Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/17068/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On Thursday 2 May 2019	**On 24th May 2019**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MRS MAHEEM HAMEED GHAFOOR
(ALIAS MRS USMA GHAFOOR)
(ALIAS MS MAHEEM HAMEED)
(anonymity direction not made)

Appellant

And

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr Z Malik, Counsel instructed by M-R Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against a decision of First-tier Tribunal Judge Monson promulgated on 27 November 2018 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision

dated 13 November 2017 refusing her human rights claim made in the context of an application for entry clearance to join her spouse, Mohammed Ghafoor (previously known as Mohammed Tahir) ("the Sponsor").

2. Identity lays at the heart of this appeal and the Decision because the Appellant has also had previous identities. Her case is that she was born Maheem Hameed. In 2005, she applied in the name of Usma Ghafoor for a visa to visit the UK and provided a passport in that name. It is her case that this is not and never was her real identity. She says that this was the name in a passport obtained for her by an agent. She says that she changed her name by deed poll on 13 January 2015 from Maheem Hameed to Maheem Hameed Ghafoor and that these are her true identities.

3. The Judge did not accept the Appellant's case. He found that the passport in the name of Usma Ghafoor was issued in her true identity and, therefore, that the passport in the name of Maheem Hameed Ghafoor was not a valid identity document. He found that paragraph 320(3) of the Immigration Rules ("the Rules") was met. He found that paragraph 320(11) of the Rules was also met because the Appellant had been an absconder during a previous stay in the UK.

4. The Appellant's immigration history is set out at [5] to [13] of the Decision. The Judge accepted that the Appellant is in a genuine and subsisting relationship with the Sponsor and that he meets the minimum income threshold. However, he concluded that the public interest weighing against the Appellant was strong given his conclusions on the general grounds raised by the Respondent. He therefore dismissed the appeal.

5. The Appellant challenges the Decision on four grounds. First, it is said that the Judge misconstrued paragraph 320(3) of the Rules. Second, it is asserted that the Judge has failed to have regard to documents in the Appellant's bundle which she says show that Maheem Hameed is her true identity. Ground three relates to the Judge's conclusions in relation to paragraph 320(11) of the Rules which it is said are perverse. Ground four asserts that the Judge has failed to recognise that paragraph 320(11) is a discretionary ground of refusal.

6. Permission to appeal was refused by First-tier Tribunal Judge Davidge on 7 January 2019 (on largely different grounds) but granted by Upper Tribunal Judge Kamara on 28 February 2019 on the following basis:

> "2. It is arguable that the judge erred in concluding that the appellant failed to produce a valid national passport in seeking entry clearance; that the judge's treatment of the supporting evidence was flawed and that his treatment of the suitability provisions was wrong in law. It is further arguable that the judge failed to treat paragraph 320(11) as a discretionary ground of refusal."

7. The appeal comes before me to determine whether there is a material error of law in the Decision and if so either to re-make the decision or to remit to the First-tier Tribunal to do so.

DISCUSSION AND CONCLUSIONS

Ground One: Paragraph 320(3) of the Rules; Valid National Passport

8. Paragraph 320(3) of the Rules reads as follows:

> "320. In addition to the grounds of refusal of entry clearance or leave to enter set out in Parts 2-8 of these Rules, the following grounds for the refusal of entry clearance or leave to enter apply:
>
> **Grounds on which entry clearance or leave to enter the United Kingdom is to be refused**
>
> …
>
> (3) failure by the person seeking entry to the United Kingdom to produce to the Immigration Officer a valid national passport or other document satisfactorily establishing his identity and nationality save that the document does not need to establish nationality where it was issued by the national authority of a state of which the person is not a national and the person's statelessness or other status prevents the person from obtaining a document satisfactorily establishing the person's nationality;"

