



IAC-AH-DP-V1

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

Appeal Number: IA/42926/2013

THE IMMIGRATION ACTS

**Heard at Manchester
On 18th November 2014**

**Determination
Promulgated
On 27th November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**S B
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Schwenk of Counsel instructed by Parkview Solicitors
For the Respondent: Miss C Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appeals against a determination of Judge of the First-tier Tribunal A K Simpson promulgated on 2nd July 2014.
2. The Appellant is a female citizen of Pakistan born 2nd February 1973 who had leave to remain in the United Kingdom as a Tier 4 (General) Student until 1st July 2012. On 30th June 2012 she applied to vary that leave to

enable her to remain in the United Kingdom. The application was made outside the Immigration Rules on the basis of her family and private life.

3. The application was refused on 1st October 2013. The Respondent accepted that the Appellant has a child who was born in the United Kingdom on 25th October 2012, but contended that the Appellant could not satisfy section EX.1 of Appendix FM because the child is not a British citizen and had not resided in the United Kingdom for at least seven years. The Respondent contended that the Appellant had not satisfied paragraph 276ADE in relation to her private life, and there were no exceptional circumstances that warranted consideration of Article 8 outside the Immigration Rules. The Respondent's decision was that it would be appropriate for the Appellant and her child, to return together to Pakistan, the country of which they are both citizens.
4. The Appellant lodged an appeal which was heard by Judge Simpson (the judge) on 7th March 2014 and 7th May 2014. Having heard evidence from the Appellant and one other witness, the judge found that the Appellant had not given a truthful or reliable account, the judge noted that the Appellant had raised as Grounds of Appeal, both asylum and humanitarian protection, but concluded that the Appellant had fabricated her claim, and the appeal was dismissed on asylum, humanitarian protection and human rights grounds.
5. The Appellant applied for permission to appeal to the Upper Tribunal relying on three grounds which are summarised below.
6. Ground 1 - It was pointed out that the judge had found the witness NA straightforward and truthful but had then gone on to make an adverse finding that the father of the child, MA, was named on the birth certificate and this was not done accidentally and that either the father of the child had been present when the birth was registered, or the Appellant had deliberately deceived the registrar into believing that she was married. It was submitted that these findings were contrary to the weight of the evidence provided by the Appellant and NA and the judge's finding and reasoning was contradictory and unsound.
7. Ground 2 - The judge found in paragraph 13 of the determination that the child was not borne out of wedlock, but it was submitted that the judge's reasoning was "based upon the judge's own stereotype of a woman fitting her ethnic and religious profile" and that such reasoning was highly prejudicial. In addition the judge's finding in paragraph 13(c) that the Appellant's brother's friend would not have tolerated her having a relationship without being married, was not supported by adequate reasoning. It was contended that the judge's finding that she was not satisfied that the Appellant was unmarried although she may only have undergone a religious ceremony was based on conjecture and that any such religious marriage may not have been recognised as legal in the United Kingdom.

8. Ground 3 – It was submitted that the judge had failed to consider the best interests of the Appellant’s child, whose welfare and best interests were paramount.
9. Permission to appeal was granted by Judge of the First-tier Tribunal Gibb and I set out below paragraphs 2, 3 and 4 of the grant of permission;
 - “2. The grounds, which were in time, complained that the judge erred in:
 - (1) her approach to the issue of whether the Appellant had been married to the baby’s father and why/how his name came to be on the birth certificate;
 - (2) her finding that the baby was in fact legitimate, and that the father was the Appellant’s first cousin; and
 - (3) not considering the best interests of the child.
 3. The third ground has little merit see [18] of the determination. The first and second do raise arguable points, however. It is arguable that there may be contradictory reasoning in both accepting the evidence of the witness who explain getting the certificate, and then concluding that a marriage certificate had been presented. The issue of whether the adverse findings as to the marriage and the first cousin relationship were sufficiently evidence based, or may instead have been speculative, is of central importance, and deserves closer consideration. It is unclear whether the various adverse points were raised at the hearing, and whether the gov.uk website information [11] was researched independently by the judge: these may raise fairness issues.
 4. The grounds are arguable.”
10. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 contending in summary that the judge had not erred in law, and had produced a clearly reasoned determination rejecting the Appellant’s account, and giving adequate reasons for not believing the Appellant.
11. Directions were subsequently issued making provision for there to be a hearing before the Upper Tribunal to decide whether the First-tier Tribunal determination should be set aside.

