



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/07841/2016
HU/07846/2016
HU/07847/2016

THE IMMIGRATION ACTS

Heard at Field House
On 4 September 2018

Decision & Reasons Promulgated
On 25 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

MISS IS
MISS DS
MISS MS
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mrs H Gore, Counsel
For the Respondent: Mr C Avery, Home Office Presenting Officer

ERROR OF LAW DECISION AND REASONS

1. The appellants are citizens of Pakistan, born on 6 July 2002, 22 August 2005 and 29 December 2003 respectively. They are siblings who claim to be the children of their sponsor/mother who was granted humanitarian protection in the UK and has indefinite leave to remain in the United Kingdom as a refugee. They appealed

against the decisions of the respondent refusing to grant entry clearance under the family reunion provisions, pursuant to paragraph 352D of the Immigration Rules.

2. Their appeal was heard by First-tier Tribunal (Judge Chana) ("FtT") and dismissed in a decision and reasons promulgated on 26 June 2017. The central issue before the FtT was whether or not the appellants were related to their mother, the sponsor. There was some documentary evidence such as photocopies of birth certificates and photographs. The FtT considered the evidence including the sponsor's oral evidence but found that they were not related as claimed.
3. The FtT placed considerable weight on the sponsor's failure to obtain a DNA report and was criticised her decision concluding that it was not reasonable to have failed to obtain such a report because of the costs involved.

Grounds of Appeal

4. The appellants argued that the FtT erred by failing to take into account further evidence that was material to the family relationships, namely the First-tier Tribunal decision allowing the sponsor's asylum claim and the record of her screening interview. It was argued that the FtT had agreed that these documents could be produced after the hearing and directed that they were to be served within ten days.
5. The FtT decision and reasons was dated 20 June 2016 and the time limit for producing the further documentation was 22 June 2016. The appellants had produced and served the documents by that date. It was clear from the decision that the FtT not only referred failed to refer to the direction allowing for further evidence to be produced but also did not take it into account in determining the appeal.

Permission to Appeal

6. Permission to appeal was granted by First-tier Tribunal Judge P J M Hollingworth on 24 January 2018.
7. At the hearing before me the representatives made submissions which I have taken into account and which are set out in the Record of Proceedings.

Decision

8. It is clear to me having consulted the original Record of Proceedings for the hearing before the FtT, that the FtT made a direction allowing for the further material to be produced within a time limit of ten days. The FtT erred by determining the decision and reasons prior to the expiry of that time limit and thus failing to take into account the further material that was produced. I am satisfied that the appellants' solicitors served the relevant documentation by 22 June 2016 and which was evidence that ought to have been considered by the FtT in reaching its decision.

9. It was particularly significant given that the material included the First-tier Tribunal decision allowing the sponsor's asylum claim and in which she was found not only to be a vulnerable person but entirely credible as to her claim and as to the circumstances of having left her family. Furthermore there was reference made in that decision and reasons to her family members consisting of her three daughters born in 2002, 2004, 2006 and to them living with her estranged husband. In addition, the screening interview at paragraph 6.4 names the appellants and also made reference to the fact of the sponsor having last seen them in March 2011.
10. I take the view that the FtT ought to have taken into account this further evidence which was material and that the failure to do so was unfair, and having regard to Devaseelan where it was held that a first decision is the starting point for any further determination.

Error of law decision

11. I have decided that there was an error of law in the decision and reasons of First-tier Tribunal Judge Chana. I set aside the decision made.

Re making the decision

12. I then heard submissions having decided that the decision could be re-made before me in the Upper Tribunal. To that end, the appellants produced a further bundle dated 23 August 2018 which included the further evidence, namely the First-tier Tribunal determination dated 20 November 2013 and the sponsor's screening interview dated 8 April 2013. In addition, the appellants had provided three DNA test reports confirming that the sponsor was the parent of each of the appellants.
13. Mr Avery raised some concerns as to the lack of background information that would normally be produced within the body the DNA reports.
14. I considered all of the evidence before me and having regard to the standard of proof as the balance of probabilities, concluded that the appellants have made out their case. The bulk of the evidence which now includes the DNA reports establishes that the children are related to the sponsor as claimed and that they were members of her family prior to her fleeing from Pakistan. The requirements under Paragraph 352D are met.
15. I re-make the decision to allow the appeals on human rights grounds.

Signed
Deputy Upper Tribunal Judge G A Black

Date 17.9.2018

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a reduced fee award of £100.00 for the following reason. There was sufficient evidence before the

Signed

Date 17.9.2018

G A Black
Deputy Upper Tribunal Judge