



Upper Tribunal
(Immigration And Asylum Chamber)

Appeal Number: IA/14451/2014

THE IMMIGRATION ACTS

Heard at: Field House

Decision & Reasons

Promulgated

On: 9 April 2015

On 20 April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS FARYIA MEMON
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Mr A Mills, counsel (instructed by CW Law Solicitors)

DETERMINATION AND REASONS

1. I shall refer to the appellant as “the secretary of state” and the respondent as “the claimant.”
2. The claimant is a national of Pakistan, born on 2 September 1989. Her appeal against the decision of the secretary of state dated 3 March 2014 refusing to issue her a residence card under the Immigration (European Economic Area) Regulations 2006 was allowed by First-tier Tribunal Judge Kainth in a determination promulgated on 13 November 2014.
3. The secretary of state appeals with leave against that determination.

4. The Judge found that the issue in the appeal was very narrow, relating to the first birth certificate produced which the secretary of state had not accepted on the basis of its quality. The certificate was not very clear and they could not make out the majority of the writing on it. Nor did the certificate contain any details of the claimant's mother. Whilst it was accepted that this may be the original document, the contents could not be ascertained and the document was thus not accepted as evidence of her relationship.
5. The Judge stated at the outset that he has had regard to the respective bundles produced. The claimant's bundle contained two covering letters dated 17 March 2014 and 28 April 2014. There was a signed copy of the claimant's and her sponsor's witness statements together with an updated birth certificate issued on 16 April 2014.
6. The claimant's father, her sponsor, attended the hearing and gave evidence. He confirmed that his wife (the claimant's mother) was sitting at the back of the Court and was in a position to give evidence should she be required to do so.
7. He explained that the original birth certificate was obtained on the basis that it was required with respect to the claimant's schooling. It was unclear as to why there were grammatical mistakes. The reason why the claimant's mother's name did not feature on the certificate was because there was no specific column and at the date of issue it was not the norm in Pakistan for a child's mother's details to be endorsed.
8. The sponsor came to the UK in October 2008, having lived before that in the Republic of Ireland. The claimant had been at school there and had come to the UK for the purpose of education.
9. With regard to the re-issued birth certificate, the sponsor asked his brother to obtain the appropriate form from Pakistan, which was sent to him in the UK, which he then completed. He paid the necessary fee and a certificate was issued for the claimant and her brother.
10. Judge Kainth had no difficulty accepting the sponsor's evidence that at the time the birth certificate was issued, namely on 19 May 1993, the competent authority in Pakistan did not have the benefit of computerisation and birth certificates were then written in manuscript on proforma. The certificate identified the father as the sponsor together with the claimant's name and date of birth. It had not been contended by the secretary of state that the first birth certificate was a forgery.
11. He also accepted the sponsor's evidence that it was not the "norm" in 1993 that the mother's name be endorsed on such a certificate. In any event, the claimant's mother was present at the hearing had this been a "live issue", and she could have been called to give evidence. This, the Judge found, was peripheral in his judgement and has no bearing with regard to the substance of the appeal [10].

