



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006305 & UI-2022-
006306
First-tier Tribunal No:
HU/53528/2022&HU/53529/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 12th of October 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE SILLS

Between

MOLIKA FARHANA AKTAR TUHA

First Appellant

SYED MOHAMMED ABDULLAH

Second Appellant

(NO ANONYMITY ORDER MADE)

And

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms Hussain

For the Respondent: Ms Young

Heard at Phoenix House (Bradford) on 2 August 2023

DECISION AND REASONS

1. The Appellants appeal against the decision of Judge Hands dated 14 December 2022, dismissing their appeal.

Factual Background

2. The Appellants are a mother and son, citizens of Bangladesh and born on 11 September 1996 and 1 March 2021 respectively, who applied for entry clearance on 7 September 2021 to join their husband and father, their Sponsor, Syed Mahbub Ahmed, in the UK.
3. The Respondent refused the application on 8 December 2021 on the basis that the Appellants did not satisfy the financial requirements of the Immigration Rules. The Sponsor was in receipt of Carer's Allowance but with his additional earnings

he did not reach the level of income that the family of a couple and a child would have if they were in receipt of Income Support. The decision did not breach the ECHR Article 8 rights of the Appellant.

4. The Judge dismissed the appeal for the following reasons. In relation to the financial requirements, the Sponsor earned £6000 per year as a kitchen assistant. This equated to £115.38 per week. When added to Carer's Allowance, this amounted to £182.63, short of the threshold of £185.07 required. The Judge found that the third party support from the Sponsor's sister was neither dependable, reliable, nor financially sustainable and did not accept that the Sponsor received those funds. In respect of the argument that the threshold figure was wrong as the Second Appellant was a British citizen, the Judge found that there was no evidence of an application for a British passport having been made. The application form referred to him being a citizen of Bangladesh. The Judge found there was insufficient evidence to find that the Second Appellant was a British citizen. The Judge therefore concluded that the financial requirements of the Rules had not been met. The Judge found that the decision did not breach the Appellants' ECHR Article 8 rights and dismissed the appeal.
5. The Appellants' applied for permission to appeal raising what I construe to be three grounds. First, the Judge had erred in finding that the Second Appellant was not a British citizen. This meant that the financial threshold was too high. Second, the precise threshold figure taken by the Judge, namely £185.07, was too high. Under the Respondent's own guidance, the correct figure was £180.03, which the Sponsor could meet. Third, the Judge had erred in rejecting the offer of third partner support.
6. The FTT granted permission to appeal on 13 December 2022, highlighting in particular that the threshold appeared to be £180.03 which the Appellants could satisfy.

The Hearing

7. I heard submissions from the two representatives. Ms Young opposed the appeal. In the course of the hearing, I was taken to the Respondent's policy setting out how the appropriate threshold figures were calculated. That policy makes clear that the figures are taken from Rightsnet.org. The representatives and I all accessed the Rightsnet.org website and the page for the tax year 2021-22, which is the year of the decision.¹ It was agreed with the representatives that the relevant figure for a couple and one child living on income support was £117.40 (couple element) and £68.60 (child element), a total of £186. That figure is slightly in excess of both the Sponsor's income, and the threshold used by the Judge. I heard submissions from the representatives and reserved my decision.

Findings

Error of Law

8. Having established at the hearing that the correct threshold for a couple and one child on income support was £186 as per the Respondent's policy, it follows that the Judge did not make any error of law in relation to the figure used for that threshold. The figure used by the Judge was slightly lower, but this makes no

¹ https://www.rightsnet.org.uk/pdfs/rightsnet_benefit_rates_poster_oct_2021.pdf

difference. Whether on the figure used by the Judge, or the agreed figure based on the Respondent's policy and the Rights.net website, the Sponsor's income fell below the required level for that threshold.