The Appellant’s Submissions

12. Mr Schwenk indicated that he did not pursue the third ground of appeal but submitted that there was considerable merit in the first two grounds. The judge in paragraph 12 had found the witness NA to be truthful, but had then gone on to find that either the child’s father was present when the Appellant was registering the birth, or the Appellant had deliberately deceived the registrar into believing that she was married, and neither of those scenarios could have occurred, if NA had given truthful evidence, as

the judge found that he had. In effect it was submitted that the judge was finding the witness truthful but then disbelieving his evidence.

13. In relation to the second ground Mr Schwenk submitted that the findings made by the judge appeared to be based upon stereotyping and speculation and were not safe findings. In relation to paragraph 13(c) the judge was assuming that the brother's friend referred to was a Muslim of Pakistani heritage, but even if that was the case, there was insufficient evidence to find that he would not have tolerated the Appellant's claimed relationship outside marriage with MA.
14. In relation to paragraph 14 of the determination in which the judge refers to the possibility of a religious ceremony, Mr Schwenk submitted that this would not have been recognised under United Kingdom law, and submitted that it was not clear whether any of the points found by the judge, had been put to the Appellant to give her the opportunity to respond.

The Respondent's Submissions

15. Miss Johnstone relied upon the rule 24 response and submitted that paragraph 12 should be read together with paragraph 13(d) of the determination. Miss Johnstone submitted that it was clear that the judge was not making a finding that the child's father was present when the Appellant was registering the birth but was making a finding that the Appellant had submitted evidence to indicate that she was married to the child's father.
16. In relation to paragraph 13(a) and the judge's finding that it was not credible that a woman with the Appellant's cultural and religious background would enter into a physical relationship with a stranger she met at the bus stop within one month of arriving in the United Kingdom, Miss Johnstone referred to paragraph 4 of the Appellant's witness statement in which she described a traditional and religious family, and submitted that the judge was entitled to reach the finding that the Appellant's account was not credible.
17. Miss Johnstone contended that all relevant matters had been put to the Appellant at the two hearings. The initial hearing was adjourned part-heard to enable the Appellant to call NA to give evidence, and for evidence to be obtained from the registrar as to the procedure that would be followed when a birth was registered. The hearing resumed on 7 May 2014, and the Appellant submitted a witness statement from NA, together with documentary evidence from Bolton Council setting out the procedure for registering a birth. Miss Johnstone explained that the gov.uk website information on registering a birth had been submitted by the Presenting Officer at the hearing before the First-tier Tribunal.

The Appellant's Response

18. Mr Schwenk accepted that paragraph 13(d) to an extent qualified paragraph 12 of the determination, but he nevertheless submitted that the conclusion reached by the judge still did not make sense, if the witness evidence of NA was accepted. That witness had been present when the birth was registered and had made no reference to the production of a marriage certificate.
19. Mr Schwenk accepted that the evidence in relation to the procedure for registering births had been before the judge and confirmed that he was not suggesting that the judge had undertaken her own research.
20. In relation to the credibility of the Appellant forming a physical relationship so soon after arriving in the United Kingdom with a person she met at a bus stop, Mr Schwenk pointed out that her witness statement indicated that her family were traditional, but this did not mean that she held the same views.
21. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

22. I will deal firstly with the third ground of appeal which was not pursued by Mr Schwenk. In my view this was an entirely correct approach. The author of the ground erred in contending the best interests of a child are paramount, as that is clearly not the case, and in any event the judge considered the best interests of the child in paragraph 18 of the determination.
23. I will also at this stage deal with comments made by the judge granting permission as to fairness. I am satisfied, and Mr Schwenk accepted, that the judge had not independently researched information on the gov.uk website as to registering births. I am satisfied that this was submitted by the Presenting Officer at the first hearing. I am also satisfied that no relevant adverse points were raised by the judge after the hearing.
24. This appeal has been dismissed because the judge did not believe the Appellant, and found that she had fabricated her account. The challenge to the findings made by the judge is not made on grounds of perversity, and I do not find that the judge has made findings which are either perverse or irrational.
25. The judge in paragraph 12 found the witness NA to be straightforward and truthful, but I agree that this paragraph should be read in conjunction with paragraph 13(d), and in any event, in paragraph 12 the judge specifically rejected the suggestion that the child's father's name was "accidentally" included on the birth certificate.
26. The judge had the benefit of listening to oral evidence, and in my view is best placed to decide what weight should be attached to that evidence. The Record of Proceedings confirms that the Appellant was asked what happened when she registered the birth of her child and was asked to

account for the fact that the child's father was named on the birth certificate even though he had not attended with her to register the birth. The Appellant was also asked why a medical document contained at page 61 of the Appellant's bundle, recorded the child's father as being her first cousin. These were therefore issues that were raised with the Appellant and she had the opportunity to respond.

