



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

Appeal Numbers: HU/19746/2016
HU/19752/2016
HU/19753/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 31 October 2018**

**Decision & Reasons
Promulgated
On 29 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

**FAHANA BEGUM
LUTHFA BEGUM
JULFA BEGUM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER, NEW DELHI

Respondent

Representation:

For the Appellant: Mr M Mustafa of Kalam, solicitors.
For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellants against a decision of the First-tier Tribunal dismissing their appeals against the respondent's decisions of 18 July 2016 (first appellant) and 19 July 2016 (second and third appellants) refusing their applications for entry clearance as the children of their mother and sponsor, a person settled in the United Kingdom.

Background

2. The appellants are citizens of Bangladesh born on 26 June 1998, 18 July 1999 and on 19 November 2000 respectively. Their mother entered the UK on 5 March 2014 following the grant of a certificate of the right of abode on 18 February 2014. Subsequently, the appellants applied for entry clearance to join her, but their applications were refused on the basis that the birth certificates submitted in support showed that their births had not been registered until December 2007 and the certificates were only issued on 21 July 2014. The respondent was not satisfied that the appellants were related as claimed to the sponsor, taking into account that she had not visited them in Bangladesh and there was little or no evidence of contact or financial support. The respondent also found that as the appellants were living with a maternal uncle, there were no serious compelling family or other considerations to make their exclusion undesirable.
3. The grounds of appeal to the First-tier Tribunal argued that the appellant's father had died and their mother was present and settled in the UK and, therefore, the provisions of para 297(1)(d) of HC 395¹ (emphasised in bold in the grounds) were satisfied. It is further argued that, in any event, under article 8 it would be disproportionate to expect the children to be separated from their mother.
4. The refusal decisions were reviewed on 2 December 2016 and maintained. In the review, the Entry Clearance Manager (ECM) said that unfortunately it had not been possible to locate the documents retained by the Entry Clearance Officer (ECO) when the decision was made but he was satisfied that the ECO had seen the documents referred to in the decision. The appellants had chosen not to provide any additional documentation to show how they were related to the sponsor, apart from a further copy of the birth certificates. The ECM commented that it appeared from the grounds of appeal that the appellant's father was dead, but it was not clear whether acceptable evidence of this was before the ECO and no evidence had been provided with the appeal papers. If their father was not dead, the sponsor would need to demonstrate sole responsibility or serious compelling family or other circumstances making exclusion undesirable. The ECM found that the sponsor had not shown that she had sole responsibility and that article 8 was not satisfied as it was not shown that the appellants had family life with her but, if they had, the decisions

¹ The provisions of para 297 setting out the requirements to be met by a person seeking indefinite leave to enter as a child are set out in full at [5] of the First-tier Tribunal decision.

were proportionate as family life could continue as it had done up until now.

The Hearing before the First-tier Tribunal

5. By the time of the hearing before the First-tier Tribunal DNA tests had been obtained showing that the appellants and the sponsor were related as claimed. At the hearing the appellants' representative, Mr Mustafa, produced a death certificate for the appellants' father showing that he had died on 23 December 2001. He also relied on the contents of a letter dated 8 June 2016 from the appellants' solicitors which was said to be the letter submitted with the online applications, the letter referring to an appointment booked for 21 June 2016 at Sylhet Visa Application Centre ("the visa centre") and to the applications being submitted in person. On a separate sheet with the letter, the documents enclosed were itemised and refer to the original death certificate of the appellants' father [7].
6. Mr Mustafa indicated that the hearing would be proceeding by way of oral submissions and that it was not proposed to call the sponsor who was present at the hearing. It was submitted that if the appellant's father was dead, then the issue of sole responsibility did not arise and the appeal must succeed [8]. The judge indicated that, in any event, she might wish to hear oral evidence on the issue of sole responsibility and also on adequate maintenance and accommodation, pointing out that these issues were dealt with in the witness statement [9]. Insofar as there was an issue about the reliability of the death certificate, the appellant's representative indicated he was seeking an adjournment to make enquiries of the registrar in Bangladesh, given the challenge to its validity by the presenting officer [11].
7. The judge accepted the presenting officer's submission that the appellants had had ample time to provide further evidence: the notice of hearing been sent out on 13 April 2017 for a hearing on 9 August 2017. She gave the appellant's representative a short adjournment to take instructions on whether the sponsor wished to give oral evidence but he maintained his position that the hearing would proceed by way of submissions and that sole responsibility was not being pursued because, if the finding was that the appellant's father was not dead, then sole responsibility could not arise if he was alive, but, if he was dead, then the appeals succeeded [13].
8. It was submitted by the presenting officer that the father's death certificate had not been provided to the respondent with the original applications and that there would have been no reason for the ECO to mention it in his decision. It was clear from the terms of the review that the ECM had noted the assertion that the appellant's father was dead, but he said that no further documents were provided for the review. Had a death certificate been provided, the ECM would have dealt with it. He also argued that there was no evidence that the letter of 8 June 2016 was in fact sent with the online applications and the document was no more than

