



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/23217/2012

THE IMMIGRATION ACTS

Heard at Field House
On 11 February 2014

Determination Promulgated
On 28 February 2014

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

MASTER HUMAYUN HALIM ROSID
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellant: Mr S Karim
For the Respondent: Mr A Melvin

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh who is said to have been born on 2 January 1995. He applied for entry clearance to the United Kingdom to join his parents. His application was assessed against paragraph 297 of the Immigration Rules. The

application was refused and the appellant appealed. That appeal was unsuccessful as a result of which the appellant sought permission to appeal that decision. At a hearing before me on 5 December 2013, for reasons that I set out in a decision dated 16 December 2013, I found a material error of law in the First-tier Tribunal Judge's determination. I directed that there be a resumed hearing and that took place on 11 February 2014 in the Upper Tribunal.

2. As set out in my error of law finding, the appeal was dismissed under the Rules on three bases. Firstly, because of the failure to establish that there would not be additional recourse to public funds if the appellant were to be granted entry clearance; secondly that it had not been shown that the sponsor had sole responsibility for the appellant; and thirdly that it had not been shown that the appellant was under the age of 18 at the date of application.
3. At the resumed hearing I heard no live evidence and the matter proceeded by way of submissions. Mr Karim, who represented the appellant, submitted that although at one time the appellant's parentage was a live issue it was no longer because there were DNA test results which showed to a very high degree that the sponsor and his wife are indeed the parents of the appellant. I agree with that submission. There is DNA evidence in the file from "Cellmark" which in its summary states as follows:-

"The DNA evidence supports the claimed relationship between Abdul Jalil and [the appellant].

The DNA evidence supports a family relationship between [the mother] and [the appellant] but the tests are inconclusive as to the true nature of the relationship. While the proposed relationship is statistically more likely other available evidence should be considered in this case."

4. That evidence appears to be somewhat inconclusive. However, the report later concludes that the most likely relationship between the appellant and his claimed parents is 99.99%. In the absence of any other evidence therefore to the contrary it is safe to make a finding that the appellant is the son of the sponsor and his wife.
5. The witness statement of Mr Abdul Jalil which was prepared for the hearing before me refers to the appellant's birth certificate which was an issue that was raised by the judge in the First-tier Tribunal. Mr Jalil who is the father of the appellant said that in Bangladesh birth registration became compulsory in 2006 and people only used to obtain birth certificates as and when required. From the statement it appears that several educational documents independently confirm the appellant's date of birth.
6. Looked at in isolation I can well understand that a birth certificate issued many years after the asserted date of birth may not carry weight. However, viewed in the round and on the balance of probabilities, which is the appropriate standard in this appeal, I am satisfied that the appellant was born on the date claimed. Firstly, he has three siblings, two sisters aged 20 and 19 and a brother aged 16, so that it is perfectly possible for the appellant to be aged 18 and fit in with the known biological possibilities. Although one may perhaps not place much weight on a passport

showing his date of birth if only the birth certificate was used to prove date of birth, there are school certificates that are at least consistent with his claimed date of birth. Furthermore, a cursory glance at a photograph showing the appellant with his family shows him to be of the sort of age claimed. Mr Melvin had no serious challenge to the claimed date, the birth date has been maintained throughout as that of the appellant and on the balance of probabilities I accept that he was born on that date, i.e. 2 January 1995. It is perhaps pertinent also that as I found in my material error of law decision, the appellant's date of birth was not a matter that appeared to be of concern to the judge who heard the previous appeal in 2011. The focus of the refusal of that appeal was more about the alleged relationship between the appellant and the sponsor (and his wife) than about the appellant's actual date of birth.

7. In relation to accommodation, Mr Melvin did not take issue in relation to it. There is a tenancy agreement and a letter from "Grand Solutions Lettings" confirming the tenancy agreement that appears in the bundle of documents before me and that the sponsor Mr Jalil has been paying rent consistently. It is said that there is sufficient room for an additional resident to occupy the property, "the client has sufficient space in the property for an additional person to live in good welfare". Although that letter in terms does not confirm that the addition of the appellant to the household will not cause statutory overcrowding, the property is a three bedroom one. The bedrooms would be occupied by the sponsor and his wife, their two daughters in the second bedroom, and the appellant and the sponsors' son in the third. On balance therefore accommodation is satisfactory.
8. Mr Melvin also had no proper challenge regarding the statement of income and expenses and benefit and tax credit rates produced by the sponsors on behalf of the appellant. The statement of income and expenditure was backed up by a considerable amount of documentation.
9. On the evidence provided I accept that Mr Jalil, his wife and elder daughter are all working and contributing to the family "pot" available for maintenance. As set out in the material error of law decision at paragraphs 10 and 11 there needed to be an analysis undertaken of the statement of weekly income and expenses that had been provided to assist the Tribunal as referred to in paragraph 1 of the headnote of **Ahmed (benefits: proof of receipt; evidence) [2013] UKUT 00084 (IAC)**. On such analysis on balance I find that there is sufficient income available to this family such as would not require or necessitate recourse to additional public funds as a result of the appellant's presence in the United Kingdom. Mr Melvin in submissions stated that there was nothing in the schedule provided that he would want to take issue with.

Conclusions

10. The decision of the First-tier Tribunal Judge has been set aside for reasons already provided. At the resumed hearing and for the reasons set out above, I find that on the balance of probabilities the requirements of paragraph 297 of HC 395 have

been met by the appellant such that the appeal is allowed under the Immigration Rules.

Decision

Appeal allowed.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Pinkerton