



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: EA/09917/2016
EA/09922/2016
EA/09919/2016

THE IMMIGRATION ACTS

Heard at Field House
On 15 June 2018

Decision & Reasons Promulgated
On 5 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

ENTRY CLEARANCE OFFICER - NEW DELHI

Appellant

and

PARMJEET KAUR
TARANJEET SINGH
SHARANJEET SINGH
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:

For the Appellants: Ms Z Kiss, Home Office Presenting Officer
For the Respondents: Ms S Sharma, instructed by Immigration Advice Bureau

DECISION AND REASONS

1. In this decision, I will refer to the appellant as “the ECO” and the respondents individually by name or collectively as “the claimants.”
2. This appeal arises from the decision of the ECO to refuse an EEA family permit to Parmjeet Kaur, Taranjeet Singh and Sharanjeet Singh, citizens of India who were seeking to join Jasbir Singh (“the sponsor”), a citizen of Germany, in the UK.

3. Paramjeet Kaur sought a family permit on the basis that she is the sponsor's wife. Taranjeet Singh and Sharanjeet Singh sought an EEA family permit on the basis that they are the children of the sponsor. The ECO refused the applications on the basis that the claimants were not family members of the sponsor under Regulation 7 of the Immigration (EEA) Regulations 2006. In the case of Parmjeet Kaur, it was considered that her marriage to the sponsor was one of convenience. In the case of Taranjeet Singh and Sharanjeet Singh, it was not accepted that they were the children of the sponsor.
4. The claimants appealed and their appeals came before Judge of the First-tier Tribunal Iqbal sitting at Hatton Cross. Judge Iqbal, in a decision promulgated on 23 August 2017, allowed the appeals. The appeal of Parmjeet Kaur was allowed on the basis that the marriage was not one of convenience. The appeal of Sharanjeet Singh was allowed on the basis that the DNA evidence showed that the probability of the sponsor being his biological father was virtually one hundred percent.
5. With respect to Taranjeet Singh, the judge found that on the balance of probabilities he was the biological child of the sponsor even though two DNA tests had been taken and neither demonstrated that there was a parental relationship between the sponsor and Taranjeet Singh.
6. The grounds of appeal only challenge the decision of Judge Iqbal in respect of Taranjeet Singh. The grounds argue that it was not open to the judge to conclude that Taranjeet Singh is the son of the sponsor given the DNA evidence.
7. Before me, Ms Kiss reiterated the argument made in the grounds and referred to the report on the DNA evidence where amongst other things it is stated that no genetic material had been found in common between the sponsor and Taranjeet Singh although it is acknowledged that there could have been a rare genetic change. She argued that the possibility of a rare genetic change is not sufficient to overcome the clear evidence that the DNA shows that Taranjeet Singh is not the biological son of the sponsor.
8. Ms Sharma did not seek to persuade me that the judge's analysis of the DNA evidence could withstand scrutiny. Instead, she argued that even if the judge erred in this regard the outcome necessarily would be the same because the judge was required to apply Regulation 7(1)(b) of the Immigration (European Economic Area) Regulations 2006. This provides:

"7(1) Subject to paragraph 2, for the purposes of these Regulations the following persons shall be treated as the family members of another person:

- (a) his spouse or his civil partner;
- (b) direct descendants of his, his spouse or his civil partner who are
 - (i) under 21, or
 - (ii) dependants of his, his spouse or his civil partner."

9. Ms Sharma noted that the DNA evidence, whilst finding that there was no evidence of the sponsor's paternity, showed there to be a 99.99% probability of Taranjeet Singh being the son of Parmjeet Kaur, the sponsor's spouse. She argued that Taranjeet Singh is a family member under Regulation 7(1)(b) because he is a direct descendent of the sponsor's spouse.
10. The judge has made a clear error of law in the approach to the DNA evidence. The DNA evidence establishes that it is very unlikely that Taranjeet Singh is the biological son of the sponsor. Accordingly, as argued by Ms Kiss and to an extent acknowledged by Ms Sharma, it was not open to the judge to conclude that Taranjeet Singh is a family member of the sponsor as a consequence of the relationship between the two of them.
11. However, as argued by Ms Sharma, Taranjeet Singh's relationship to the sponsor is not the only route by which he can fall within the category of a family member under Regulation 7 of the Immigration (EEA) Regulations 2006. Regulation 7 provides, inter alia, that a person shall be treated as a family member if he is a direct descendent of a person's spouse. There is clear DNA evidence that Parmjeet Kaur is Taranjeet Singh's mother and the judge's finding that she is the sponsor's wife has not been challenged. Accordingly, Taranjeet Singh satisfies the requirement under Regulation 7 of being the direct descendent of the sponsor's spouse. The remaining question under Regulation 7 is whether Taranjeet Singh is under 21 or a dependent. At the time of the First-tier Tribunal hearing he was under 21.
12. Although the judge erred in respect of his analysis of the biological relationship between the sponsor and Taranjeet Singh, the error was not material because, in light of his unchallenged finding that the marriage of Parmjeet Kaur and the sponsor was not a marriage of convenience, the appeal by Taranjeet Singh should have been allowed on the basis that he was a direct descendent under the age of 21 of the sponsor's spouse and therefore satisfied the requirements of Regulation 7(1)(b)(i).
13. I note for the avoidance of doubt that the decision of the First-tier Tribunal in respect of Parmjeet Kaur and Sharanjeet Singh was not challenged and therefore stands.

Notice of Decision

14. The appeal of the ECO is dismissed.
15. The decision of the First-tier Tribunal does not contain a material error of law and stands.

Signed