9. The Judge dealt with the identity issue at [25] to [30] of the Decision as follows:

> "25. Although the respondent has failed to serve any documentary evidence, save for a copy of the completed application form, in support of the factual assertions made in the refusal decision, some of the key facts are established on the evidence tendered by the appellant on matters which are outside the direct knowledge of the sponsor, who only claims to have met her at the end of 2010.
> 26. The first issue is whether a general ground of refusal under Rule 320(3) is made out. In her witness statement signed by her on 30 October 2018, the appellant admits that she entered the UK in 2005 under the name of UG, and she accepts that this was the name in her passport that she says the agent (who accompanied her) tendered to the Immigration Officer on arrival. She further states as follows at paragraph 11: *"Therefore, I provided valid passport to the Home Office in UK as well as [to] the ECO at the time of the submission of the entry clearance application."*
> 27. This appears to be an admission that the passport that she used to travel to the UK in 2005 was validly issued by the Pakistani authorities in Pakistan. Even if I have misinterpreted her evidence on this point, the fact that she was granted entry clearance on the basis of this passport raises a *prima facie* case that the passport was validly issued to her in her true identity. This case is reinforced by her admission that the same identification number appears in both passports (the passport of 2005 and the passport of 2015). Her explanation at paragraph 4 is that once an ID card is issued, *"then you cannot change the number."* So she appears to accept that the same ID number was used to obtain the passport in 2005 as was used to obtain the passport in 2015. This is

confirmed by her evidence at paragraph 3 of her witness statement, where she says that when she gave her fingerprints at the Pakistan High Commission in London in 2015, she was told by staff at the High Commission that she already had an ID card in the name of UG. In short, the fingerprints which the appellant gave in 2015 matched the fingerprints used to obtain the ID card in the identity of UG, and the appellant admits that this ID card was used to obtain the 2005 passport in the identity of UG.

28. Accordingly, from the perspective of the Pakistan High Commission, the appellant was (and is) the same person as the person referred to in her old ID card, and they proceeded to issue her with a new passport in 2015 on the basis that she had simply changed her name from UG to MHG.

29. The appellant claims that UG is a false identity, and that her true identity at the time of entry to the UK in 2005 was MH. However, the appellant has not produced a birth certificate, or school and medical records, to show that she was assigned the name of MH at birth, and that she was brought up in the identity of MH.

30. Accordingly, I find that Rule 320(3) is made out. The appellant has not produced a valid national passport or other document which satisfactorily establishes her claimed identity, which is that she was born and brought up as MH, and then changed her name by Deed Poll to MHG, as opposed to her having been born and brought up as UG."

10. Mr Malik submitted that, for the purposes of satisfying paragraph 320(3) of the Rules, all the Appellant had to show was that the passport which she produced was a valid one issued by the Pakistani authorities. He said that the question whether a document satisfactorily establishes identity relates only to the words "other document".

11. As a matter of construction, I cannot agree with that submission. It is evident from the paragraph read as a whole that it concerns the need to establish identity and the effect on an application of failing to do so. There may be a presumption that a passport issued by the national authorities is sufficient proof, but it stands to reason that it can only be so if the applicant is the person to whom the passport belongs who is also the person who the authorities accept is entitled to use that identity.

12. In most cases, I accept that if the passport is valid on its face, then no question is likely to arise under this paragraph. However, if Mr Malik were right in his submission, then the passport which the Appellant produced in 2005 in support of her application to visit the UK would also meet this provision even though the Appellant says that she was not entitled to it and it was not in her identity. It was a passport validly issued to Usma Ghafoor. The Appellant says that it was procured by an agent who presumably had established that the Appellant was Usma Ghafoor in order to obtain it. I do not understand it to be the Appellant's case that the passport was a forgery.

13. It is somewhat puzzling that the Appellant needed to use an agent to obtain a passport to which she now says she was not entitled in order to obtain a family visit visa. Her entry to the UK was not on a protection basis which might explain the use of a passport to which, on her case, she was not entitled. Mr Malik had no instructions on this point. However, on Mr Malik's construction, the passport used in 2005 would be sufficient to meet the requirement for a "valid national passport" in paragraph 320(3) even though the Appellant says that she was not entitled to it. It cannot be the intention of this rule that the Appellant could avoid the consequence of it by using a passport to which she is not entitled by simply claiming that the national authorities had issued a passport which was on its face "valid".

14. Moreover, a passport is not on a sensible construction "valid" if it is issued to a person who does not in fact hold the identity of the bearer which is claimed.

15. For those reasons, given the identity issue which arises in this case, the Judge was entitled to go behind the passport to look at other documents relating to identity to judge whether the passport could be said to be one which was a valid proof of identity. That leads me on to the second of the Appellant's grounds.

