IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-000742
UI-2024-000746
First-tier Tribunal Nos: HU/53082/2023
LH/04299/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 5th December 2024

Before

UPPER TRIBUNAL JUDGE KEITH

Between

TAMANNA BEGUM
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Karim, instructed by Kalam Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 21st October 2024

DECISION AND REASONS

1. This is the remaking of the appellant's appeal against the respondent's decision on 8th February 2023 to refuse her application for entry clearance, to join her sponsoring parents. As I recorded in my error of law judgment dated 12th June 2024, which is annexed to these reasons (and in which I retained remaking in this Tribunal), the appellant was a minor (just) at the date of the application, with a date of birth of 5th February 2004 when the application was made on 19th January 2022.

Issues

2. I identified and agreed three issues with the parties.

3. The first issue was whether a "false document," as defined in Paragraph 6 of the Immigration Rules, was submitted in relation to the Appellant's application,

whether or not to her knowledge, for the purposes of Paragraph S-EC.2.2(a) of the Immigration Rules. Mr Melvin accepted that if the respondent had not shown that the photograph was a false document, then the appellant's appeal should succeed.

4. The second issue, based on Mr Karim's submission, was that even if the document were a false document, whether the respondent had properly exercised her discretion under Section S-EC.2.1.

5. The third issue was whether, even if the respondent had exercised her discretion, refusal of leave to enter was proportionate for the purposes of Article 8 ECHR, specifically the appellant's right to respect for her family life, as a (then) minor with her parents.

6. I discussed with the representatives how I should consider the second question of discretion and say more about that in the discussion of the representatives' submissions.

The hearing before me

7. I do not recite all the evidence or submissions, which I have considered in full, except to explain why I have reached my decision. The appellant's sponsoring father gave oral evidence, via an interpreter in Sylheti, and adopted his witness statements. I also refer later to the findings of FtT Judge O'Rourke, which I had preserved in my error of law decision.

The Sponsor's evidence

8. The sponsor, Md Miah Ali, referred to being a British citizen by descent. His wife, the appellant's mother, now also resided with him in the UK, having entered on 10th February 2021. The appellant's mother had previously brought up the appellant in the sponsor's absence and he and his wife had maintained regular contact with the appellant since the mother had left Bangladesh. The sponsor explained he had a number of other children. His youngest child had been born in the UK on 30th January 2022, a son and lived with him and his wife in the UK. This, he added, was an additional reason why he and his wife could not return to Bangladesh. His wife's brother, namely the appellant's maternal uncle, Rashed Ali, lived in Bangladesh. The appellant and her other siblings lived with their uncle. These were sister, born in 2008 whom the sponsor hoped could also join him in the UK, and two brothers, Abdul Kahar and Abdul Hakeem, born in 2002 and 2006 respectively, who are now too old to join him in the UK and both of whom are studying full time in Bangladesh and not in work.

9. The sponsor candidly accepted that he had arranged for the photograph montage, which is at the centre of this appeal, to be created by a local photography shop in Bangladesh. It was created only for his family to see privately. Although pictured in the photograph, at the time, neither he nor his wife were physically present with their children, as the parents were both in the UK. He apologised for submitting the photograph with the appellant's application. He had not understood and was not aware of the consequences of his actions for using the photograph. He added, at paragraph 7:

> "After my wife moved to the UK we realised we did not have any family group photographs then we had composed this photograph with the help of

> a local computer shop. As a layman, I had submitted this photograph and I thought this photograph only shows our family members nothing more because we are already family and the appellant Tamanna is my daughter. In the future, I will not carry out such kind of acts in any wrongdoings".

10. The sponsor explained that the appellant was suffering depression, for which she was receiving medication, although he also accepted that her depression was mild. She is not working (she is now an adult) but he did not elaborate on the reason for this, although he explained that his wife's brother was struggling to continue to accommodate all the respective children. He added that he was the carer for his own mother in the UK, who is now 91 years old, who has degenerative joint conditions and that was another reason why he could not relocate back to Bangladesh.

Other witness evidence

11. I also considered the appellant's witness statement, in which she described her depression and the fact that her uncle could no longer look after her, as he was busy with his work and professional life, and he expressed feeling overwhelmed. She referred to the current situation in Bangladesh having worsened due to political conflicts and it was no longer safe for them to live in the rural area in which they lived, although the witness evidence did not elaborate on this further, beyond general background evidence.

12. The witness statement of the appellant's uncle, with whom she lived, referred to having taken care of the appellant and her siblings since their mother left for the UK on 10th February 2021. He described running a small grocery store and focussing upon establishing himself professionally and becoming self-reliant. His business took up a lot of his time and he was looking for a permanent, secure job, which made it difficult to provide adequate support and care for the appellant and her siblings, and he was worried about her mental ill health. He was also worried about the political situation in Bangladesh.

The parties' legal submissions

The appellant

13. Mr Karim submits that whilst the definition of a 'false document' in the Immigration Rules is relevant, the photographic montage did not come close to the non-exhaustive list of false documents in Paragraphs 6(a) to (e). The montage had not been 'altered' or tampered with. All photographs were, by their nature, creations and the montage was a social one, as might be included on a greetings card. The definition of a 'false document' in Paragraph 6 was no wider than the commonly understood position in case law, as set out in Hameed v SSHD [2019] EWCA Cid 1324. In essence, the document had to tell a lie in itself. The montage produced and relied on in the application for entry clearance did not tell a lie. Any suggestion by the respondent in its decision that there was an implication that the family were physically present at the same time, in the same place, was merely an assumption, which those applying on behalf of the appellant had never claimed. For the document to be false, there had to be some dishonesty in its creation, as per the authority of R (Agha) v SSHD (False document) [2017] UKUT 121 (IAC), the headnote for which stated:

> "For a document to be a false document under the Immigration Rules there must have been an element of dishonesty in its creation and if this is not immediately obvious in a case of an inaccurate document then that element must be engaged with in any refusal."

