



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

Appeal Number: EA/03936/2020
UI-2021-001713

THE IMMIGRATION ACTS

**Heard at Field House
On 28 November 2022**

**Decision & Reasons Promulgated
On 18 December 2022**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**B A S
(ANONYMITY DIRECTION MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr G Davison, instructed by Charles Simmons Immigration Solicitors

For the Respondent: Ms A Nolan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India born on 3 June 2005. His appeal against the refusal of a family permit under the European Settlement Scheme ('EUSS') was allowed by First-tier Tribunal Cameron on 28 September 2021. This decision was set aside by me on 25 August 2022 following a concession by the appellant's representative. The sponsor is a Portuguese national with a permanent residence card in the UK. He adopted the appellant, his brother's son, on 15 February 2017.

2. The respondent refused the appellant's application for a family permit on 14 July 2020 because the respondent was not satisfied the appellant was properly adopted in accordance with Indian adoption laws. The appellant could not meet the eligibility requirements of Appendix EU of the immigration rules. The refusal notice states:

"You have stated that you are the adopted child of a relevant EEA citizen or their spouse or civil partner and provided an adoption certificate issued in India as evidence that you are a 'family member of a relevant EEA citizen'.

To be recognised, adoptions must meet the criteria defined in Annex 1 of Appendix EU (Family Permit). The criteria to qualify as an adopted child (and therefore as a family member) the child must be adopted in accordance with a decision taken by;

- (a) By the competent administrative authority or court in the UK or the Islands; or
- (b) By the competent administrative authority or court in a country whose adoption orders are recognised by the UK or the Islands; or
- (c) In a particular case in which that decision in another country has been recognised in the UK or the Islands.

According to the website here <http://cara.nic.in/> Indian adoption is governed by the Central Adoption Resource Authority (CARA). CARA is a statutory body of Ministry of Women & Child Development, Government of India. The website states that CARA 'functions as the nodal body for adoption of Indian children and is mandated to monitor and regulate in-country and inter-country adoptions. CARA is designated as the Central Authority to deal with inter-country adoptions in accordance with the provisions of the Hague Convention on Inter-country Adoption, 1993, ratified by Government of India in 2003'

It appears there should be a registration of all 'in country' adoptions through CARA. You have submitted various India certificates and affidavits with English translations. None of these documents give any indication of any contact with CARA. We cannot accept the adoption order documentation provided in isolation without further confirmation of the legality of the adoption from CARA and evidence that the adoption is registered with them.

Therefore, I am not satisfied that your application meets the eligibility requirements as the family member of a relevant EEA citizen, and your application has been refused.

3. It is the appellant's case that the appellant was adopted under the Hindu Adoption and Maintenance Act 1956 (HAMA) and he did not have to register his adoption with CARA which was established under the Juvenile Justice (Care and Protection of Children) Act 2015 (JJA). Section 56(3) of the JJA states that nothing in this act shall apply to the adoption of children made under the provisions of HAMA. It was neither mandatory or necessary to apply under the JJA or to register the appellant's adoption with CARA.

4. The appellant relied on a case from the Indian High Court (IHC decision) in which it was held that an application for adoption under the HAMA subsequently registered under the HAMA cannot be challenged on the basis it should have been made under the JJA. In addition, the JJA does not apply to children adopted directly from the biological parents. The passport office could not question the validity of the registered adoption deed in the application for issuance of a passport of a minor child.

Submissions

5. Ms Nolan relied on the respondent's refusal notice and the entry clearance manager's review. She relied on an article in the Times of India and submitted the HAMA did not apply to inter-country adoptions because adoptions under the HAMA were not covered by the JJA. CARA was the only authority for inter-country adoptions and a 'No objection certificate' (NOC) was required for the child to travel outside India. This position was supported by the IHC decision which stated it was in the interests of the child and parent that an NOC was obtained from CARA to ensure a clean transition. CARA do specific safeguarding checks.
6. Mr Davison submitted the respondent had not argued the adoption under the HAMA was unlawful and it was irrelevant that an NOC would make the process run more smoothly. It was clear from the documents in the appellant's bundle that CARA covered vulnerable children. This was an inter-family adoption and there were no safeguarding issues. The IHC decision and the opinion of an India lawyer should be preferred to the article relied on by the respondent. This was a lawful adoption with no trafficking concerns.

Conclusions and reasons

7. The Adoption (Recognition of Overseas Adoptions) Order 2013 (Adoption Order) states that an overseas adoption is one effected under the law of a country or territory listed in the schedule and 'law' does not include customary or common law. India is listed in the schedule. It was accepted by the respondent that the adoption was lawful under the HAMA.
8. I have considered the appellant's skeleton argument dated 24 October 2022, the appellant's and respondent's bundles and the submissions made by both parties. I find the IHC decision to be very persuasive.
9. The appellant is not a vulnerable, surrendered or abandoned child. He has been lawfully adopted under the HAMA by the sponsor. The only issue taken by the respondent in the refusal notice is whether or not the adoption is valid in India and therefore recognised in this country. I am satisfied on the totality of the evidence that the appellant does not have to register his adoption with CARA. I find that the adoption is recognised in the UK.

10. There was nothing in Appendix EU which states that the adoption should be registered with CARA and I was not directed to any Home Office guidance on the interpretation of the immigration rules. Under the law of India, the appellant was not required to register his adoption with CARA or obtain a NOC, although it may assist in arranging travel documents.
11. On the evidence before me, the appellant satisfies the requirements of Appendix EU. The appellant is a family member and the refusal of entry clearance breaches his rights under the Withdrawal Agreement. I allow his appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.

Notice of Decision

The appellant's appeal is allowed under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and his family are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or any member of his family. Failure to comply with this order could amount to a contempt of court.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 30 November 2022

TO THE RESPONDENT **FEE AWARD**

As I have allowed the appeal, I make a fee award of any fee which has been paid.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 30 November 2022

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent" is that appearing on the covering letter or covering email.