Ground Two: Other Documents Establishing Identity

16. The short point here is that, at [29] of the Decision (set out above), the Judge failed to have regard to other evidence which the Appellant says does establish that her true identity is Maheem Hameed. In addition to her own statement with which the Judge deals at [26] and [27] of the Decision, the Appellant relies on the following documents:

Document 1: Deed Poll dated 13 January 2015 ([AB/102-4]) changing her name from Maheem Hameed to Maheem Hameed Ghafoor and giving date of birth of 6 December 1970;

Document 2: IELTS Certificate dated 21 March 2017 in name of Maheem Hameed Ghafoor bearing photograph said to be of the Appellant and bearing the date of birth 6 December 1970 ([AB/105]);

Document 3: Money transfers from the Sponsor to Maheem Hameed Ghafoor dated 4, 14 and 20 March 2017 ([AB/106-7]). The first two of those documents refer to there being an account in the Appellant's name at Allied Bank in Lahore and the third to cash being picked up, payable "on ID". There are other money transfers elsewhere showing similar transfers with similar particulars given;

Document 4: Birth certificate registering the birth of Maheem Hameed, date of birth 6 December 1970 on 31 December 2001 ([AB/113] and in different format at [AB/117]);

Document 5: School certificate dated 13 August 1983 showing admission on 9 April 1975 and discharge on 31 March 1983, stating the duration of attendance from 1 April 1982 to 31 March 1983, and giving date of birth of 6 December 1970 ([AB/114]).

17. I accept that the Judge has not referred to these documents. The question is whether any of them individually or taken together could undermine the Judge's conclusions on the identity issue (as set out above). The difficulty with the documents is that I only have copies. Even if that were not so, only one bears a photograph said to be of the Appellant and that is Document [2]. It is not said what evidence would have been produced to IELTS in order to establish the identity used on that occasion. Nor is there evidence to show what documents would have been needed to obtain the birth certificates at Document [4]. I note that the birth was not registered until 2001 which is not all that unusual but does not establish how that certificate was obtained, nor whether the Appellant has the original nor that the Appellant is entitled to that certificate. Document [5] suffers from a similar difficulty. Moreover, there is only the one certificate for a period in education said to be some eight years. Although the money transfers at Document [3] might provide some support for the Appellant's case if she has a bank account in the name Maheem Hameed Ghafoor, there is no further evidence about when that account was opened or using what identity documents. The deed poll at Document [1] shows only that the Appellant has signed a deed attesting to what she says is her own identity.

18. I accept that the documents relied upon are consistent as to name and date of birth. I also accept that, taken alone, those documents might be capable of providing proof of identity. However, those have to be looked at in the context of what the Judge says on this issue, particularly in relation to the identity card and what is said at [27] of the Decision. In light of that evidence, and although the Judge did not mention the evidence which I have set out above (and in fact expressly says that there was no birth certificate or school records), I am satisfied that the evidence which was overlooked could not make any difference to the Judge's conclusions on this issue if the documents had been taken into account.

19. There is therefore no material error of law disclosed by Ground Two.

Grounds Three and Four: Paragraph 320(11) of the Rules and Suitability

20. Strictly, I do not need to deal with this ground given my conclusions on grounds one and two. Those relate to a mandatory ground of refusal which I have concluded was made out and that the Judge was entitled so to find. Accordingly, the Judge was entitled to take this into account when judging proportionality. The outcome would not be any different even if the grounds challenging the conclusion on the

discretionary ground were made out. However, I consider this ground also for the sake of completeness.