14. The dishonest intent must relate or have some connection to the application, i.e. the appellant or their sponsor. If, for example, a relative sought to jeopardise an application by submitting information unknown to the main actors in the application, it could not make sense for the application to be refused. Context was all important, as while maintenance of effective immigration controls was important, submitting a false document to a friend could not be seen in the same way as submitting it for an immigration application. Context in this case might be, for example, where the appellant and sponsor were not, in fact, related as claimed. Mr Karim gave another example of a 'filter' on a photograph. If that 'filter' added some kind of 'clown' image, that might be relevant if used and relied on in an application for a job in a circus. If added in other contexts, its addition could not be said to be dishonest.

15. The montage was clearly an artistic creation, like one that might be seen at tourist attractions. The construction of it as a "false document," despite it clearly not being so, was an error. The respondent, in its decision, had not stated why the montage was said to be a false document. Instead, it had referred to the document examination report. "False," did not mean mere inaccuracy, as per the authority of AA (Nigeria) [2010] EWCA Civ 773, at §§39 to 40. The respondent had not shown, as per Agha, that the montage contained an element of dishonesty in its creation and the document examination report itself referred to a 'substituted' photograph or image, which was plainly incorrect. Instead, the montage was a product that contained different people added together, rather than replaced through substitution. The photographic studio was simply lining up, in one montage, images of family members with an artificial background.

16. As to the issue of discretion, the photograph was not material. There was DNA evidence which confirmed the relationship between the appellant and the sponsor. The appellant was a minor at the time and should not be penalised for the sponsor's actions.

17. In relation to the respondent's exercise of its discretion, I raised with the representatives the issue of whether this was something that I should review on public law principles, akin to the authority of Chimi (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 00115 (IAC). If I did, the next question was whether I should consider evidence that was not before the respondent at the time of its decision. Mr Karim said that public law principles did not apply, and I should consider all evidence up to the date of this hearing. The analysis under Chimi and other cases concerning deprivation of citizenship related to the specific provisions of Sections 40(2) and 40(3) of the British Nationality Act 1981. In contrast, the provisions of Section 84 and 85 of the Nationality, Immigration and Asylum Act 2002 applied to this appeal, so that the Tribunal could consider any matter relative to the Respondent's decision, including a matter arising after the date of a decision. Mr Karim submitted that the exercise of discretion and the question of proportionality were both answered by the same analysis, namely an analysis of the proportionality of the refusal of entry clearance.

18. On the issue of proportionality, the appellant relied on a number of aspects. First, the appellant undoubtedly had a family life, the interference with which was sufficiently serious to engage Article 8 ECHR, which was also relevant to proportionality. The refusal of entry clearance prevented the appellant from joining her parents in the UK and those parents could no longer return to live in Bangladesh. Second, she suffered mental health issues and even though her depression was mild, it remained a relevant factor. Third, her maternal uncle had expressed his difficulties in continuing to care for the wider family because of his business. Fourth, there was the issue of the highly unstable situation in Bangladesh, which was highlighted in the UK government's own guidance, which referred to the situation in Bangladesh being volatile. Fifth, she also had a recently born British sibling in the UK.

The respondent

19. Mr Melvin said that it was not necessary, and that I should not provide guidance more broadly on the definition of a "false document," beyond the circumstances of this case. The document did tell a lie in itself. He agreed with Mr Karim that whether it was a false document had to be considered in context. The context was that it was submitted to support a visa application. It now transpired, as the sponsor now finally admitted, that he had arranged for the montage to be created. The lie it sought to convey was obvious, namely that the family members had physically been in the same place at the same time. Despite Mr Karim's assertion that the document was obviously a montage, and the background was obviously a mock-up, it was far from obvious. It fell within the definition of having been 'altered' (see Paragraph 6 of the Immigration Rules). There was unarguably a dishonest intent in the document's creation, whatever the sponsor might now say about the reason for it being created. It had been submitted with the visa application to support the existence of family life.

20. The respondent's decision was consistent with the respondent's guidance published on 14th November 2023: Suitability: false representations. That guidance drew a distinction where there was deception by an applicant, where refusal was mandatory, as opposed to information or a document which was false, submitted by an applicant or by a third party. While the burden was on the respondent to prove that a false document had been submitted, the burden of proof remained on the appellant to satisfy the Rules, and it was for her to explain any relevant context, to assist the respondent in the exercise of its discretion. The assumed purpose of reliance on the photograph was to demonstrate that the people in the picture were present together at the same time, in addition to being family members. The appellant had provided no other explanation, in her application, of what the photograph was otherwise intended to convey. Indeed, the sponsor had reiterated that claim in previous oral evidence before the FtT, which had been found to be untruthful.

21. In oral submissions, Mr Melvin pointed out that the case had started as a case involving sole parental responsibility resting with the appellant's mother who had since come to the UK. The respondent had not accepted the relationship between the appellant and sponsor, which was the only reason for the appellant then obtaining a birth certificate.

22. In terms of proportionality, the current situation in Bangladesh was not relevant where there was no suggestion of any protection claim or other risks, even at an

Article 8 level. The appellant's mild depression and needing to take medication for it did not come close to tipping the balance in favour of granting entry clearance.

23. When I raised the question of how I should approach the exercise of discretion, Mr Melvin began by suggesting that the exercise of discretion was entirely a matter for the respondent as per the authority of Marghia (procedural fairness) [2014] UKUT 00366 although as I explored with Mr Melvin, the reference to the matter being for the respondent alone as to whether she exercised residual discretion, related to a case where there was no reference to an exercise of discretion in the Rules. In this case, there was an express reference to discretion in the Rules. Having reflected, Mr Melvin accepted Mr Karim's submission that the issue of the exercise of discretion was answered by an assessment of the proportionality of the refusal of entry clearance.

