



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: VA/14897/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 28<sup>th</sup> July 2014

Determination Promulgated  
On 26<sup>th</sup> August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR ABDUR RAHMAN  
(Anonymity Direction Not Made)

Respondent

**Representation:**

For the Appellant: Mr M Chowdhury instructed by Masud & Co  
For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The application for permission to appeal was made by the respondent but nonetheless I shall refer to the parties as they were described before the First-tier

Tribunal that is Mr Abdur Rahman as the appellant and the Secretary of State as the Respondent.

2. The appellant is a citizen of Bangladesh born on 7<sup>th</sup> October 1976 and he made an application on 26<sup>th</sup> May 2013 for entry clearance as a visitor under paragraph 41 of the Immigration Rules. This application was refused by the respondent on 23<sup>rd</sup> June 2013. The Entry Clearance Officer was not satisfied that the appellant was a genuine visitor who intended to leave the UK at the end of the visit, was able to maintain and accommodate himself adequately or could meet the onward cost of his return journey contrary to paragraphs 41(i), (ii), (vi) and (vii) (accommodation). The Entry Clearance Officer noted that he had produced a letter from a clinical nurse specialist at Guy's and St Thomas' Hospital (NHS) which related to his wish to become a kidney donor for Delwar Hussain (the donee). The Entry Clearance Officer noted that the right of appeal was limited to the grounds referred to in Section 84(1)(c) of the Nationality, Immigration and Asylum Act.
3. Given the seriousness of the reason for the trip the appellant was requested to submit evidence to corroborate his friendship with the sponsor and a reply was received from the sponsor's cousin Nazmul Hussain Uddin in which he stated no evidence was available owing to him being a religious person. He had failed to satisfy the Entry Clearance Officer that a relationship was sufficiently close for him to travel to the UK for the purpose to be credible.
4. The Entry Clearance Officer also assessed the appellant's own personal financial circumstances in Bangladesh. The appellant was employed as an assistant teacher earning a salary of BDT 15,000, that is £121 per month. His bank statement for his personal account with the Islami Bank showed a history from 3<sup>rd</sup> October 2011 to 12<sup>th</sup> May 2013 and the balance had been boosted by a contribution of BDT 130,000 from his financial sponsor in the UK, approximately £1,050. However the account statement without this large deposit did not show a balance higher than £69 (BDT 8532) throughout the account history. In view of the modest salary and low personal savings, the Entry Clearance Officer was not satisfied that he had reason or intended to leave the UK at the end of his trip. Also the Entry Clearance Officer had not seen evidence of any tests being carried out and this lack of preparation given the amount of money to be spent on the trip and the risk that he may not be suitable for donation adds to the doubt.
5. The sponsor stated he had sent £1,100 to pay for the travel and other expenses and he was a friend of the donee. There was no evidence that this expenditure was commensurate with his own personal financial circumstances.
6. On 14<sup>th</sup> April 2014 First-tier Tribunal Judge Colvin allowed the appeal under the Immigration Rules stating that she had had the benefit of oral evidence from the financial sponsor Mr Uddin and there was no reason to doubt the credibility of his evidence. He stated that the relationship between himself and the donee was as first cousin and the appellant was that of a close family friend as well as being distantly related. The donee and the appellant appeared to have met in Bangladesh through

Mr Uddin in 2006 and remained in contact. The judge was satisfied from the evidence that she received that the *"motive is a genuine wish to help a friend and a relative"* [12]. He had undertaken the preliminary tests and been informed by Mr Hussain's NHS consultant that he was a suitable match subject to further tests. [12].

7. The judge found *"it is clear that Mr Hussain who is already on dialysis will be given the best opportunity as a young man if he has a live donor transplant as soon as possible"* [12].

8. The judge went on to find at [13]

*"In all these circumstances and on the evidence before me I am fully satisfied that the appellant is a genuine visitor who intends to leave the UK after the visit to be a transplant donor to Mr Hussain. Accordingly I allow the appeal and I am satisfied that he fulfils the requirements of paragraph 41 of the Immigration Rules."*

9. The judge added,

*"In addition I consider that there is a substantive human rights issue in this case that relates to Mr Hussain."*

### **Application for Permission to Appeal**

10. The respondent stated that the decision to refuse entry clearance did not attract a full right of appeal and was limited to the grounds referred to in Section 84(1)(b) and (c) of the Nationality, Immigration and Asylum Act and in particular, *"that the decision is unlawful under Section 6 of the Human Rights Act 1998 (42) (public authority not to act contrary to Human Rights Convention) as being incompatible with the appellant's Convention rights."*

11. In considering the appeal and allowing the appeal under the Immigration Rules the judge failed to engage with the provisions under the Nationality, Immigration and Asylum Act.

12. She did not make findings in relation to human rights or race relations and the determination did not record that either of these grounds were advanced. As such there was no jurisdiction to hear the appeal.

