



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: EA/03192/2016
EA/03193/2016
EA/03194/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 14 June 2018

Decision & Reasons Promulgated
On 22 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

ENTRY CLEARANCE OFFICER

Appellant

And

MRS NAHEED AKHTAR
MISS RAMSHA HAVED
MISS WAJEEHA JAVED

Respondents

Representation:

For the Appellants: Mr R Ahmed, Counsel instructed by Dawn Solicitors
For the Respondent: Mr A McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The Respondents, to whom I shall refer as the Claimants, are a mother and her two daughters, all nationals of Pakistan, born on 1 January 1968, 15 March 1995 and 20 February 2000 respectively. They applied for an EEA family permit in order to join their Sponsor, Mr Amir Javed Mian Ashraf, who is the husband of the first Claimant and father of the second and third Claimants. Mr Ashraf is a national of Pakistan born

on 6 April 1972 who obtained Spanish nationality on 12 March 2015 and came to the United Kingdom to exercise his treaty rights on 1 March 2015. The Claimants' applications were refused on 18 February 2016 on the basis that the Entry Clearance Officer was not satisfied that they met all the requirements of Regulation 7 of the Immigration (EEA) Regulations 2006. This was on the basis that:

- (a) No original Nikah Nama or other marriage certificate or documentation had been submitted and little weight could be placed on copies; and
- (b) No explanation was provided as to why the births of the two daughters were only registered many years after they were born and no original or contemporaneous documentation had been produced.

2. The Claimants appealed and their appeals came before Judge of the First-tier Tribunal Barrowclough for hearing on 21 July 2017. In a decision and reasons dated 30 July 2017, the judge allowed the appeals in light of the fact that the originals of the Nikah Nama and birth registration certificates were produced at the hearing before him and provided to the Presenting Officer for inspection as well as inspected by the judge

3. The Respondent sought permission to appeal on the following grounds:

- (1) That the judge failed to give adequate reasons for findings on a material matter i.e. the fact that the children's births had been registered late; and
- (2) In finding that the plethora of new evidence (the original documents) was not subjected to any challenge the First tier Tribunal Judge erred in that:

"It is respectfully submitted that is not quite the case as the PO was intending to challenge the evidence but was prevented from doing so. The PO's note of the hearing is as follows:

'I cross-examined the sponsor and notes on file. I started making submissions but the IJ indicated that in the case with all the new evidence that had been handed in only fees should be argued. I submitted that the evidence was not before the ECO or ECM review as the grounds of appeal state that the Nikka Nama was not attached in error but is now available before the IJ therefore fees should not be awarded'."

4. The Respondent asserted that the Tribunal had acted prematurely in accepting this evidence as credible given it raised new issues which had not been addressed by the Entry Clearance Officer and the Tribunal had the option of referring the case back to the Entry Clearance Officer for document verification.

5. Permission to appeal was granted by Judge of the First-tier Tribunal Hodgkinson on 31 January 2018 on the basis that:

"The second ground, if established, does raise an arguable error of law and a reading of the Judge's decision as a whole suggests that the Presenting Officer did not accept the

reliability of the documents, the acceptance of which then formed the basis of the Judge's decision in the appeals. Permission is granted accordingly on the second ground only."

Hearing

6. At the hearing before me, Mr McVeety accepted on behalf of the Secretary of State that the first ground falls away, in light of the terms of the grant of permission to appeal. He also fairly accepted that he was in some difficulty in respect of the second ground of appeal in that having checked through the minute provided by the Presenting Officer there had been no request for an adjournment in order for the documents to be verified. Consequently, if the Presenting Officer clearly felt that this was important she should have made an adjournment request. Mr McVeety further departed from the assertion in the grounds of appeal that the Presenting Officer was prevented from challenging the evidence or making submissions and accepted that on the basis of the minute the judge had given an indication of his view prior to submissions. Consequently Mr McVeety expressly disavowed any procedural unfairness on the part of the First-tier Tribunal Judge. He was also unfortunately unable to provide the Tribunal or the Claimant's representative with a copy of the minute.
7. In his response, Mr Ahmed stated that he was grateful to Mr McVeety for taking a proper approach. The original documents had been provided to the Presenting Officer on the day and she was entitled to make an application in order to have those documents authenticated but chose not to do so. She made no allegations of forgery and it was clearly open to the judge to find on that evidence, having heard from the Sponsor and in the absence of any adverse factors, that the appeal should be allowed.
8. There was no reply by Mr McVeety on behalf of the Entry Clearance Officer.

Findings

9. Somewhat unusually, in light of Mr McVeety's very fair presentation of the Entry Clearance Officer's case, it would appear that ground 2 of the grounds of appeal has somewhat overstated the position as it was before the First-tier Tribunal. On that basis, it is at least arguable that, had the application for permission to appeal been put in the manner adopted by Mr McVeety today, permission to appeal to the Upper Tribunal is unlikely to have been granted. I find in light of Mr McVeety's very fair submissions that there are no errors of law disclosed either in the approach by the First-tier Tribunal Judge to the original documents produced at the hearing or in his findings. This is because the Presenting Officer was given a clear opportunity to view the original documents, which had by an oversight not been before the Entry Clearance Officer. The Presenting Office clearly could have applied for time or an adjournment in order to have those documents verified but did not do so. In these circumstances it is clear that there is no procedural unfairness. There is no challenge by the Entry Clearance Officer to the findings of fact by the judge. Consequently, I uphold the decision of First-tier Tribunal Judge Barrowclough.

Notice of Decision

10. The appeal is allowed with the effect that entry clearance in the form of an EEA family permit should now be granted to the three Claimants and I direct that that is now done.

No anonymity direction is made.

Signed *Rebecca Chapman*

Date 18 June 2018

Deputy Upper Tribunal Judge Chapman