Discussion and conclusions

24. I have considered all the evidence in the round, but I must start somewhere. I consider, first, the context in which the photographic montage was sent to the respondent. Whilst the sponsor has referred to being a lay person and that the photographic montage had been created purely for family purposes with no intention to show it to anyone else, and he had not appreciated the consequences of sending it to his legal representatives, that does not answer the question of why those representatives relied on it, presumably on the basis of his instructions, in the application. The application included a covering letter, dated 19th January 2022, and relied on a family relationship between the appellant and both of her sponsoring parents. The letter emphasised that the appellant had kept in regular contact with her parents via video calls, received regular funds from them and relied on supporting documents. The letter emphasised that it would be contrary to Section 55 of the Borders, Citizenship, and Immigration Act 2009 for the appellant to be kept apart from her parents and thereby be deprived from their love and affection. The letter itemised separate kinds of documents under different headings, for example, in relation to financial maintenance, the sponsoring parents' immigration status, and TB tests. The heading under which the photograph was referred was 'Documents regarding relationship.' This included the appellant's birth certificate, her passport, and her parents' Muslim marriage certificate as well as online communication documents between the appellant and the sponsor. It included one description, "family photograph."

25. No other reference or description was provided. Two photographs were relied on. They are both contained in one page. The second photograph, as to which no issue is taken, appears to show the appellant, her parents and siblings, at a relatively young age, all standing in a single, carpeted room. There is no suggestion that this is a montage. In contrast, the other photograph shows the children at a far older age, with their parents, and is the document to which Mr Karim refers as the montage. The document verification report includes a number of potential tick boxes or findings, which in this case is ticked as containing a substituted photograph or image. The commentary in the report is as follows:

> "This photograph shows the applicant – TAMANNA BEGUM with five other family members.
>
> The photograph has used a background picture as the backdrop to the photograph rather than an actual place.

The proportions of all the individuals in the photograph are not to scale. All individuals are all the same height however other parts of their bodies are not in proportion. Their bodies appear to have been digitally altered and stretched to match so that they are all the same height. The background shows a wooden cart with a wooden shed however the individuals stood in front of the cart and shed are as tall as the roof of the shed and higher than the wooden cart but they are stood at the edge of the wheel of the cart.

The light and shadows seen are coming from different directions on each individual in the photograph. The male stood on the far left has light reflecting onto the right side of his face and his left side is in shadow. However, the female stood third from the left has a bright light shining onto the left side of her face and her right side of her face is in shadow. If all these individuals were present when the photograph was taken – all light and shadows would be seen coming from the same direction on everyone.

The colour and tone of the photograph is very yellow, and the quality of the focus is very poor. The photograph appears to have a yellow tint. The detailing of the garment the female (centre in black) is very clear however the trousers of the male (far right) is blurred and is not in focus. There appears to be white reflection over part of his trousers.

The feet of every person in the photograph appears to be floating in the air. Their feet are not positioned on the ground in the photograph, but they all look like they are on tip toes or floating in the air. There are clipping marks seen around all the feet where they have been digitally snipped and added to this photograph. The feet of the individual on the far-right hand side appears to be cut off and have no toe edge of the shoe. The individual stood on the far left appears to be stood on the top of the wheel seen behind them and the person next to them looks like they are stood on the wheel.

This suggests that all individuals have been snipped and digitally added to the photograph.

Summary of Findings

The photograph submitted as evidence in the visa application shows signs that it has been digitally altered in the following ways:-

* A photo backdrop has been used to digitally place the individuals onto.
* The proportions of the individuals are not to scales and not consistent – the individuals are similar size to the shed and cart seen in the photograph.
* Inconsistent lighting and shadowing on the individuals in the same photograph.
* All individuals seen in the photograph appear to be floating in the air and are not positioned on the ground.
* Clipping marks and areas of their bodies are missing – end of the shoe on the male seen on the far right.

The above demonstrates that the images are not genuine and have been digitally altered."

Whether the montage is a false document

26. I do not accept Mr Karim's submission that the document was so obviously a montage that its original intended purpose was as a family social photograph. It was specifically included with another photograph of the same family members albeit far younger, once again, all appearing in one place, and there is no suggestion of that being a montage. On the one hand, I am conscious that the visa guidance does not expressly state that digitally altered images cannot be relied upon in any way, but on the other hand, the appellant's own representatives specifically relied upon this as 'family photographs.' No distinction was made between what the appellant says is a genuine photograph and not altered, and the other which is the montage. There is also the obvious question as to how, if it were not intended to convey that family members were present in the same place at the same time, this could be evidence of a family relationship. If not relied on as meaning that, all it would mean is that the appellant's father, who had arranged for the creation of the montage, had had access to digital images of various family members which he had added together. That would not begin to support a claim of family life. The obvious inference to anybody reviewing the photograph, in the context of a visa application, was that it was intended to convey the fact of physical co-location, at a single time, of family members. This is in the same context that the sponsor has only visited Bangladesh four times in the last twelve years, so that the appellant had rarely been in her father's physical presence for over a decade. I do not accept Mr Karim's submission that the respondent was not entitled to draw this inference, where the appellant had not expressly stated this in any accompanying description. I accept Mr Melvin's submission that if the photograph was not relied on to convey co-location, because the montage was merely a social document for fun, which was now being used for a different, formal purpose, it was incumbent on the appellant to have explained this in the application on which the montage was relied. It was otherwise apt to mislead the respondent.

27. In answer to Mr Karim's submission that the creation of the montage must have been dishonest, in this case, I find that the respondent has shown that it was, and that the reliance on it was also dishonest. These findings are within the context of the wider evidence. First is the sponsor's dishonest evidence before the First-tier Tribunal Judge, where he doubled down on the untruth, which is inconsistent with Mr Karim's submission that the poor quality of the montage must have been obvious, and it was merely used for an innocent purpose. Second, it is one thing to include images of different family members in a montage, but it only became apparent in cross-examination before me that at the time this very document was created, the appellant and his wife were not even in the same country as their children. The wider context is that the appellant relied on the montage as an image showing all the family members together, as evidence of the appellant's relationship with her sponsoring parents, while those parents, shown in the photograph with her, lived in a different country. Even if the appellant is innocent, as a minor, of her sponsoring father's actions, her father must have known of the import of relying on such a photograph.

28. The respondent has shown that the document's creation and use were dishonest, and that the montage is a "false document," for the purposes of the Immigration Rules and in the "Hameed" sense.

29. It might be that the respondent chooses, in future, to make clear that in any entry clearance applications, any images of documents, whether photographic or otherwise, must not be digitally enhanced, as they already are for passport

applications, but in the context of this case, the respondent has shown that the sponsor knew perfectly well what he was doing when he instructed the creation of the montage and the reliance on it in the application for entry clearance, and what that montage might be understood as attempting to convey.