a copy. The usual practice was that documents submitted with an application were returned stamped, but it was unclear or there was no evidence whether this had been done. The respondent's case was that the death certificate had been produced for the first time on the morning of the hearing. The presenting office submitted further that the death certificate was not reliable and the sponsor had not been called to give oral evidence to answer questions about how the death certificate had been obtained.

9. The appellants relied on PJ Sri Lanka) v Secretary of State [2104] EWCA Civ1011. It was submitted that the death certificate was at the centre of the claim and there was an obligation on the respondent by a simple process of enquiry to determine whether it was genuine. Mr Mustafa submitted that he should have an opportunity of providing an affidavit from the relevant authorities and of rebutting the submissions of the respondent. The judge gave the appellants 28 days to produce further evidence and 7 days to produce a copy of PJ (Sri Lanka) and to make written submissions on the effect of that decision. After the hearing further documents and submissions were filed on behalf of the appellants and a response was filed from the presenting officer.
10. Having reviewed the evidence including the documents and submissions made after the close of the hearing, the judge said that given the lack of a paper trail she could not make any positive findings on whether the covering letter of 8 June 2016 had been attached to or sent with the appellants' applications made online. She commented that the letter produced at the hearing had no email heading to indicate that it was sent with the online applications and the practice of returning documents submitted with the application without keeping at least one full copy on file was to be regretted. She set out a number of factors at [35]-[38] which led her to the view that there was no adequate evidence to show that the purported covering letter of 8 July 2016 was sent with the online applications, a fact which could have been established by the appellant's solicitors by evidence of an email being sent or a proper paper trail but no such evidence had been provided. She also gave weight to the fact that there was no evidence from any of the appellants to establish what, if any, documents they took with them when they attended the visa centre to submit their applications in person.
11. The judge went on to consider the death certificate. She found that it was not a reliable document to which she could give any weight. It was not a death certificate as such as it had not emanated from the Office of the Registrar of Birth and Deaths unlike the birth certificates produced. She found that the affidavit of the chairman of No 3 Dewanbazar Union Parishad ("U/P") dated 29 August 2017 made the death certificate first produced even more unreliable as he conceded in para 3 that the death certificate he issued on 30 February 2016 was not in accordance with the format of a death certificate due to inattention and he did not explain why further details not been provided in the first certificate.

12. There had been no explanation why the U/P was issuing birth certificates and not the Registrar of Births and Deaths. She commented on the inadequacy of the contents of the chairman's affidavit and found that the notarial certificate was carelessly produced as there had been no deletion of the alternative documents allegedly being certified. She noted that the most recent death certificate had a different spelling of the sponsor's name compared with the earlier death certificate and commented that the documents produced after the hearing raised more and further questions rather than answers creating, even more unreliability about the death certificates produced [48].
13. The judge went on to consider the reasoning in PJ (Sri Lanka) setting out paragraphs 29-32 of the judgment. She found that the death certificate had only been produced on the morning of the hearing and that there had been no opportunity or obligation on the respondent to make any enquiries at all and, in any event, he had not been in a position to do so. There had been no breach of any obligation to undertake a proper process of verification.
14. In these circumstances, the application was dismissed under the Rules. The judge went on to consider article 8 but found that the decision to refuse entry clearance was justified by the need to maintain effective immigration control.