12. The updated certificate issued on 16 April 2014 (paragraph 11 of the determination) has the incorrect date. It made reference to the claimant's date of birth and details of both her parents. It was submitted that the secretary of state received the claimant's brother's email birth certificate issued on the same date as opposed to the claimant's. That, the sponsor claimed, was an error and there had been no intention to deceive. The Judge accepted that it was a genuine mistake. The secretary of state has had the opportunity, had they chosen to do so, to undertake any verification checks on the emailed birth certificate.
13. The Judge concluded [12] that there is "no doubt" that the parents are those as claimed by the claimant. The sponsor was not challenged with respect to his clear evidence that he was the claimant's father and that her mother was sitting at the back of the Court.
14. I was informed that the witness was not cross examined at all.
15. In the event, the Judge found that the claimant had provided more than sufficient evidence challenging the secretary of state's "assertions, analyses and conclusions" in the refusal letter. Those assertions are no longer valid or tenable [13].
16. Mr Clarke submitted that at paragraphs 9-10 of the determination, the Judge had not explained why he accepted the sponsor's evidence. It was not explained why he accepted evidence as to how birth certificates were presented in Pakistan with regard to a computerised system and therefore this explains why the birth certificate was produced in manuscript. Nor did the Judge explain why he accepted evidence from the sponsor on what is the norm in Pakistan regarding endorsements upon birth certificates.
17. Mr Clarke also referred to paragraph 10 where the Judge stated that the issue of the authority of the birth certificate was not a live issue. However, the acceptance or otherwise of the authority of the birth certificate was central to the secretary of state's refusal. The refusal letter stated that the certificate *may* be an original, therefore a matter to be decided at the hearing. The Judge has not dealt with this aspect in the determination.
18. It is also asserted [ground 3] that the Judge impermissibly transferred the burden to the secretary of state. The refusal did not accept the birth certificate as evidence of the claimant's relationship. The birth certificate in question was provided to the presenting officer on the date of hearing. The Judge suggested that the secretary of state could have made verification checks. This however "is unrealistic."
19. On behalf of the appellant, Mr Mills relied on the skeleton argument.
20. He accepted that the secretary of state was concerned about the quality of the 1993 certificate, as a result of which a new, electronic copy of her birth certificate from Pakistan was sought. That in fact was obtained in April 2014.

21. Unfortunately the wrong birth certificate was sent “by mistake” to the secretary of state. That was realised the day before the appeal hearing and on the morning of the appeal, the secretary of state was given an original copy of the 2014 certificate, which was handed to the Home Office Presenting Officer.
22. The Home Office Presenting Officer then took instructions on the new birth certificate, after which he informed the First-tier Tribunal Judge that the secretary of state still intended to resist the appeal on the basis of the quality of the 1993 certificate.
23. No application for an adjournment was made.
24. Mr Mills submitted that the identification of the issue, namely that it related to who the parents of the claimant were, was not challenged. That was correct, because that was the only basis for the secretary of state's refusal to grant the application.
25. Accordingly the appeal required a determination as to whether the claimant is indeed a direct descendant of the sponsor.
26. At the date of the secretary of state's decision, the May 1993 birth certificate was the only evidence before the secretary of state regarding that relationship. Matters had however moved on since the date of decision so that at the date of the hearing, the claimant produced two additional pieces of evidence proving her relationship to the sponsor. The first “piece of evidence” constituted the live oral evidence from her sponsor as to the relationship. There was also a “new re-issued, computerised birth certificate from April 2014.”
27. At the hearing, the veracity of the 2014 certificate was not challenged. No adjournment was sought to enable checks to be carried out.
28. Most significantly, however, the claimant and her sponsor gave evidence that they were father and daughter, which was not challenged in cross examination.
29. In the event, the Judge had uncontested evidence before him as to that relationship. That evidence he found to be decisive and he made a clear finding of fact that the sponsor was the claimant's father [12].
30. Mr Mills made further submissions regarding the individual ground of appeal before the Upper Tribunal.
31. With regard to ground 1, there was no challenge to the finding that the sponsor is the claimant's father [12]. Accordingly, the challenges as to the adequacy of the reasoning in paragraphs 9-11 of the determination “are academic.” The Judge was bound to make the decision he did on the basis of the finding of fact he made at paragraph 12, made because of the sponsor's live and unchallenged evidence.
32. The Judge downplayed the significance of the 1993 certificate, referring to an issue of the content of that certificate as being of “peripheral relevance”.