The exercise of discretion and proportionality

30. On the question of the exercise of discretion, Mr Karim argued that the respondent did not explain why she regarded the document as a false one and did not exercise her discretion. The respondent's decision must be read in the context of the document verification report, which makes clear why the document was treated as a false document. Moreover, whilst there is a 'tick' in a box in that report of 'substitution,' the further commentary which I have recited explains precisely why the document is said to be false.

31. I also agree as a matter of law, that the exercise of discretion is not a public law review by reference to Chimi, but instead is one which I need to consider for the purposes of Article 8. Mr Karim submitted, and Mr Melvin agreed, that that assessment is ultimately a proportionality assessment.

32. There is very limited dispute between the parties about the appellant's circumstances, save for the creation and use of the montage. The appellant was a minor (just) at the time of her application – she was a few weeks short of her 18th birthday on 5th February 2022, when her application was made on 9th January 2022. There is no suggestion that she was personally aware of the image being created and I proceed on basis that it was her father who was dishonest. The appellant's mother lived with her until 10th February 2021, when her mother emigrated to the UK and left her in her uncle's care, with her siblings, in Bangladesh. Her mother has since given birth, after moving to the UK, to another sibling on 30th January 2022.

33. I have no doubt that the appellant misses her mother, and that she did not previously live with her uncle. However, she also continues to live with the same two adult brothers and younger sister, as part of a family group with whom she has lived the entirety of her life. I find that despite the uncle's evidence that he is struggling to look after the appellant, as he is seeking to build a business, he will continue to allow the appellant to live with him, so that she has a family home with her siblings, even if the time her uncle spends with her is limited. The appellant is now 20 years old. While she had mental ill-health, specifically depression, her father accepts that this is moderate. There is no detailed evidence on why her uncle should need to look after the appellant and her two adult brothers, even if the younger sister remains a minor.

34. I find that the appellant's parents will now struggle to return to Bangladesh for anything more than a visit. The appellant's father is a carer for his 93-year-old mother, whilst the appellant's mother has herself recently given birth, to a child whom it is assumed is a British citizen. The consequence of the mother returning alone permanently would be to leave her husband and either deprive him of a relationship with his newborn child or alternatively for her to leave that very young child in his care. On a real-world analysis, I have no doubt that the parents will remain in the UK, just as the sponsoring father has lived apart from his children in Bangladesh, for many years.

35. In the context of these findings, I weigh the proportionality of the respondent's decision to refuse the appellant entry clearance, to settle with her parents. I apply the spirit of section 55 of the Borders, Citizenship and Immigration Act 2009, even if it is not strictly applicable. I have considered the appellant's best interests separate from her father's actions. I bear in mind that she was a minor at the time of her application. Even though she is now an adult, I have not applied a 'bright line,' and have considered her best interests in the period up to this hearing, even though she is now an adult. In the appellant's favour, the appellant's best interests are to be settled with her mother in the UK. She grew up with her mother and has lived with her almost all of her life. She will have the opportunity to develop a relationship with her father, whom she has barely met, and to develop a relationship with her infant brother. Presumably, her UK family's material circumstances, including access to financial support, healthcare and work opportunities, are significantly better than in Bangladesh.

36. Also in her favour are that while a false document was relied on by the appellant's father in arranging her visa application, it is most likely that the appellant had no knowledge of this and was a minor at the time. The appellant is related, as claimed, to her sponsoring father. The consequence of the respondent's decision is that the appellant potentially faces a ten-year entry ban, so cannot even visit her parents and new siblings, unless they visit her. They are likely to have limited ability to visit her, because of the sponsoring father's caring responsibilities and the appellant's mother caring for a very young child. I do not go as far as to say that there is no possibility of visits, but even limited visits will contrast with the situation before the appellant's application, when she had lived with her mother. I am also conscious that the impact is upon the family as a whole and not merely the appellant outside the UK. I bear in mind that the appellant suffers from moderate depression, and it is most likely because of the refusal of entry clearance, the separation from her mother and that she now lives within a different setting, living with her maternal uncle. I have borne in mind the turbulence within Bangladesh. That being said, I accept Mr Melvin's submission that whilst Bangladesh is in a period of upheaval, as confirmed in the general background evidence, I am not satisfied that there is evidence that within the rural location in which the appellant lives, there has been a specific impact upon her or there would be, such that this has material weight in the proportionality assessment.

37. In terms of the factors weighing against the appellant, while the appellant is related to her father, it does not make reliance on the false document immaterial. In this case, the appellant had not initially produced the DNA evidence. The DNA evidence was only produced after the initial refusal of entry clearance, no doubt at significant inconvenience and expense compared to the photographic montage. That montage did contain a lie, namely the physical co-location of the family members, even if the familial relationship, on a purely biological basis, was as claimed. The 'lie' was about the quality of the family life when the sponsor had barely seen the appellant over many years. The montage was relied on to bolster potentially limited evidence of family life between the sponsor and the appellant, in circumstances where the sponsor knew this.

38. The confidence and trust which Entry Clearance Officers are entitled to place on the reliability of evidence, submitted in a formal application of such importance (namely an application with a view to settlement) is legitimate, and a breach of that confidence and trust is of great weight.

39. A further reason in the respondent's balance is what position the appellant finds herself in now, compared to how she was before the impugned decision. The appellant's current position is different in one respect because the appellant no longer lives with her mother. However, she had limited contact with her father and that contact will continue to be limited, beyond regular communication via WhatsApp etc., as well as financial support.

40. The appellant was a minor at the time of her application but is now aged 20. She does not work, and I do not know the reason for that (it is not said to be for medical reasons), but she is living in a close and loving family unit, including with her siblings, ie. her two older adult brothers and younger sister, with whom she has presumably always lived. I have found that her uncle will continue to provide for her, and there is no evidence that he needs to be a 'carer' for her, which is why her age as an adult now is relevant. I do not accept that she is isolated because of remaining in Bangladesh – the material change is her mother's emigration, just before she became an adult.

