



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case Nos:
UI-2024-002185, UI-2024-002186,
UI-2024-002187, UI-2024-002188,
UI-2024-002189, UI-2024-002190
First-tier Tribunal Nos:
EA/12722/2021, EA/08775/2021
EA/08839/2021, EA/08845/2021
EA/08672/2021, EA/08720/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 24th October 2024**

Before

UPPER TRIBUNAL JUDGE MAHMOOD

Between

ENTRY CLEARANCE OFFICER

Appellant

and

**NOORIN YOUSOFZAI
NOOR AQA ELYASKHIL
RIZAGUL ELYASKHIL
MARIA ALI ZADA
MOHAMMAD ARQAM YOUSOFZAI
HENA ELYASKHIL
(NO ANONYMITY ORDER MADE)**

Respondents

Representation:

For the Appellant: Ms R. Arif, a Senior Presenting Officer

For the Respondents: Mr S. Toora of Counsel instructed by J Stifford Solicitors
Unit 2, Canary Gateway, Commercial Road, London E14
7HD

Heard at Birmingham Civil Justice Centre on 15 October 2024

DECISION AND REASONS

1. In this matter the Entry Clearance Officer brings this appeal but for ease in following the decision I shall continue to refer to the Entry Clearance Officer as the Respondent, and I shall refer to the original Appellants as the Claimants.
2. This is my oral decision which I delivered at the hearing today.

Permission to Appeal

3. This matter comes before me with permission having been granted against a decision of First-tier Tribunal Judge Black ("The Judge"). She had considered the matter on the papers on 20 December 2023 and the decision was promulgated on 2 January 2024.
4. Permission to appeal was refused by the First-tier Tribunal but was granted by Upper Tribunal Judge Rimington on 3 June 2024.

Background and Grounds of Appeal

5. The background to the matter is that the Claimants had sought entry clearance to join the Sponsor here in the United Kingdom. In a Reasons for Refusal Letter dated 8 April 2021, the Respondent referred to several reasons why the Claimants' applications were being refused. Within that refusal letter, there were two particular aspects identified. They are encapsulated within the refusal letter as follows:

"On the evidence submitted in support of your application and on a balance of probability I am not satisfied that you are related as claimed or dependent on your sponsor. I am therefore not satisfied that you are the extended family member in accordance with Regulation(s) 8(2) of the Immigration (European Economic Area) Regulations 2016. I therefore refuse your EEA Family Permit application because I am not satisfied that you meet all of the requirements of regulation 12 of the Immigration (European Economic Area) Regulations 2016".

6. Judge Black had considered the matter on the papers, as sought by the Claimants, therefore without the assistance of oral submissions. At paragraphs 9 and 10 the learned judge set out her findings of fact and conclusions. She had allowed the Claimants' appeals.
7. The Respondent's grounds of appeal are lengthy but in essence can be summarised as follows. The Respondent contends that there was a failure to provide adequate reasons. The Respondent also contends that there was a failure to engage with the relationship issue, other than to make assertions that the DNA evidence adduced by the Claimants represented one family. It was contended that there were inadequate reasons that the Sponsor could support the Claimants if they were granted entry clearance.

8. At paragraph 8 of the grounds of the Respondent contends:

“It is not possible to determine upon what documentary evidence the FTTJ refers to at [9] leading to a finding that the sporadic remittances were sufficient to demonstrate that they had no other income upon which they relied on or why/how the remittances were sufficient to cover their essential living needs given how few and far between they were”.

9. The Entry Clearance Officer also refers to the decision of the Upper Tribunal *MK (duty to give reasons) Pakistan* [2013] UKUT 00641 (IAC), stating that it is axiomatic that a determination disclose clearly the reason for a Tribunal’s decision.