33. In the event, any errors of law in the paragraphs relating to the 1993 certificate played no material part in the overall decision, which cannot be impugned and quashed.
34. With regard to the second ground, he submitted that the reasons in paragraphs 9 and 10 are adequate. That has to be read in the context of the decision as a whole. In particular they should be read in the light of the Judge's conclusion on parenthood, which meant that the issue of the quality of the 1993 certificate was of little relevance to the substance of the appeal.
35. In the event, the Judge was under no obligation to provide more than the very briefest of reasons for preferring the claimant's evidence on the quality of the 1993 certificate.
36. The reasons in any event at paragraphs 9 and 10 make it clear why the Judge accepted the genuineness of the 1993 certificate. Accordingly, there is no doubt as to why the Judge found that the 1993 certificate was genuine: there had been no computerisation in 1993.
37. Accordingly, the secretary of state cannot contend that she really cannot understand the Judge's thought process, even assuming that the quality of the 1993 certificate was material.
38. Mr Mills submitted that what in effect is being required is that the Judge was required "to give further reasons for his reasons."
39. However, the sponsor's evidence on computerisation, which was in his witness statement, was not challenged by the secretary of state at the hearing, and no positive evidence was put forward by the secretary of state to demonstrate that the 1993 certificate was not genuine.
40. The Judge did not state that the authority of the 1993 birth certificate was not a "live issue" as contended in ground 2. He simply recorded that the secretary of state had the opportunity to challenge the relationship between the claimant and her mother, but chose not to take it [10]. There was a recognition that the 1993 certificate was only one way of proving that the respondent is the daughter of an EEA national. The Judge's decision, however, on the core question of parenthood, is clear and unchallenged.
41. With regard to the secretary of state's assertion that the Judge transferred the burden to the secretary of state, it is evident from the determination [13] that the Judge clearly understood where the burden of proof lay. There he stated that the claimant has provided more than sufficient evidence for challenging the assertions in the respondent's refusal letter.
42. There is nothing in paragraph 11 suggesting otherwise, merely a reflection that the secretary of state could have sought to adduce further evidence by way of verification checks, with the aim of reducing the weight to be given to the

claimant's evidence (the birth certificate) but decided not to seek an adjournment to do so.

Assessment

43. I have had regard to the witness statements from both the claimant and her sponsor. That was part of the evidence before the First-tier Tribunal. That evidence was confirmed to be true and correct by the sponsor when he gave evidence.
44. In his statement, Mr Memon confirmed that the claimant is his daughter. They lived together at the same address in Walthamstow, London.
45. In his statement he referred to the secretary of state "surprisingly" refusing her application on the basis of the quality of the birth certificate, including the fact that it does not contain the details of his wife. She did however accept that the certificate may be an original.
46. He stated in his evidence that the birth certificate was issued in 1993 when there was no facility in Pakistan to issue computerised birth certificates. The relevant certificate was issued manually. That confirms his details. Moreover, the claimant's passport that was produced before the Judge also confirms the details. Both these "evidences" are sufficient to prove that he is the father. Copies of those documents had been provided with her grounds of appeal.
47. I have had regard to the birth certificate dated 19 May 1993, signed by the Registrar of Births and Deaths. The certificate is a statement from the Birth Register Municipal Corporation, Hyderabad. It relates to "Fariya", daughter of Muhammad Ifshad. The date of birth is 2 September 1989. There are other manuscript additions relating to the number of the ward and the name of the reporter, which are not easily legible.
48. I have also had regard to the later birth certificate produced at the hearing. This sets out in computerised form, the date of the claimant's birth (2 September 1989) and also identifies the father's name and the NIC number. It also identifies the mother's name and her NIC number.
49. I have had regard to the claimant's passport in which her name and date of birth are identified. Moreover, her father's name is also set out as Muhammad Arshad Memon. Again, there is no reference or requirement that her mother's name be given in the passport.
50. I accept that after the secretary of state expressed concerns about the quality of the 1993 certificate, a further electronic copy of her birth certificate was obtained in April 2014. However, the wrong birth certificate was sent to the secretary of state, namely her brother's certificate. That was realised shortly before the hearing and the original copy of the claimant's 2014 certificate was handed to the Presenting Officer.