41. Whilst a finely balanced decision, I am satisfied that the importance of immigration controls in this case means that the refusal of entry clearance, whilst it will undoubtedly have a significant impact upon the appellant, is proportionate. I emphasise that the case is fact-specific, as I have been invited not to make a more general analysis as to what amounts to a 'false document' within the Immigration Rules, beyond a document that tells a lie in itself. I have considered the appellant's case only on its facts but I equally am conscious of the dangers, given the ease with which documentary evidence may now be digitally altered and fabricated, of applicants for entry clearance seeking to rely on such material, in circumstances where they must have known of the import or the potential risk of misleading or attempting to mislead the respondent. Put simply, what the appellant's sponsoring father did was extremely serious, and the impact on the impact on the legitimate interest of immigration control was also serious. This outweighs the factors in the appellant's favour. The respondent's decision was proportionate and not in breach of the appellant's article 8 rights. Accordingly, the appellant's appeal fails and is dismissed.

Notice of Decision

42. **I re-make the appellant's appeal. The respondent's decision did not breach the appellant's rights under Article 8 ECHR. The appellant's appeal fails and is dismissed.**

Judge J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2nd December 2024

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000742
UI-2024-000746
First-tier Tribunal No: HU/53082/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

UPPER TRIBUNAL JUDGE KEITH

Between

Tamanna Begum
(NO ANONYMITY ORDER MADE)

Appellant

and

The Entry Clearance Officer

Respondent

Representation:
For the Appellant: Mr S Karim, Counsel, instructed by Karim Solicitors
For the Respondent: Mr E Benham, Senior Home Office Presenting Officer

Heard at Field House on 1st May 2024

DECISION AND REASONS

1. The appellant appeals against the decision of Judge O'Rourke, promulgated on 10th October 2023, in which he dismissed the appellant's appeal against the respondent's decision of 8th February 2023 to refuse her application for entry clearance, to join her sponsoring parents. Of note, the appellant was a minor (just) at the date of the application, with a date of birth of 5th February 2004 when the application was made on 19th January 2022. The respondent refused the application for two reasons. The first was that she failed to meet the suitability requirements of Appendix FM, paragraph S-EC.2.2(a) on the basis that false information, representations, or documents had been submitted by the appellant's solicitors in relation to her application. This is the so-called "suitability" requirement. The document said to be false was described by her solicitors in their covering letter with her application, under the heading, "Documents regarding relationship" as "Family photograph," alongside the appellant's birth certificate, her parents' marriage certificate and evidence of on-

line communication between the appellant and her sponsoring father. Second, the respondent refused the application because the respondent did not accept that the appellant and sponsors were related as claimed and so the appellant did not meet the 'eligibility' requirement of paragraph E-ECC.1.6. After the refusal decision, the appellant submitted DNA evidence. In light of the DNA evidence, the respondent accepted that the sponsors and the appellant were related, so the eligibility requirement was not longer disputed, but maintained the refusal on the basis of the suitability requirement because of the submission of the false document; and that refusal of leave to enter was proportionate.

The Judge's decision

2. At §3 of his decision, the Judge identified the issues as being some of those in the refusal decision – that the appellant did not meet the 'suitability' requirements of S-EC.2.2(a), so that her application 'fell for refusal'; and second, whether Article 8 was engaged. The Judge also considered the proportionality of the respondent's decision, in the context of Article 8 ECHR. The discretionary as opposed to mandatory nature of refusal under S-EC.2.2(a) was not canvassed in the skeleton argument or supplementary skeleton argument in the appellant's bundle, which merely denied "foul play" and then made submissions in relation to Article 8 ECHR. The Judge cited the well-known authority of R (Razgar) v SSHD [2004] UKHL 27, and Section 117B of the Nationality, Immigration and Asylum Act 2002, followed by the appellant's evidence and the representative's submissions. The appellant's sponsoring father gave evidence before the Judge and was questioned about the photograph which was at the centre of the dispute. The Judge made adverse credibility findings about the appellant's father, at §14 onwards of his judgment. At §15, the Judge concluded that the document was undoubtedly false and was submitted in relation to an application; and it mattered not whether the appellant had known that it was false. Her application therefore had "fallen for refusal" (§16). The Judge cited Hameed v SSHD [2019] EWCA Civ 1324, for the proposition that a false document is itself dishonest and that led to a refusal, regardless of the appellant's knowledge. I will return to Hameed later in these reasons.

3. The Judge went on to conclude that the refusal of entry clearance engaged the appellant's and her parents' Article 8 rights, but that the decision was lawful and, by reference to Section 117B, was proportionate (§20). In balancing factors in the appellant's case, at §21(v), the Judge rejected the submission that the provision of the photograph was a minor technical breach. The Judge also noted at sub-paragraph (vi) that until two years earlier, the appellant had lived with her mother and siblings in Bangladesh and the sponsoring father had not lived with his family for approximately 12 years, apart from four visits. The Judge also considered at sub-paragraph (vii) the appellant's best interests as a minor, but bore in mind that her sponsoring father had not lived with her for the majority of her life and her mother had later chosen to come to the UK, leaving the appellant behind with her aunt and uncle in Bangladesh. The arrangements prior to the appellant's mother coming to the UK two years earlier were restorable, and the appellant's pre-existing "best interests" of living with her mother and siblings remained an option. In the circumstances, the public interest in the maintenance of immigration controls was not outweighed and the refusal of leave to enter was proportionate.

The appellant's appeal

4. The appellant appealed on three grounds (or in reality, headings, as each heading contained multiple grounds), as expanded on in her renewed application for permission.

5. Ground (1). In concluding that the photograph had been fabricated, the Judge had failed to consider that the appellant was a minor and should not be penalised for the actions of her parents (for which the appellant relied on Zoumbas v SSHD [2013] UKSC 74). In any event, because the relationship had since been established by way of DNA and other evidence, the photograph had no material bearing on the outcome of the appeal. Those factors ought at least to have been given weight. Moreover, the Judge had failed to consider that even if a false document had been submitted, refusal of leave to enter was discretionary, not mandatory, so the Judge ought to have carried out a balancing exercise for the purposes of considering whether the appellant satisfied the Rules, which would be dispositive of a human rights appeal.

