



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Numbers: EA/00162/2017

EA/00163/2017

EA/00164/2017

EA/00166/2017

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 15 January 2019**

**Decision & Reasons Promulgated
On 31 January 2019**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

(1) UK

(2) RK

(3) AS

(4) HK

ANONYMITY ORDER MADE

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court

orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This prohibition applies to, amongst others, all parties.

1. The first appellant is the wife of the sponsor, a Portuguese citizen said to be exercising Treaty rights in the UK. The second, third and fourth appellants are the children of the first appellant and the sponsor born in 2006, 2009 and 2012 respectively. The appellants are citizens of Pakistan.
2. The appellants have appealed against a decision sent on 6 December 2017 in which the First-tier Tribunal ('FTT') dismissed their appeals against the respondent's decisions dated 7 September 2016 to refuse to issue them with EEA family permits. Those decisions make it clear that the respondent accepted that the sponsor is a Portuguese citizen exercising Treaty rights in the UK. It follows that the only issue in dispute before the FTT was whether or not the appellants are related as claimed to the sponsor.
3. The FTT considered all the evidence available, including the sponsor's oral evidence, and was entitled to conclude, for the reasons provided that there was a paucity of credible evidence to support the claimed family relationships.
4. The first appellant appealed against the FTT's decision on behalf of all four appellants. She submitted that there was ample evidence to support the claimed family relationships and indicated a willingness to undertake DNA testing.
5. In a decision dated 10 May 2018 FTT Judge EB Grant granted permission to appeal. She observed that arguably in the interests of fairness the FTT was required to adjourn the appeal with directions to the sponsor to adduce and submit DNA evidence and evidence of continuing contact.
6. The hearing of this matter was previously adjourned on 7 August 2018 and 23 November 2018, at the request of the appellants. On the last occasion it was adjourned to enable the appellants to obtain legal representation. In a decision dated 7 January 2018 a Lawyer of the Upper Tribunal ('UT') refused a further adjournment on the basis that due to an unspecified "family emergency" they had been unable to consult with their Counsel and anticipated they would need a further six months.
7. The application for an adjournment was not renewed before me. The sponsor did not appear at the hearing before me and the appellants were unrepresented. I decided that given the recent procedural history, it was appropriate to continue with the hearing - the recent history demonstrates that an adjournment was unlikely to achieve anything other than further delay.

8. The grounds of appeal, as drafted by the appellants, do no more than list disagreements with the decision of the FTT. The FTT has not erred in law in finding that the appellants failed to discharge the burden of establishing that they are the sponsor's family members, given the paucity of the evidence available and the length of time the sponsor claims to have been residing outside of Pakistan.
9. I must consider whether the FTT acted fairly in not granting an adjournment of the hearing of its own volition. In my judgment fairness did not require an adjournment when the following factors are considered in the round.
 - (i) The sponsor has resided in the UK for a lengthy period. He has been employed in the UK. He was in a position to understand the issues concerning the respondent and to provide the evidence capable of rebutting those concerns. The marriage is said to be a longstanding one dating back to 2004. The sponsor claims that he regularly visited his family, yet he was unable to provide evidence as straightforward as photographs.
 - (ii) The sponsor and the appellants were refused family permits as long ago as September 2016 and have not been able to explain why they were unable to adduce any further evidence in advance of the FTT hearing, sooner.
 - (iii) DNA evidence has the potential to clearly determine whether the parents of the children are the first appellant and the sponsor. If obtained, straightforward fresh applications for an EEA permit could be made.
 - (iv) The sponsor and the appellants did not ask for an adjournment of the FTT hearing and there was no clear reason at the hearing to consider that an adjournment would accomplish anything other than the generation of delay.
10. When all the relevant circumstances are considered, there has been no unfairness in the FTT proceeding with the hearing.

Decision

11. The decision of the FTT did not involve the making of an error of law and I do not set it aside.

Signed:

UTJ Plimmer
Ms M. Plimmer
Judge of the Upper Tribunal

Date:
15 January 2019