27. The Appellant confirmed that the child's father had attended the medical appointment with her on 30th May 2012 but did not in her evidence adequately explain why he was recorded as being her first cousin, as her evidence was that he was not related to her.
28. A primary finding made by the judge was that the Appellant was not credible in claiming that her child was born without her being married to the father. The judge gave four reasons for finding the Appellant not credible, and three of these reasons are challenged in the second ground of appeal.
29. I will firstly deal with the first ground, which is the claim that in referring to the witness, the judge made contradictory and unsound findings contrary to the weight of the evidence. I find no error of law. The judge did not make a finding that the father was present when the birth was registered and therefore accepted the witness's evidence on this point. The judge specifically found that the witness was unlikely to have lied on this issue and her conclusion is contained in paragraph 13(d) which is;

"Consequently, it is more likely than not that the couple are already married and that the Appellant was able to provide satisfactory evidence of that marriage i.e. a marriage certificate;"
30. In my view the judge was entitled to reach this finding, which does not contradict the evidence given by the witness NA. His evidence that the father did not attend was accepted. His evidence, according to the Record of Proceedings, was that although he was present he did not say that he was the father of the child and he was not asked this. The Record of Proceedings indicates that his evidence confirmed that the Appellant produced documentation to the registrar. The Record of Proceedings does not indicate whether the witness was aware of what the documentation was. The witness could not recall how the Appellant described MA, for example as the child's father or as her husband.
31. I therefore conclude that the judge considered the evidence, did not make contradictory findings that amount to an error of law, but made a finding that the Appellant was not unmarried, which finding was open to her to make on the evidence.
32. I now consider ground 2 which relates to paragraph 13 of the determination. It is not suggested that the judge applied the wrong burden or standard of proof. It is clear that in considering credibility, the judge has to make findings on the evidence, and give adequate reasons for those findings. The burden of proof is on the Appellant.

33. The judge was entitled to find the Appellant's account not credible. The judge has taken into account the Appellant's cultural and religious background, and the judge does not have to accept an assertion made by an Appellant at face value.
34. The Appellant in her witness statement described coming from a very traditional and religious family, and did not adduce any evidence that she had ever previously entered into a physical relationship with a stranger, within such a short period of time as she claimed happened in this case. I note that the Appellant was 41 years of age at the date of hearing before the judge. I find no error of law in the judge not accepting the Appellant's account of that relationship.
35. The judge went on in paragraph 13(b) to consider whether the child's father is in fact the Appellant's first cousin. There is no direct challenge to this part of the determination. The judge was entitled to find the midwife who prepared the medical notes would only have described the father of the child as a first cousin if she had been told this information. The Appellant confirmed that both she and the child's father attended that medical appointment.
36. I do find the judge erred in finding at paragraph 13(c) of the determination when she concludes that the Appellant would not have been able to hide the relationship from her brother's friend with whom she was staying, and that such a relationship would not be tolerated by that friend. There appears to me to be insufficient evidence for the judge to reach that conclusion. There is no mention of this in the Appellant's witness statement, but I note that in her oral evidence she said that when she first came to the United Kingdom she initially stayed with her brother's friend but she then moved. As there is insufficient evidence to sustain this finding, I conclude that this is an error, but in view of the other findings, it is not material.
37. The judge accepted that there was no evidence before the Tribunal that the Appellant was married, but was entitled, having considered the evidence as a whole, to conclude that the Appellant and the child's father were in fact related, and her account of meeting a stranger at a bus stop and thereafter forming a relationship was a fabrication, but that some evidence was provided to the registrar to prove that she and the child's father were married, which is why the father is named in the birth certificate.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision. The appeal is dismissed.

Anonymity

An anonymity direction was made by the First-tier Tribunal. This is maintained by the Upper Tribunal because the Appellant's child is a minor.

Signed

Date: 24th November 2014

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date: 24th November 2014

Deputy Upper Tribunal Judge M A Hall