6. Ground (2). In concluding that the photograph was a false document, the Judge failed to engage with how the document was materially false. It was not attempting to create a relationship that did not exist. At its height, it was a collection of images of various family members superimposed onto one document. A false document needed to be one that told a lie about itself, see the case of Adedoyin v SSHD [2010] EWCA Cid 773. Moreover the Rules were not to be interpreted with the same strictness of statute (see the case of Mahad (Ethiopia) v ECO [2009] UKSC 16).

7. Ground (3). The Judge's proportionality assessment was flawed because it implied a requirement for evidence of dependency, for family life to exist between minor children and parents and the Judge had penalised the appellant for choices made by her parents. The Judge had also failed to take into account that in light of the DNA evidence, the fabrication of the photograph was not material to the application. Finally, the Judge had failed to consider the respondent's own Country Policy and Information Note Bangladesh: Women fearing gender based violence, Version 3.0 June 2020 ('CPIN') and the societal prejudice towards lone women in Bangladesh.

8. Permission to appeal was initially granted on grounds (1) and (3) only by Judge Landes of the First-tier Tribunal, but on renewed application was granted by Judge Perkins also on ground (2).

The respondent's Rule 24 response

9. The respondent did not oppose the application for permission to appeal and invited the Tribunal to determine the appeal afresh.

10. I clarified with Mr Benham at the beginning of the hearing the precise concessions which he was instructed to make. The respondent conceded that the Judge erred on ground (3), on the basis that the Judge had failed to consider as a positive factor the DNA evidence, which resolved any doubts about the appellant's relationship with her sponsoring father, for the assessment of proportionality under Article 8.

11. However, Mr Benham confirmed that the respondent continued to oppose the grounds (1) and (2). Ground (2) was particularly important because if, on the one

hand, the Judge erred in law then the Judge's adverse findings about a false document were based on an error of law, in which case there should be no preserved findings. In contrast, where the Judge had not erred in law in concluding that the document submitted was a false document, then it followed that that would be a preserved finding. Mr Karim confirmed that the appellant wished to have any re-making decision to be retained in the Upper Tribunal for re-making subject to the issue of preserved findings. The remainder of the facts were no longer in dispute, in particular the relationship between the appellant and her sponsoring father.

The hearing

The appellant's submissions

12. Mr Karim submitted that first, there had been a flawed assessment under the Immigration Rules because the relevant provision did not require a mandatory refusal and there was no evidence that the Judge had considered a balance-sheet exercise within the Rules. Whilst it was trite law that no appeal lay under the Immigration Rules, if in fact the appellant met the requirements of the Immigration Rules that would be dispositive of a human rights appeal. This had been identified by Judge Landes of the First-tier Tribunal in her grant of permission. Moreover, the Judge had failed to consider the appellant's status as a minor and in the context of that assessment, the materiality of the photograph where DNA had now shown the relationship as claimed.

13. In relation to ground (2), the photograph on which the respondent had focussed was not, on any view, false. It did not attempt to create or suggest a relationship which did not exist and was merely a collection of photographs. Mr Karim referred to an analogy of a family montage that may be taken at a visit to a zoo, which might have a superimposed background. The document did not tell a lie about itself and in particular the use of the word 'substitution,' contained in the document examination report, was incorrect. The common-sense meaning of 'substitution' was that one image had been superimposed onto another. This was not correct, where the photograph was clearly a montage of various photographs of family members.

The respondent's submissions

14. On behalf of the respondent, Mr Benham argued that in relation to ground (1), the appellant had not argued before the Judge that she should not be penalised for the actions of her parents, but in any event, the appellant had applied with the support of legal advisors and it was they who had expressly relied upon the family photographic evidence. In relation to a proportionality assessment either within the Rules, for the purposes of ground (1), or outside it for the purposes of ground (3), whilst the respondent had accepted that there was a flaw in the proportionality assessment, the Judge had carried out a proportionality assessment, so the argument that he had failed to consider the discretionary nature of refusal under the Immigration Rules was not correct.

15. Regarding ground (2), the Judge's findings in relation to the sponsor's evidence were clear. Whilst Mr Karim might try to portray the sponsor's witness evidence as confused, in reality it was clear that the sponsor had given untruthful evidence (see §14 of the decision). As the Judge recorded, the sponsor "doubled down" on

a falsehood, concocting spurious assertions about how the photograph could show that family members were standing together, despite the respondent's detailed concerns, set out in a document examination report, about how the images of family members were all at the same height, but parts of their bodies were not in proportion and appeared to have been stretched, and the light and shadows appeared to come from different directions whilst the feet of every person appeared to be floating in the air, not in proportion to the background images of a cart, on grass. When it was put to the sponsor that the image had been "photoshopped," he sought to explain the apparent similarity in heights because of the unevenness of the ground and, even though his daughter would only have been eight years old at the time, that all his children were tall. The Judge found that the sponsor was not confused but knew the photograph was a fake. He should have said so in his witness statement, to explain the rationale for preparing it, but did not. Such belated honesty on his part would have probably meant some compliance with the Rules and have had some weight, but he had not. To answer the question head on as to what the document was a 'lie' in the Adedoyin sense, it was a lie about the relationship between family members, being together in one place at the same time. Whilst Mr Karim might suggest that this was not expressly stated and the application had never suggested that the family members were all standing together in a single photograph and that this was supposition, this was clearly the import of the photograph. Even if, as now, DNA evidence had later been adduced, that was after the event and only when the respondent had initially refused the application for entry clearance, and the issue of suitability remained. In relation to the document evaluation report, by focusing on the phrase in it of "substituted photograph" and attempting to apply a narrow meaning of a substitution of one image for another, this entirely ignored the detailed analysis on the following page of that report at page [51] of the respondent's bundle, which described the photograph as using a background picture as a backdrop rather than actual place; the proportion of the individuals not being to scale; and they appeared to have been digitally altered, with further discrepancies on the colour and tone of the photographs and the shadows. In simple terms, the individuals had been added together as a photograph and the document was not genuine.

