



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/09268/2016  
HU/09260/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 8<sup>th</sup> November 2018

Decision & Reasons Promulgated  
On 29<sup>th</sup> November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THI [C]  
[V D]

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - BANGKOK

Respondent

**Representation:**

For the Appellant: Mr H Kannangare, Counsel instructed by Lisa's Law Solicitors  
For the Respondent: Mr C Avery, Home Office Presenting Officer

**DECISION AND REASONS**

1. These are the appellants' appeals against the decision of Judge Mosolowski made following a hearing at Taylor House on 20<sup>th</sup> October 2017.

## **Background**

2. The first appellant is the mother of the second appellant and both are nationals of Vietnam. The first appellant claimed that she was married to Mr Ha [D] and the second appellant was his younger daughter. They both made applications for settlement in the UK to join him in January 2016 but were refused on 14<sup>th</sup> March 2016. The Entry Clearance Officer was not satisfied that the couple were in a genuine and subsisting relationship nor that the sponsor was employed as claimed.
3. The first appellant met the sponsor in 1990 and their first daughter was born in 1991. They married on 22<sup>nd</sup> August 2000. The second appellant was born in 2004 but before her birth the sponsor left Vietnam for the UK arriving on 31<sup>st</sup> August 2004.
4. He eventually obtained indefinite leave to remain in February 2011 under the then legacy scheme run by the respondent and became a British national in 2012. The appellants thereafter wished to join him, leaving the older daughter in Vietnam, but there was a delay in the applications being made until the first appellant had passed her English language test requirement.
5. The appellants claimed to have been maintained by money remitted to them from the UK by the sponsor since 2011. When he first came here he was working unofficially as a cleaner, earning just enough for him to live on, but he was able to remit monies back to Vietnam from 2012. Since then he has visited them four times and keeps in touch by telephone.
6. The appellants' evidence was that the sponsor started working as a chef in 2011 working at the same restaurant until January 2016 and earning around £25,000 per annum. He now works at a different restaurant at the same wage. He provided all of the specified evidence required by Appendix FM-SE.
7. The respondent considered that evidence to be unreliable. The Entry Clearance Officer was aware that the payslips and P60 forms could easily be reproduced. He had concerns about the amount of money being transferred to Vietnam which he considered to be excessive in comparison with the monies which the sponsor was actually earning. Accordingly he suspected that the sponsor's earnings had been exaggerated.
8. The judge said that there was a major problem with the sponsor's credibility highlighting a discrepancy in the evidence as to whether the appellant was self-sufficient before 2011 or whether she was dependent entirely on remittances. She said that it was surprising that he earned £25,000 as a kitchen assistant and did not understand how he could afford to repay a substantial loan which appeared in the bank statements. She was concerned that he was able to afford to spend the times in Vietnam visiting his family as claimed. There was also a question mark about his rent. In her view the appellant ought to have provided evidence from HMRC. She placed little reliance on the payslips which she said were in reasonably good

condition and had a black toner cartridge mark which indicated that they had all been produced in one batch. She concluded that his general credibility was extremely poor and did not understand why he left Vietnam before the birth of his second daughter.

9. She concluded that the appellants had not made out their case and dismissed the appeal.

### **The Grounds of Application**

10. The appellants sought permission to appeal on the grounds that the judge had come to adverse findings mainly based on assumptions which she had not put to the sponsor and therefore deprived him of an opportunity of allaying her concerns. Some would have been answered had she asked the sponsor, for example, in relation to the rent payments which changed when he rented a larger flat which would be suitable for the appellants. She had also made a mistake of fact in describing him as a kitchen assistant which he was not. Furthermore, she had failed to consider the evidence which was before her. For example, she had doubted whether the photographs which had been produced were of the appellants but she could have compared them to the DNA photographs in the bundle and ascertained for herself that they were the same.
11. Permission to appeal was initially refused by Judge Lambert but granted upon re-application by Upper Tribunal Judge Pitt on 18<sup>th</sup> September 2018.

### **Consideration of Whether There is a Material Error of Law**

12. Mr Avery defended the judge's decision and whilst he recognised that not every judge would have reached the same conclusion, he argued that she had looked at the evidence in the round and come to a conclusion open to her.
13. Mr Kannangare relied on his grounds. All of the specified evidence required by the Entry Clearance Officer had been provided dating from 2012 including P60s. It argued against any fraud having been committed that he had provided documents going back to 2012 when the application was only made in 2015. The sponsor earned more than the amounts required by the Rules.
14. I am satisfied that the judge did err in law and did not adequately assess the evidence which was before her.
15. The couple have been married for many years and have two children. A number of photographs have been produced and if the judge had any doubts about whether they were the same person as the appellant she could have compared the photographs with those on the application form or the DNA evidence. Evidence of remittances was produced for three years preceding the application. There is no

discrepancy in the evidence in relation to whether the appellants were being maintained by remittances sent by the sponsor. It has always been their case that initially when he was in the UK, before he obtained ILR, he was unable to send money and the first appellant made a living selling things in the market in Vietnam. However, since the time when he was earning a good salary he has been sending substantial remittances.

16. The appellant had provided P60s, letters from his employer and bank statements showing the amounts of his salary being paid into those bank accounts.
17. It is not clear to me why the fact that the sponsor took out a loan should go against him nor why the sponsor would not be entitled to holiday pay having worked for the same employer for five years. The question of the rent could easily have been answered if she had asked the sponsor why he had changed to renting a property at £350 per month from £60 a week. The change was made in anticipation of the family coming to the UK.
18. The judge appeared to regard his credibility as being extremely poor but does not explain why she did so.
19. She erred in law because she deprived the appellants of an opportunity of answering her concerns. Moreover, the decision is against the weight of the evidence. It is set aside.

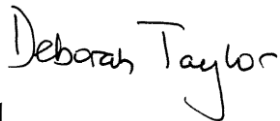
### **Findings and Conclusions**

20. Mr Avery declared that he did not wish to cross-examine the sponsor and he simply relied on the original decision.
21. Mr Kannangare provided a printout from HM Revenue & Customs dated 12<sup>th</sup> December 2017 setting out the sponsor's source of income for the tax years ending 2014, 2015, 2016 and 2017. A copy of that printout was given to Mr Avery and he made no submissions on it. He made no attempt to argue that the documents could not now be relied upon.
22. First, in relation to the relationship between the sponsor and the appellants, I note that they have been married for eighteen years and since the sponsor has gained British citizenship and ILR, he has been fully supporting them in Vietnam. He has also made four visits to them. He has pursued this appeal for two years.
23. There is no basis upon which I could properly conclude that this is not a genuine and subsisting relationship.
24. So far as the finances are concerned the document from HMRC is wholly consistent with the P60s and the payslips which have been provided. The appellant has provided all of the documents required by him in accordance with Appendix FM-SE. They are all consistent with each other.

**Notice of Decision**

The original judge erred in law. Her decision is set aside. It is remade as follows. The appellants' appeals are allowed.

No anonymity direction is made.



Signed

Date 24 November 2018

Deputy Upper Tribunal Judge Taylor