Manchester
On July 27, 2018

Decision & Reasons Promulgated
On August 02, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**RPR
CPR
CVPR
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Sram, Counsel, instructed by One Source Solicitors
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Procedure Rules) I make an order prohibiting the disclosure or publication of specified documents or information relating to the proceedings or of any matter

likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be identified. The effect of such an “anonymity order” may therefore be to prohibit anyone (not merely the parties in the case) from disclosing relevant information. Breach of the order may be punishable as a contempt of court.

2. The appellants are nationals of the Philippines. They each sought entry clearance under paragraph 297 HC 395 as the children of a parent present and settled in the United Kingdom. The respondent refused the application of October 22, 2016 on the basis that the sponsor did not have sole responsibility and the respondent further stated that he was not satisfied the sponsor would be able to adequately accommodate the appellants or maintain them adequately without recourse to public funds. The respondent went on to state there were no exceptional circumstances that engaged article 8 ECHR.
3. The appellants lodged grounds of appeal on June 19, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. Their appeal came before Judge of the First-tier Tribunal Khawar (hereinafter called “the Judge”) on November 27, 2017 and he dismissed their appeals on human rights grounds on December 5, 2017.
5. The appellants appealed this decision on December 19, 2017 on the grounds there had been procedural unfairness by refusing her application to allow the sponsor to attend the appeal hearing. The Judge had been unable to obtain answers to important questions in her absence.
6. Permission to appeal was granted by Judge of the First-tier Tribunal Keane on May 24, 2018 who accepted there was an arguable error of law due to the fact the Judge had not adjourned the hearing even though he had accepted that answers to a considerable number of questions may have been forthcoming if the sponsor had been there.

SUBMISSIONS

7. Mr Sram relied on his skeleton argument and submitted that whilst it was accepted the sponsor mother had received details of the hearing he submitted that she had not attended as she had not realised she was required to attend. This was an application by three children to join their mother and he submitted that if the mother had realised that she was required to attend then she would have done so. Mr Sram argued that the Judge did not consider properly whether proceeding would be unfair but effectively proceeded because he did not accept the sponsor mother’s explanation. He submitted this was unfair.
8. Mr Tan submitted that the Judge had considered the issues and apart from adjourning there was little else he could have done. He had considered the explanation advanced and gave good reasons for refusing the adjournment. He submitted the Judge acted fairly in refusing the adjournment request and he invited the Tribunal to dismiss the application.

FINDINGS

9. This was an appeal brought on a narrow ground namely that there had been procedural unfairness in proceeding in the absence of the appellants' mother.
10. At paragraph 8 of the Judge's decision, the Judge noted that an application for an adjournment had been made on the basis the appellants' mother had failed to attend the hearing. The Judge stood the matter down to enable contact to be made with instructing solicitors with a view to ascertaining why the appellants' mother had not attended.
11. The solicitors had confirmed to counsel, who was instructed, that the appellants' mother was aware of the hearing date but that possibly there had been some misunderstanding because she did not speak English very well. The Judge noted that there had been no request for an interpreter and she had been living in the United Kingdom since 2008 and concluded she would have understood the importance of attending. He therefore proceeded on the basis that she did not intend to appear.
12. Having carefully considered the issues in this appeal and had regard to case law including Nwaigwe (adjournment:fairness) [2014] UKUT 00418 and in particular paragraph 7 of that decision I find that there has been procedural unfairness.
13. It has to be remembered that the Judge was dealing with an appeal by three children who were applying to join their mother, who had leave to remain in this country, and he was not dealing with an appeal brought by their mother. In other words, the persons who were penalised by the decision not to adjourn were the appellants not their mother. When the Judge considered whether to adjourn this appeal it seems the Judge's concentration was on the absent mother.
14. The Tribunal in Nwaigwe emphasised that "where an adjournment refusal is challenged on fairness grounds it is important to recognise that the question for the Upper Tribunal is not whether the First-tier Tribunal acted reasonably. The test to be applied is that of fairness and whether there was any deprivation of the affected parties' rights to a fair hearing."
15. In this case the affected parties were the appellants and the question the Judge should have asked himself was whether it was fair to proceed, without their mother present, in the knowledge that there were "a considerable number of questions which arise from the documentary evidence filed" and in the knowledge she did not realise she had to attend.
16. The Judge recognised that the witness was an important witness and whilst he may have had doubts about the sincerity of her absence the fact remained there was an application for an adjournment and by refusing the adjournment I find, given the fact it was the appellants' appeals as against the mother's appeal, that there was unfairness by refusing the adjournment request.

17. As findings are crucial to the issue of whether the appellants satisfy the Immigration Rules I remit the matter back to the First-tier Tribunal under Section 12 of the Tribunals, Courts and Enforcement Act 2007 for a de novo hearing.

DECISION

18. There is an error in law and I set aside the decision.
19. I remit the matter back to the First-tier Tribunal to be heard by a Judge other than Judge of the First-tier Tribunal Khawar.

Signed

Date 27/07/2018

A handwritten signature in black ink, appearing to read 'SPAR' with a stylized flourish underneath.

Deputy Upper Tribunal Judge Alis