Discussion and conclusions

Ground (3)

16. I deal with this ground first, given the respondent's concession. While it was perhaps generously made, I do not seek to go behind it, and Mr Benham confirmed that the Judge erred in failing to consider the fact of the biological relationship between the appellant and her sponsoring parents, in the Judge's proportionality assessment. Given that such proportionality assessments are, by their nature, intensely fact-sensitive, this error alone is material. Moreover, I accept Mr Karim's challenge that the appellant had raised the issue of remaining in Bangladesh as single woman in the skeleton argument before the Judge. While judges are not obliged to deal with each and every aspect of evidence, where a specific proposition was put at length in the skeleton argument, I am also satisfied that the Judge erred in failing to consider this factor in the proportionality assessment. The Judge's proportionality assessment was flawed on these two bases.

17. I do not, however, accept that the Judge implied any requirement of dependency, or penalised the appellant for choices by her parents in moving to the UK – her father, many years ago; her mother more recently. In relation to the question of dependency, the Judge recognised that family life was interfered with (and so implicitly recognised it existed), but recognised that the impact of interference was less, in terms of the appellant and her father, as they had not lived together for 12 years, and he had moved away when she was only six (§16). The Judge found that the "pre-existing" family life, before the appellant's mother also moved to the UK two years earlier, and after which the appellant was left to live with an uncle, along with her siblings, was "restorable." Those findings were open to the Judge on the evidence. They did not "penalise" the appellant, but recognised the historic choices made by the appellant's parents and the viability of future arrangements.

Ground (1)

18. In relation to the criticism that the Judge erred in failing to consider that the appellant was a minor and consequently should not be penalised for her parents' submission of a false document (if it were false), this feeds in to the second aspect of ground (1), namely that that the Judge erred by reciting and accepting at §3(i) the respondent's decision that the appellant's application "fell" for refusal, because whether or not with the applicant's knowledge, a false document had been submitted in relation to the application. The appellant argued that the Judge failed to appreciate the discretion in the Rules, where paragraph S-EC.2.1, begins: "The applicant will normally be refused on grounds of suitability." Neither point was canvassed with the Judge, either in the appeal form, the two skeleton arguments produced by the appellant's counsel, or oral submissions to the Judge. The "Zoumbas" point was raised for the first time in the application for permission to appeal to this Tribunal, while the Rules point was raised for the first time by the Judge granting permission to this Tribunal. I bear in mind Lata (FtT: principal controversial issues) [2023] UKUT 00163 (IAC), and in particular, headnotes (4) and (7):

> "4. It is a misconception that it is sufficient for a party to be silent upon, or not make an express consideration as to, an issue for a burden to then be placed upon a judge to consider all potential issues that may favourably arise, even if not expressly relied upon. The reformed appeal procedures that now operate in the First-tier Tribunal have been established to ensure that a judge is not required to trawl though the papers to identify what issues are to be addressed. The task of a judge is to deal with the issues that the parties have identified.
>
> .....
>
> 7. Unless a point was one which was Robinson obvious, a judge's decision cannot be alleged to contain an error of law on the basis that a judge failed to take account of a point that was never raised for their consideration as an issue in an appeal. Such an approach would undermine the principles clearly laid out in the Procedure Rules."

19. I do not accept that the Judge erred in the sense of R v SSHD, ex p Robinson [1998] QB 929. As the Court of Appeal observed in that case, a judge is not required to engage in a search for new points, or seek points which are arguable,

as opposed to obvious (see p.946 of Robinson). In relation to the issue of discretion in the Rules, the use of the phrase, "falls for refusal," in the refusal letter, might suggest classification, so that someone "must" be refused leave, or might equally mean a tendency, which is consistent with the Rules. Context is all, and would necessitate the very search which the Court in Robinson indicated was not necessary. The challenge that the Judge failed to consider that the appellant should not be blamed for her parents' actions is a reformulation of the argument about discretion within the Rules. On remaking, there is nothing to prevent the appellant submitting that the human rights appeal should be considered in the context of the Rules, when carrying out the proportionality assessment, but the Judge cannot fairly be criticised for erring on this ground.

Ground (2)

20. I return to the ground which occupied most of the respective parties' submissions. The question of whether a document itself contains 'a lie' arose in Adedoyin, because of the Court's analysis of whether a representation or document was "false" for the purposes of paragraphs 320(7A) and 322(1A) of the Immigration Rules. The Court concluded that "false" meant "lying" or "deceitful" (§43) and even if a party was ignorant of the use of such a false document, the document itself needed to be deceitful, as opposed to merely "untrue" or "incorrect." In contrast, as the Court confirmed at §68, a false representation stated in all innocence may be simply a matter of mistake, or an error short of dishonesty. The distinction between a false document and representation was confirmed in Hameed, which the Judge himself considered. As with a digital Certificate of Sponsorship (in Hameed), a digital photograph is a document for the purposes of the Immigration Rules, because it provides information and potentially acts as an official record (see §28 of Hameed).

21. Moreover, the Judge correctly reminded himself of Mahad, and the principle that Rules are not to be construed with all the strictness applicable to the construction of a statute or a statutory instrument but, instead, sensibly according to the natural and ordinary meaning of the words used (§10). The Judge referred to the detailed analysis in the document evaluation report at §13, the contents of which it was unnecessary for him to repeat. Mr Karim's submission that there was no "substituted photograph," was based on a tick box on the first page of the report. That same tick box, which the author had ticked, was alongside other boxes, such as "contain altered/added details;" "to contain a page not original to the document;" and to have been "fraudulently obtained." However, as Mr Benham points out, to take that tick box out of context ignores three further pages of detailed analysis, with annotations pointing out how the photograph had, in the respondent's view, been altered, with detailed descriptions. The report ends with a summary, which I repeat, as at §13, the Judge expressly adopted its reasons for concluding that the photograph was a false document, (which comprised the entirety of the Judge's reasons on that issue):

> "Summary of Findings
>
> The photograph submitted as evidence in the visa application shows signs that it has been digitally altered in the following ways: -
>
> - A photo backdrop has been used to digitally place the individuals onto.