The Grounds of Appeal

15. In ground 1 it is argued firstly that the judge erred in her finding that the father's death certificate had not been produced until the morning of the hearing and had not been enclosed with the application for entry clearance. It is argued that the covering letter of 8 June 2016 overwhelmingly established that the appellants had submitted their father's death certificate with the application for entry clearance and that, therefore, the death certificate was before the respondent; the covering letter made it plain that the appellants were applying with reference to para 297(1)(d) and the reasoning that the respondent's decision made no reference to the death certificate nor raised any concern in relation to it and that therefore the death certificate was not delivered was irrational especially as the respondent might not have referred to the death certificate for a variety of reasons.
16. The judge's understanding of the situation was vitiated by the fact that she did not appreciate that an application was made online following which any covering letters together with supporting documents were submitted in person at the appointed date at the visa centre; the reliance on the ECM's review conveniently ignored the admission that it had not been possible to locate the documents retained by the respondent when the decision was made; the comment that the respondent's decision made no specific reference to para 297(1)(d) was a glaring mistake as the

decision clearly referred to paras 297(1)(a)-(e) which obviously included (d); the finding that the notice of appeal made no reference to the death certificate and therefore the same was not submitted with the application was irrational because the decision took no issue with the death certificate which meant there was no need to refer to it in the notice of appeal and, finally, no reasons had been given for rejecting the appellants' written submissions on these issues.

17. Ground 2 argues that the finding that the appellant's father's death certificate was unreliable amounted to an error of law as the judge failed to give any reasons for her finding that it was not in form a death certificate whereas it was issued by the person who stated that he was responsible for registering births and deaths in his U/P; the judge ignored the evidence in the affidavit which provided details of how births and deaths were verified and put inordinate weight on the format of the death certificate; the jurisdiction of the U/P was set out in the relevant Births and Deaths Registration Act 2004 in Bangladesh and finally, the judge placed undue weight on immaterial considerations.
18. Ground 3 argues that the judge's references to PJ (Sri Lanka) amount to a material error of law as it indicated a misunderstanding that, according to her, PJ (Sri Lanka) was only applicable if there was an allegation of forgery and she wrongly took the view that this authority did not apply to documents produced on the morning of the hearing, which was clearly not the case and the finding that any enquiries of the chairman of the U/P would be self-serving indicated a closed judicial mind on this issue.
19. Mr Mustafa adopted his grounds emphasising his argument that the judge had misunderstood the procedure when making an application online. After the application was made online, the documents and the covering letter would have been submitted by hand at the visa centre. The judge had failed to give adequate reasons for finding that the death certificate had not been submitted; she had failed to give proper weight to all the evidence on this issue and had been being wrong to express concerns which had not been raised with the representatives. He further submitted that this was a case where verification would conclude the issue and therefore fell within the principles set out in PJ (Sri Lanka).
20. Mr Kandola submitted that ground 1 was only of peripheral relevance, if any, if ground 2 succeeded. The judge had considered the evidence about the death certificate and the parties had been given an opportunity of producing further evidence. There was no error in her finding that the death certificate was not a reliable document, particularly in circumstances where the sponsor had not given oral evidence. There was no adequate explanation why it was provided so late, assuming it was only provided on the day of the hearing. So far as PJ (Sri Lanka) was concerned, there was no general duty on the respondent to authenticate documents. There had been no breach, so he submitted, of any obligation to attempt to verify the death certificate.

Assessment of whether the Judge Erred in Law.