9. The Judge committed no error of law in relation to the question of third party support. At [21] the Judge considers the relevant evidence concerning this issue, and notes the Sponsor's sister did not attend the hearing. The Judge was entitled to find that the payments were not dependable, reliable, nor financially sustainable and that the Sponsor did not in reality receive those funds and gave adequate reasons for doing so.
10. I do however find that the Judge made a material error of law in assessing whether the Second Appellant was a British citizen at [22]. This is a material issue as it is relevant to the threshold that needs to be met for maintenance to be adequate. The Judge makes two points. First, there was no evidence of the Second Appellant having applied for a British passport. Second, he had stated he was a Bangladeshi citizen on his entry clearance application. I recognise that this case presents a somewhat peculiar situation in which an individual has applied for entry clearance arguing that they are a British citizen and return to this further below. Whether or not the Second Appellant has applied for a British passport is not determinative of the question of his British nationality, indeed it is difficult to see how such an application alone can assist in determining the issue. A British passport would confirm British nationality, but it does not confer nationality. Similarly, the fact that the Second Applicant referred to being a citizen of Bangladesh is irrelevant to the question of British citizenship, given that there is no prohibition on dual nationality for British citizens. So, the reasons given for not accepting that the Second Appellant is British were inadequate. Further, there was relevant evidence to indicate at least that the Second Appellant may be a British citizen. There is no dispute about the claimed family relationships. Submitted in support of the appeal were the Sponsor's passport and birth certificate confirming that the Sponsor was British when the Second Appellant was born, and was born in the UK. There was no consideration of these matters, nor the relevant provisions of the British Nationality Act 1981. The Judge has thus given inadequate reasons and failed to consider material matters in finding that the Second Appellant had not established that he is a British citizen. Having found there to be an error of law, I set aside that decision.

Remaking the Decision

11. I have decided that it is appropriate to remake the decision rather than remit. The Appellants were not deprived of a fair hearing. The issue on which the Judge erred relates to a specific point, namely whether the Second Appellant is a British citizen. Hence any fact finding is limited. Further, having considered this issue, I am satisfied that it can be determined without the need for a further hearing or further submissions. There is no need for further evidence. The question of whether the Second Appellant is a British citizen can be resolved on the evidence available, and the legal consequences of that are equally clear.
12. The Second Appellant's case is that he was born British, having acquired that through descent being born outside the UK. The relevant provision of the British Nationality Act 1981 state as follows:

2.— Acquisition by descent.

(1) A person born outside the United Kingdom and the qualifying territories after commencement shall be a British citizen if at the time of the birth his father or mother—

(a) is a British citizen otherwise than by descent;

13. So, the Second Appellant will be a British citizen by descent, provided his father is a British citizen otherwise than by descent. The Second Appellant's parents are married, with the marriage certificate shown at AB172. The Respondent did not dispute that the Sponsor was the Second Appellant's father for the purposes of the Act. The Sponsor's birth certificate, showing he was born in Sunderland, UK, on 1 July 1995, is at AB174. His British passport issued in 2015 is at AB191. The Respondent did not dispute that the Sponsor was born in the UK and was British. So, the unchallenged facts are that the Second Appellant's father was born in the UK on 1 July 1995 and was British at the time of the Second Appellant's birth. As per s2 of the 1981 Act set out above, the Sponsor cannot be a British citizen by descent as he was born in the UK. He must therefore be a British citizen otherwise than by descent. Whether the Sponsor acquired British citizenship at birth or through subsequent registration or naturalisation is not relevant to the question of the Second Appellant's British citizenship. What matters is that the Sponsor was a British citizen at the time of the Second Appellant's birth and not by descent. The passport shows that the Sponsor was a British citizen at that time, and the fact that he was born in the UK means that the Sponsor cannot be a British citizen by descent. I raised these provisions with Ms Young at the hearing and she was unable to put forward any argument why the Second Appellant would not be British in these circumstances. Her submission was that information was missing in that it is unclear how the Sponsor acquired his British citizenship. For the reasons set out above I do not agree. Unchallenged evidence set out above establishes that the Sponsor is not a British citizen by descent (having been born in the UK) and that being the case, the Second Appellant must be a British citizen. I thus find that the Second Appellant is a British citizen.
14. I now consider the implications of this for the appeal. I am satisfied that the fact that the Second Appellant is British must affect the calculation of the adequate maintenance threshold. This is because, amongst other reasons, the Sponsor will be entitled to claim welfare benefits to support his British child should he require them. Similarly, the Sponsor is entitled to rely on benefits (Carer's Allowance) that he receives in his own right in terms of the resources available to support the First Appellant. While not explicitly addressed in relation to E-ECP 3.3, it is explicitly addressed in relation to E-ECP 3.1. The financial requirement under 3.1 does not increase when the child is British (see 3.1(c)(c)).
15. I am satisfied that the £68.60 child element of income support should be disregarded, because the Sponsor would be entitled to claim this for the Second Appellant as he is a British citizen were he to come to the UK to reside with him. This means that in my view the Appellants must show that the Sponsor's income would cover the income support amount for a couple, namely £117.40. The Sponsor's income from his Carer's Allowance and employment combined is £182.98 and so exceeds this. It therefore follows that the Appellants satisfy the financial requirements of the Rules so far as they apply to them.
16. As alluded to above, this appeal concerns the somewhat unusual situation in which one of the Appellants is dual national British. The Second Appellant has applied for entry clearance as a Bangladeshi citizen, but the Appellants rely on the Second Appellant being a British citizen to establish that the Appellants