21. The Judge dealt with paragraph 320(11) as follows:

> "31. Turning to Rule 320(11), it is not disputed by the appellant that she was an overstayer. However, while she admits being *"caught"* by an Immigration Officer on 15 April 2008, she denies being an absconder as she says she was not aware that she needed to report. She points out that the appellant has failed to produce a document stating that she was required to attend a Reporting Centre in 2008. While the respondent has not produced documentary evidence to show that the appellant was served with a notice requiring her to report, it is unlikely that she was released without such a notice being served on her. Moreover, the IS96 notice of August 2015 is described as being a "*new*" notice, which imports that there was a previous one.
> 32. Accordingly, I find on the balance of probabilities that the respondent is correct to characterise the appellant as absconding after her arrest and then temporary release on 15 April 2008. This finding is reinforced by the fact that, by her own admission, the appellant gave the name of UG to the Immigration Officer when arrested whereas she says that she was operating under the name of MH. This made it easier for her to disappear.
> 33. Although the sponsor has confirmed that an application was made to regularise her status in 2013, no documentary evidence has been produced to show that at this time she disclosed to the Home Office that she had been apprehended in 2008 in the name of UG. So, from the perspective of the Home Office, she was still an absconder.
> 34. I consider that the respondent has also proved that the appellant knowingly made a false statement in her application form. This justifies here exclusion on suitability grounds.
> 35. My reasoning is that the respondent has established on the balance of probabilities that the passport issued to the appellant in 2015 was not her first passport (see above). The respondent has also established that the appellant knew that it was not her first passport. I consider that the appellant's excuses for not mentioning the existence of the earlier passport are spurious.
> 36. Moreover, the appellant inculpates herself by another piece of information which she gives in her application form. She says that she entered the UK in February 2010. In order to have entered the UK in February 2010, she would have needed a passport, and the only plausible candidate is the same passport on which she entered the UK in 2005."

22. The Appellant says that there was no evidential basis for the finding at [32] of the Decision that the Appellant was an absconder in the past. The Appellant relies on the case of R (Shabani) v Secretary of State for the Home Department (Legacy-residence-SOS's limited duty) IJR [2015] UKUT 403 (IAC). The Appellant relies on what is said at [27] of the decision in that case. The Tribunal said that it would not be right to characterise the applicant in that case as an absconder due to lack of documentation. However, first this was an application for judicial review and therefore the Tribunal was scrutinising the Respondent's reasoning in that case. Second, and more importantly, what is there

said has to be read in the context of [25] and [26] of that decision where it is evident that this conclusion was based on the facts of that case.

23. In this case, the Judge recognised that the Respondent had not produced the documentation in support of the assertion that the Appellant was an absconder but relied on another document which he considered showed that she had been an absconder for the reason there given.

24. In any event, the Judge also considered the suitability grounds. There is no challenge made to the reason given for the finding on that basis. I accept that the reasoning there relies also on the passport issue but for different reasons to those relied upon in relation to paragraph 320(3) and based on the Appellant's own evidence. There is no error of law disclosed by ground three.

25. I accept that the Judge falls into error at [15] of the Decision where it is stated that paragraph 320(11) of the Rules is mandatory in nature. However, there is no reason put forward in the grounds for the exercise of discretion in the Appellant's favour nor any submission recorded on this basis. Accordingly, it cannot be said that the Judge has failed to carry out a proper balancing exercise at [37] to [39] of the Decision, particularly in light of the finding on the mandatory ground and the suitability finding, as follows:

> "37. The appellant does not admit to being already married at the time of her entry to the UK in 2005, and the respondent has not produced evidence to show that her marriage to the sponsor is bigamous. So I accept that *prima facie* the appellant is in a genuine and subsisting marital relationship with the sponsor, and also that on the balance of probabilities the sponsor continues to be genuinely employed by Afro Cosmetics, and that at all material times he has been earning an annual salary in excess of the minimum income requirement.
> 38. Accordingly, I accept that questions 1 and 2 of the **Razgar** test should be answered in the appellant's favour. Questions 3 and 4 of the **Razgar** test must be answered in favour of the respondent. On the issue of proportionality, I consider that the public interest in the appellant's continued exclusion from the UK is very strong, given the fact that the respondent has made out his case under Rules 320(3) and Rule 320(11) and has also established that the appellant has breached a relevant suitability requirement arising under Appendix FM.
> 39. Accordingly, the decision strikes a fair balance between, on the one hand, the rights and interests of the appellant and the sponsor, and, on the other hand, the wider interests of society. It is proportionate to the legitimate public end sought to be achieved, namely the maintenance of firm and effective immigration controls and the prevention of disorder."

Conclusion

26. For the above reasons, the Appellant's grounds do not establish any material error of law. I therefore uphold the Decision.

DECISION

I am satisfied that the First-tier Tribunal Decision of Judge Monson promulgated on 27 November 2018 does not contain any material error of law. I therefore uphold the Decision.

Signed Dated: 23 May 2019

Upper Tribunal Judge Smith