- The proportions of the individuals are not to scales and not consistent – the individuals are similar size to the shed and cart seen in the photograph.

- Inconsistent lighting and shadowing on the individuals in the same photograph. All individuals seen in the photograph appear to be floating in the air and are not positioned on the ground.

- Clipping marks and areas of their bodies are missing – end of the shoe on the male seen on the far right.

The above demonstrates that the images are not genuine and have been digitally altered."

22. While I do not accept Mr Karim's submission that the photograph was in no sense false, or, to put it another way, it was not open to the Judge to conclude that it was a false document, I accept his submission that the Judge failed to consider or explain whether it had been truly "altered", in the sense that an original had been edited, or whether a new document had been created out a montage of other images, and which told no "lie" in itself. I express no view at this stage on whether such a montage can never be a false document. Rather, the document evaluation report (which I do not criticise), which formed the entirety of the Judge's reasoning on the issue, was a very detailed description of why the photograph could not be anything other than a montage. What the judgment missed was an explanation of why, without more, a montage was necessarily a false document. The error is not a philosophical one, but goes to the heart of the appellant meeting the eligibility criteria. On this specific issue, I set aside the Judge's conclusions at §§13 and 15(i). For the avoidance of doubt, I do not set aside the Judge's critical findings about the sponsor's honesty in his witness evidence (§14). The relevance of the falsehood in the sponsor's evidence will need to be the subject of further submissions on remaking. In summary, the Judge erred in law on ground (2).

Summary and preserved findings.

23. The Judge erred in failing to consider the fact of the biological relationship between the appellant and her sponsoring parents, in his proportionality assessment; and failing to consider the respondent's Country Policy and Information Note Bangladesh: Women fearing gender-based violence, Version 3.0 June 2020 ('CPIN').

24. The Judge also erred in failing to explain adequately why a photographic montage was a "false document."

25. The errors are such that the Judge's decision is not safe and cannot stand. However, the Judge's findings that the sponsor gave false witness evidence (at §14) are preserved.

26. In relation to family life, I also preserve the Judge's findings at §17 that the appellant and her parents had family life which would be interfered, with were she not permitted to join them in the UK. Finally, I preserve the Judge's findings at §21(vi) that until two years before the hearing in 2023, the appellant lived all of her life with her mother and her siblings in Bangladesh and that her father

had, apart from four visits over the years, not lived with his family for 12 years, so from when the appellant was aged approximately six.

Re-making

27. I have considered §§7.2(a) and (b) of the Senior President's Practice Statement. Mr Karim urged me to retain re-making in the Upper Tribunal particularly given the limited evidence which would be required to re-make the appeal, which is relevant to §7.2(b). §7.2(a) is not applicable as there is no suggestion that either party has been deprived of a fair hearing. Mr Benham was neutral. In the circumstances, I retain re-making in the Upper Tribunal to be heard at Field House with the provision of a Bengali interpreter.

28. The case potentially gives rise to an important point of principle – when is a photograph a "false document" for the purposes of the eligibility criteria of the Immigration Rules. As a consequence, I set out below specific directions for written position statements from both parties.

Notice of decision

The Judge's decision contained an error of law, such that it is unsafe and cannot stand. I set aside the Judge's decision, subject to the preserved findings discussed above at §§23 to 26 of this error of law decision.

I retain remaking in the Upper Tribunal.

Directions on remaking

1. The following directions shall apply to the future conduct of this appeal:

   1.1. The Resumed Hearing will be relisted at Field House on the first available date, time estimate of four hours, to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal. A Bengali interpreter will be arranged.

   1.2. The appellant shall no later than 4 pm, 14 days before the Resumed Hearing, file with the Upper Tribunal and serve upon the respondent's representative a consolidated, indexed, and paginated bundle containing all the documentary evidence upon which she intends to rely. Witness statements in the bundle must be signed, dated, and contain a declaration of truth and shall stand as the evidence in chief of the maker who shall be made available for the purposes of cross-examination and re-examination only.

   1.3. The respondent shall have leave, if so advised, to file any further documentation on which he intends to rely and in response to the appellant's evidence; provided the same is filed no later than 4 pm, 7 days before the Resumed Hearing.

1.4. **NB Position statements** - The parties shall file and serve no later than 4pm, 3 days before the Resumed Hearing, written position statements on the following issues:

1.4.1 The relevant of the definition of "False document" in Paragraph 6 of the Immigration Rules.

1.4.2 Whether a document may be a "False document" for the purposes of Paragraph 6, but not contain a "lie in itself."

1.4.3 If a document can be a "False document," for the purposes of Paragraph 6, without containing a lie in itself, whether that meets the requirement of dishonesty in Hameed. If it does not, whether meeting Paragraph 6 alone is sufficient to permit discretionary refusal of leave to enter; and if it is sufficient, whether the absence of dishonesty is relevant to the exercise of discretion in not refusing an application.

1.4.4 The relevance of dishonest intent in the use of a document, which may not itself 'contain a lie' or meet the test of Paragraph 6; and if there is dishonest intent, whose intention is relevant.

1.4.5 The relevance of the context of a document being relied on in immigration applications, as opposed to being used or published in other contexts.

1.4.6 Considering the questions in 1.4.1 to 1.4.5 above, whether the photograph in the appellant's case was a false document; and if it was, on what basis.

1.5 The parties are reminded that they must comply with the Practice Direction for the Immigration and Asylum Chamber of the Upper Tribunal: Electronic filing of documents online – CE-File – Courts and Tribunals Judiciary. They must lodge any application or documents by the CE file E-filing service. Documents uploaded to CE file must have a file name which reflects their contents and any application (whether for urgent consideration, relief from sanctions or otherwise) must be clearly identified as such. The bundle must comply with the President's Guidance on the Format of Electronic Bundles in the Upper Tribunal (IAC), including: being limited in file size, with proper pagination, indexing, hyperlinking, bookmarking and in a format which is text searchable. Failure to comply with these directions may result in the Upper Tribunal making an order for costs pursuant to its power under rule 10(3), or by imposing any other appropriate sanction. It may also result in the matter being listed before a Duty Judge, where the defaulting party will be required to attend and provide an explanation.

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12th June 2024