satisfy the requirements of the Immigration Rules. The Immigration Act 1971 states as follows:

1.— General principles.

(1) All those who are in this Act expressed to have the right of abode in the United Kingdom shall be free to live in, and to come and go into and from, the United Kingdom without let or hindrance except such as may be required under and in accordance with this Act to enable their right to be established or as may be otherwise lawfully imposed on any person.

(2) Those not having that right may live, work and settle in the United Kingdom by permission and subject to such regulation and control of their entry into, stay in and departure from the United Kingdom as is imposed by this Act; and indefinite leave to enter or remain in the United Kingdom shall, by virtue of this provision, be treated as having been given under this Act to those in the United Kingdom at its coming into force, if they are then settled there (and not exempt under this Act from the provisions relating to leave to enter or remain).

(4) The rules laid down by the Secretary of State as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons not having the right of abode shall include provision for admitting (in such cases and subject to such restrictions as may be provided by the rules, and subject or not to conditions as to length of stay or otherwise) persons coming for the purpose of taking employment, or for purposes of study, or as visitors, or as dependants of persons lawfully in or entering the United Kingdom.

2.— Statement of right of abode in United Kingdom.

(1) A person is under this Act to have the right of abode in the United Kingdom if—
(a) he is a British citizen;

17. So, the Second Appellant has the right of abode and as such the Immigration Rules do not apply to him.
18. I now reach the following conclusions on the two appeals before me. I remind myself that the appeals are on human rights grounds. I consider the two Appellants separately as different issues arise, starting with the First Appellant. The Respondent has not disputed that the right to family life is engaged, as there is no challenge to the relationship between the First Appellant and the Sponsor. I accept that they have family life together and the decision interferes with their family life as it prevents the couple from living together in the UK. The decision is in accordance with the law and in pursuit of a legitimate aim. As to proportionality, in relation to the First Appellant, I have found that she satisfies the requirements of the Immigration Rules when the fact that the Second Appellant is British is taken into account so that the Sponsor only needs to show adequate maintenance for the First Appellant. As per TZ (Pakistan) v Secretary of State for the Home Department [2018] EWCA Civ 1109, as the Immigration Rules are satisfied, there is no public interest in refusing the Appellant's application for entry clearance. Hence the First Appellant's ECHR Article 8 rights outweigh the public interest and I allow the appeal.
19. The situation is different for the Second Appellant. The Second Appellant is British. This fact has been relied on to show that the First Appellant can satisfy the financial requirements. The Second Appellant has the right of abode, and can enter the UK 'without let or hindrance' subject to only proving that they have the right of abode. The Immigration Rules regulate the entry of those not having the

right of abode, and so do not apply to the Appellant. What this means is that the decision to refuse the Second Appellant does not interfere with his ECHR Article 8 rights. It is in the best interests of the Second Appellant to live with both parents, but he does not require entry clearance to be able to do this, he simply requires a British passport. Subject to proving that he has the right of abode by obtaining a passport, the Second Appellant is able to enter the UK without let or hindrance. He does not require entry clearance. Once he has obtained his passport he can enter the UK with his mother to live with his father. The Appellants representatives suggested that the reason the Second Appellant applied for entry clearance is the length of time that it takes for a passport to be issued. That in my view is a separate matter and in these circumstances it would be the delay in issuing the passport, rather than the refusal of entry clearance from which the Second Appellant is in any event exempt, that would possibly interfere with family life. For these reasons, the refusal of entry clearance does not interfere with the family life of the Second Appellant as he is a British citizen. Therefore, the decision does not breach his ECHR Article 8 rights. I therefore dismiss his appeal.

Notice of Decision

The appeal of the First Appellant is allowed.
The appeal of the Second Appellant is dismissed.

Judge Sills

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 September 2023