51. I have had regard to the well known decision in R (Iran) v SSHD [2005] EWCA Civ 986, where the Court of Appeal set out the adequacy of reasons for decisions by adjudicators. An adjudicator should give his reasons in sufficient detail to show the appeal tribunal that the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. There is no duty on an adjudicator in giving reasons, to deal with every argument presented in support of the case.
52. It is sufficient if what he says shows the parties and if need be, the IAC, the basis upon which he has acted and if the adjudicator has not dealt with some particular argument, but it can be shown that there are grounds on which he would have been entitled to reject it, the IAC should assume that he acted on those grounds unless the appellant can point to convincing reasons leading to a contrary conclusion.
53. In English v Emery Reinhold Strict Ltd [2002] EWCA Civ 605, Lord Phillips, MR, stated [19] that if the appellate process is to work satisfactorily, the judgement must enable the [IAT] to understand why the [adjudicator] reached his decision. It does not mean that every factor which weighed with the adjudicator in his appraisal of the evidence should be identified and explained. But the issues, the resolution of which were vital to the adjudicator's consideration should be identified and the manner in which he resolved them explained. It need not be a lengthy judgment. It does require that the adjudicator identify and and recalled those matters which were critical to his decision.
54. Brookes LJ in R (Iran) [15] continued after quoting Lord Phillips, that he used the words "vital" and "critical" as synonyms of the word "material" that they had used above. The whole of Lord Philips judgement warrants attention, because it reveals the anxiety of an appellate court not to overturn a judgement at first instance unless it really cannot understand the original judge's thought process when he/she was making the material findings.
55. At paragraph 16 he stated that what has been said does not absolve an adjudicator of his/her duty of devoting the intense scrutiny to the appellant's case that is required of a decision of such importance. What they wished to make clear however, is that the practice of bringing appeals because the adjudicator or immigration judge has not made reasoned findings on matters of peripheral importance 'must now come to an end'.
56. I have also had regard to MacDonald's Immigration Law and Practice, referred to in Mr Mills' skeleton at page 18. The duty to give reasons does not require the Judge to deal expressly with every point. When assessing the adequacy of the Tribunal's reasons, the determination should be read as a whole and in a common sense way.
57. I note that the 2014 certificate was not challenged before the First-tier Tribunal. No adjournment was sought to enable checks to be carried out.

58. More significantly, the sponsor gave evidence as to their relationship. There were also witness statements setting out the relationship.
59. There was no cross examination at all of the evidence given by the claimant and the sponsor to that effect. The Judge set out in full [5] how the original birth certificate was obtained. The sponsor could not explain why there were grammatical mistakes. He also gave unchallenged evidence as to why the claimant's mother's name did not feature on the certificate. The claimant had been attending school in the Republic of Ireland prior to coming to the UK for the purpose of education.
60. It appears that the sponsor's cross examination was limited to the matters contained in paragraph 5. However, there was no cross examination of the claimant's evidence, particularly with regard to the relationship between her and the sponsor.
61. There was thus uncontested evidence before the Judge that the claimant's sponsor was her father. This is clearly stated at paragraph 12 of the determination.
62. I also find that the Judge's reasons for accepting the sponsor's evidence with regard to the certificate issued in 1993, namely, that the competent authority in Pakistan did not have the benefit of computerisation was adequate and appropriate. The Judge noted that it was not the secretary of state's case that the first birth certificate was a forgery. It did identify the father as sponsor, together with the claimant's name.
63. The Judge also had regard to the updated certificate, making reference to the claimant's date of birth as well as details of both her parents.
64. The aside by the Judge at paragraph 11 that the secretary of state had the opportunity to undertake any verification checks on the emailed birth certificate had they chosen to do so, did not have the effect of transferring the burden of proof. An opportunity was given to the secretary of state to contest the veracity of the certificate. That however was declined. There had been no suggestion that the 2014 birth certificate was not admissible in evidence.
65. There was no doubt in the Judge's mind that the parents of the claimant were those as claimed by her. The sponsor had not been challenged with respect to his clear evidence that he was the father. Moreover, the mother was sitting at the back of the hearing room. The secretary of state had the opportunity to challenge the relationship between the claimant and her mother but chose not to take it.
66. I find, having regard to the evidence as a whole, that there was a proper evidential basis for the First-tier Tribunal Judge's subsequent finding and conclusion that the claimant's parents are those as claimed by her.
67. It cannot be said that the First-tier Tribunal Judge's thought process with regard to the making of these material findings cannot be understood. The findings that the Judge has made were properly reasoned on a sustainable basis.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on any point of law. The decision shall accordingly stand.

The appeal of the secretary of state is accordingly dismissed.

No anonymity direction is made.

Signed

Date 18/4/2015

Deputy Upper Tribunal Judge Mailer