21. I shall deal with the grounds in the order in which they are set out in the grounds of appeal. Ground 1 argues that the judge erred in law in her finding that it was not shown that the death certificate had been submitted with the original application. This was essentially an issue of fact for the judge to assess in the light of the evidence before her. When considering this issue, the judge was entitled to take into account that there had been no reference to it in the original decision by the ECO, that the appeal forms submitted against the original decision did not make any reference to the death certificate neither did the covering letter, whereas it did refer to the birth certificates. She noted that the grounds of appeal highlighted the reference to para 297(1)(d) but also the fact that the issue of the father's death was only implicit in the grounds of appeal rather than explicit.
22. She also took into account that there was no supporting evidence about the covering letter being sent with the online application or, in the alternative, being taken to the visa centre. It was argued that the judge had misunderstood the system but whether or not the judge was working on the basis of the letter being sent with the online application or later being taken to the visa centre, she was entitled to comment there was no evidence from any of the appellants to establish what, if any, documents they took with them to the Visa Centre or no other evidence from the representatives about how the letter was sent to the respondent save the production of the letter itself.
23. This is a case where different inferences could rationally have been drawn from the evidence about when the death certificate was produced in support of the application and whether the letter of 8 June 2016 was sent to the respondent. However, these were inferences of fact for the judge to make and I am satisfied that she reached a finding open to her on the evidence. Her analysis of the evidence and her conclusions do not indicate any error of law which would undermine her findings of fact on these issues or make them unsustainable. The issues raised in ground 1 are in substance an attempt to re-open and re-argue an issue of fact, where the judge has reached findings properly open to her on the evidence.
24. In any event, I accept, as Mr Kandola submitted, that the issue of whether the letter and the death certificate were sent to the ECO is peripheral to the outcome of the appeal if grounds 2 and 3 are unsuccessful as the judge considered the appeal under para 279(1)(d). At the hearing before the First-tier Tribunal the sponsor was not called to give evidence and the appeal proceeded by way of oral submissions, the judge having given an opportunity to the appellants' representative to consider whether the sponsor should be called but that course was not taken. The judge, therefore, had to consider the matter on the evidence before her. She was

not satisfied that the death certificate was genuine. Again, this was a question of fact for her to resolve on the evidence before her.

25. The judge has set out in her decision why she was not satisfied that it was a reliable document. She said that on its face it differed in form from the birth certificates relied on. She gave the parties an opportunity producing further evidence and took that evidence into account. The judge was entitled to take into account the fact that there had been a revised certificate, there was a discrepancy between those certificates in relation to the spelling of the sponsor's name and the fact that the notarial certificate been inadequately completed. She also commented that the chairman of the U/P had referred to Book no 02/12 but no copy had been provided and there was no explanation why the book was dated 2012 when the death certificate was dated 30 March 2016 and the certificate gave no reason for the death and did not specify the date of death.
26. The judge also commented on the fact the certificate came from the chairman of the U/P. The grounds at para 3(iii) set out the relevant provisions of Bangladeshi legislation to show that the chairman of a U/P can act as a registrar but these provisions were not before the judge and she did not err in law by failing to take into account matters not in evidence before her but in any event the other reasons given by the judge amply support her finding. Again, the grounds are seeking to re-argue issues of fact and in relation to para 3(iii) to introduce further evidence which was not before the judge. On the basis of the evidence before her, the judge reached findings on the death certificate properly open to her for the reasons she gave.
27. So far as PJ (Sri Lanka) is concerned (ground 3), the judge has set out the relevant paragraphs of the judgment of the Court of Appeal at [49] of her decision. As the Court made clear there is no general duty on the respondent to make enquiries to verify a document and the fact that a document is potentially capable of being verified does not mean that national authorities have an obligation to take that step. The claimed death certificate does not fall within the category of documents identified by the Court where it may be necessary to make an enquiry to verify its authenticity and reliability such as when it is at the centre of a request for protection and when a simple process of enquiry would conclusively prove its authenticity and reliability. The judge was entitled to find that there was no breach of any obligation on the respondent to undertake a process of verification on the facts in the appellants application.
28. In summary, I am not satisfied that the grounds disclose any error of law on the part of the judge. Her findings and conclusions were properly open to her for the reasons she gave.

Decision

29. The judge did not err in law and the decision of the First-tier Tribunal stands. This appeal is dismissed.

Signed: H J E Latter
November 2018

Dated: 20

Deputy Upper Tribunal Judge Latter