13. Permission to appeal was granted as the appellant was intending to visit a friend his rights were limited.

### **The Hearing**

14. Mr Bramble relied on the grounds contained in the application for permission to appeal and Mr Chowdhury conceded that the matter had been decided on the Immigration Rules alone and not in relation to the human rights grounds raised in the notice of appeal by the appellant.

15. Mr Chowdhury produced further papers in relation to the tests undertaken by the appellant, Mr Abdur Rahman, some of which were dated 5<sup>th</sup> January 2013.

16. I pointed out that the tests undertaken on 5<sup>th</sup> January 2013 were taken by someone with a different date of birth.
17. Mr Uddin the financial sponsor attended and gave oral testimony and confirmed that he was a reprographic operator on £20,000 a year, he had a five bedroomed house for which he paid the mortgage of £398 per month and he had a take-home pay of £1,400 to £1,500 per month but he had no evidence to confirm this.
18. He also confirmed that his father contributed to the household income as a cab driver. He last met the appellant in 2006 which is when the sponsor and potential donee also met the appellant.
19. Mr Bramble submitted that one of the concerns of the Entry Clearance Manager was the evidence provided by the hospital but further information had now been provided albeit that one of the letters recorded a different date of birth for the appellant.
20. Mr Chowdhury submitted that there was a serious issue of a life-threatening disease for the sponsor and that the appeal should be allowed. All the tests had been undertaken.

### **Conclusions**

21. It is clear that Judge Colvin erred legally in her approach to the appeal by allowing the appeal under paragraph 41 of the Immigration Rules albeit that the right of appeal is restricted such that the only appealable grounds were those referred to in Section 84(1)(b) and (c) of the Nationality, Immigration and Asylum Act 2002 following a change in the Immigration Rules on 9<sup>th</sup> July 2012. I accept that the appellant did appeal further to Article 8.
22. I was invited to preserve the findings at paragraphs 12 and 13 in the determination of Judge Colvin.
23. I declined to preserve those findings on the following basis. Further evidence was provided in relation to the appellant from Labaid Diagnostics Centre dated 5<sup>th</sup> January 2013. Those tests identify an incorrect date of birth of the appellant that being 5<sup>th</sup> January 1977. He gave his date of birth as the 7<sup>th</sup> October 1976. The evidence put forward was that the sponsor who is hopeful of a kidney transplant was to receive a kidney from the appellant.
24. The Entry Clearance Officer refused the application on the basis he found it reasonable to expect that the appellant would have undergone initial medical tests to assess the suitability to act as an organ donor. From the supporting documents the Entry Clearance Officer was not satisfied that any tests have been carried out. The tests supplied to me referred to an incorrect date of birth for the appellant and I am not persuaded therefore that the tests are accurate or that it was even the appellant who presented himself for testing. This undermines the genuine nature of the application. In addition although the financial sponsor Mr Nazmul Hussain Uddin

attended the hearing as the cousin brother of the sponsor in the UK he had not seen the appellant since 2006 and indeed confirmed that the sponsor and donee had not seen the appellant since 2006. This does not satisfy me that the appellant and donee are close and sufficiently close in order that it is credible that they have a genuine relationship such that the appellant would wish to donate a kidney.

25. It is quite clear that the appellant is on very limited means and has a family in Bangladesh which constitutes his wife and child which he would have to leave for a period of up to six months. The visit according to the sponsorship declaration of Mr Nazmul Uddin would be on a "*short-term basis.*" And I am not persuaded on the limited income of the appellant and the lack of any documentary evidence to confirm his financial position that he would have the savings to accommodate and maintain the appellant whilst he was in the UK, particularly as it would appear that it would be any time up to six months.
26. I asked the financial sponsor who claimed to be close to the donee whether any other efforts had been made to find an alternative donor and he stated that he did not know. If the financial sponsor had been close to the donee as he claims I see no reason why he should not know this information and thus that the information he supplied was reliable.
27. I can envisage no protected right under the European Convention for the appellant to be able to donate a kidney to someone he has little contact with. They are not related. I can accept that the physical integrity of the donee is an issue but he gave very little information about himself and although the donee may have a requirement for a kidney, I am not persuaded as to the genuineness of the relationship between the appellant's sponsor and donee or accept and because of the difficulties with the medical evidence (ie that they are accurate), that the appellant is in fact a potential donor. The Guy's and St Thomas' documentation, in particular the letter of 25<sup>th</sup> February 2013, confirming the suitability of the appellant as a donor, is based on the Lab Aid Ltd medical tests. The tests were conducted on between 3<sup>rd</sup> and 5<sup>th</sup> January 2013 and as I state gave the wrong date of birth. This in turn undermines the credibility of the tests and in turn the credibility of the human rights claim. The donee is currently receiving medical treatment at Guy's and St Thomas' Hospital on the national health service.
28. I therefore remake the decision and refuse the appeal.

### Order

29. The appeal of Mr Abdur Rahman against the ECO refusal is dismissed.

Signed

Date 21<sup>st</sup> August 2014

Deputy Upper Tribunal Judge Rimington