The Hearing Before Me

10. Ms Arif amplified the grounds of appeal and made submissions to me which I shall refer to further in my judgment.

11. Mr Toora, who has been very helpful and who has said everything that he possibly could on behalf of the Claimants, took me through the various documents. He also assisted me with some further background in relation to his solicitors instructing him recently and in respect of the documentation. It is right to say that the documentation in this case comprise a Home Office bundle of some 200 pages but also a bundle from the Claimants’ solicitors received on CE file on 18 September 2024 which comprises 62 pages. Some of that is new evidence. For example, ‘clearer’ pictures of the DNA reports. There is also a skeleton argument within that bundle that seeks to rely on some new documentation. It remains unclear if the Claimants’ solicitors served the bundle on the Respondent (as opposed to uploading it on to CE File, which is not service on the Respondent).

12. I had asked Mr Toora to assist me with whether paragraphs 9 and 10 of the Judge’s decision dealt sufficiently with why the Judge came to the decisions that she did and whether they were adequate reasons. That being the Respondent’s ground of appeal.

Consideration and Analysis

13. Mr Toora correctly identified that the tenancy documents were arguably sufficient to show that accommodation requirement were met. In my judgment though, there are inadequate reasons for the findings on the other contested matters. At paragraph 10 the Judge said in her decision that,

“I find that the appellants have produced a schedule of their expenditure which I find is reliable evidence to show their essential needs and that those are met by the funds provided by the sponsor. I find that there is reliable documentary evidence of the sponsor’s employment including wage slips

and bank statements which establish that he is working in the UK and is exercising Treaty Rights. I am satisfied on the evidence that the sponsor's income is adequate to provide for the appellants in the UK".

14. I invited Mr Toora to deal with whether the Judge provided sufficient actual reasoning as to why she thought that those schedules and documents were reliable evidence and what satisfied her in respect of the documents. Nor did there seem to be sufficient reasons in respect of the DNA evidence, which appeared to be in the form of poor photocopies at the First-tier Tribunal.
15. In my judgment there is too much of a leap in the Judge's decision when noting the documents. The Judge's conclusions that the documents were sufficient shows inadequate reasoning as to why the documents were accepted. Perhaps the Claimants' solicitors' new bundle for this hearing with new and clearer documents speaks for itself because it highlights that the original documents were not sufficient.
16. In my judgment Ms Arif's submissions are correct that the losing party, namely the Entry Clearance Officer in this instance, was not provided with sufficient reasons why they lost.
17. Whilst it is also correct that Judges at first instance should be encouraged to provide shorter decisions and that it remains unnecessary for a judge to deal with every aspect that arises in an appeal, it remains essential that sufficient and adequate reasoning be provided.
18. I remind myself that I must hesitate before concluding that the first instance judge materially erred in law and that mere disagreement is not sufficient. There must be some identifiable material error of law.
19. In my judgment there is a lacuna in the Judge's decision in this instance. It is correct to observe, as I did at the outset today, that this was an appeal considered on the papers by the Judge. Whilst therefore the Judge did not have the benefit of hearing from the Sponsor or from the parties, nonetheless the duty remained on the Judge to provide adequate reasoning as to why the refusal letter was wrong in its entirety.
20. I invited the parties to consider what the appropriate disposal ought to be if I was to find that there is a material error of law in the Judge's decision.
21. I have applied *AEB* [2022] EWCA Civ 1512 and *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC) and have carefully considered whether to retain the matter for remaking in the Upper Tribunal in line with the general principle set out in Paragraph 7 of the Senior President's Practice Statement. I take into account the history of this case, the nature and extent of the findings to be made. In considering

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paragraph 7.1 and 7.2 of the Senior President's Practice Statement and given the scope of the issues and findings to be made, I consider that it is appropriate that the First-tier Tribunal remake the decision.

Notice of Decision

22. There is a material error of law in the decision of the First-tier Tribunal.
23. There shall be an oral hearing of the matter at the First-tier Tribunal.
24. For the avoidance of doubt, none of the findings of Judge Black shall stand and I make no findings of fact in this decision. All issues will be revisited at the de novo hearing at the First-tier Tribunal.

Abid Mahmood

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 October 2024