IAC-AH-KRL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/16630/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 11 July 2014	**On 1st Aug 2014**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

ENTRY CLEARANCE OFFICER – ABU DHABI

Appellant

and

MR HOSSEIN SAFARISHIRZI

Respondent

Representation:

For the Appellant: Mr G Saunders
For the Respondent: No legal representation

DETERMINATION AND REASONS

1. The Entry Clearance Officer (ECO) has been granted permission to appeal the decision of First-tier Tribunal Judge Colvin allowing the appeal of the respondent against a decision made by the ECO of 16 July 2013 to refuse him entry clearance as a visitor in accordance with paragraph 41 of the Immigration Rules.

2. The judge determined the appeal on the papers. The respondent applied for a visa to visit his 2 year old son who resides with his mother in the UK for two weeks. He said that he is divorced from his ex-wife who is the child's mother. In his grounds of appeal he confirmed that his son Arat lives with his mother in Birmingham as refugees. It was sixteen months since he had seen the child and he had made three applications which had all been refused. He permitted his ex-wife to take his son to the UK as she could not live in Iran. He just wanted to see his son and did not want to stay in the UK.

3. He produced a copy of a Divorce Deed with the translation dated 19 June 2013 and a certificate from the General Justice Department of Tehran dated 2 June 2013 with a translation dated 19 June 2013.

4. The ECO refused the application because it was unclear from the documentation when the respondent's ex-wife and child entered the UK. The divorce certificate dated 8 August 2011 made reference to custody of his 2½ year old son; however the son's date of birth was 25 May 2010 and therefore at the time of the divorce he would have been 14½ months old. The ECO did not consider that an official document would contain such a large discrepancy regarding the child's age. This led the ECO to question the divorce papers provided, the date of the claimed divorce and whether in fact the respondent was divorced at all.

5. The ECO also considered that the respondent had provided no satisfactory documents to demonstrate that he has custody rights to see his son as he is divorced. These factors undermined his credibility and the overall credibility of the application. Added to this, the ECO did not consider that the respondent's circumstances in Iran were dissimilar to those of his ex-wife and child and given that they have applied for and been granted refugee status, the ECO was not satisfied that the respondent's intentions were merely that of a visitor.

6. The judge had before her further official divorce documents the respondent had submitted which had been amended so as to show the correct age of his son at the time of the divorce. There was also a separate certificate from the Judge of the Tehran Public Court confirming that the Minutes of the Meeting of the court had mistakenly typed the age of the child which had now been corrected. The judge said there was no submission from the ECO to claim that these new documents could not be relied upon. The judge therefore accepted in the absence of an objection from the ECO that the respondent's evidence that this was a genuine mistake by the original court and it would be unreasonable to draw an adverse credibility finding against him in those circumstances. The judge accepted on the basis of the evidence that the respondent was divorced as claimed.

7. The judge considered the ECO's assertion that there was nothing on the face of the divorce document to show that the respondent has any rights to visit his son. She said the documents submitted for this appeal as shown in the ECO's bundle includes

the following sentence: "*visiting for the child is protected (the husband does not has (sic) right of visiting his son).*" The respondent said that this sentence had not been registered as part of the divorce certificate and that his ex-wife had sent an invitation letter for him to visit his son. The judge commented that whilst it was unfortunate that this was not an oral hearing where the evidence from the respondent's ex-wife might have clarified this and other matters, she accepted on a balance of probabilities that the respondent would be able to see his son during the week's visit to the UK. His ex-wife had raised the issue that this would be in the best interests of the child, a matter that also needed to be considered in this appeal.

8. The judge also considered that the ECO had raised a question of whether the respondent was intending to seek refugee status in the UK, like his ex-wife. She thought it was not reasonably possible to reach a view on this on the evidence that was before her. The mere fact that his ex-wife has done so does not automatically mean that an inference can be drawn in relation to the respondent in the absence of substantive evidence indicating that this was likely to be so. She had no information submitted by the ECO regarding the respondent's two previous applications and refusals.

9. Taking all these matters into account, the judge reached the conclusion that on a balance of probabilities the respondent has shown that he is a genuine visitor who intends to return at the end of the visit and therefore fulfils the Immigration Rules.

10. The grounds submitted on behalf of the ECO argued that the judge failed to place any weight, without adequate reasons on the document in the respondent's bundle which includes the sentence "*visiting the child is protected (the husband does not has (sic) right of visiting his son)*", instead preferring the paper evidence of the respondent in finding that "*this sentence has not been registered as part of the divorce certificate and that his ex-wife has sent him an invitation letter to visit his son.*"

11. I find no merit in the grounds as the judge properly considered the evidence and reached a finding that was open to her.

12. Alternatively the grounds argued that the judge in finding that the respondent is a genuine visitor who intends to return at the end of his visit, has failed to provide adequate reasons to address the ECO's concerns that the respondent will also, like his wife, seek asylum on arrival in the UK and that this is his true intention behind the proposed visit.

13. Again, I find that the judge gave proper consideration to the evidence before her. She had no evidence of the reasons for refusing to grant him a visit visa on the two previous occasions. On the evidence before her she drew an inference that was reasonably open to her.

14. I find that the grounds disclose no arguable error of law in the judge's decision.

15. The judge's decision allowing the respondent's appeal shall stand.

Signed Date

Upper Tribunal Judge Eshun