



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/07018/2013
IA/07015/2013

THE IMMIGRATION ACTS

Heard at Field House
On 8 August 2013

Determination Promulgated
On 16 August 2013

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

MISS EH
MISS EL
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Not legally represented

For the Respondent: Mr Avery, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Although no anonymity direction was made by the First-tier Tribunal, in my conclusion it is appropriate to make such direction in this appeal. Both of the appellants are minors, the second appellant being only 5 years old. In such

circumstances I direct that no report of these proceedings shall directly, or indirectly, identify the appellants. Such order is to remain in place unless and until this Tribunal, or any other appropriate court, directs otherwise. Failure to comply with this direction could lead to a contempt of court. The appellants are to be known as EH and EL hereinafter.

2. The appellants are citizens of Portugal born in 1998 and 2008 respectively. Each applied for an EEA registration certificate as the family member of an EEA national exercising treaty rights in the United Kingdom. It was asserted that both were the children of M.
3. On 18 February 2013 the respondent refused to provide either appellant with a registration certificate pursuant to the Immigration (European Economic Area) Regulations 2006. Reasons for this conclusion were given in the following terms in a letter of 22 February 2013 addressed to M:

“In support of their application you submitted your dependants’ Portugal passports and two school letters. You also submitted wage slips and a P60 as evidence of your employment along with a tenancy agreement and utility bill.

In order to qualify for a registration certificate an applicant must provide evidence that your dependants are related to you; their EEA sponsor.

You have failed to provide evidence that your dependants are related to you in the form of a full birth certificate confirming parentage.

Therefore, it has been decided to refuse to issue the confirmation your dependants seek”

4. Both of the appellants appealed to the First-tier Tribunal. There was a request in each case for the appeal to be determined on the papers. The appeals came into the list of First-tier Tribunal Judge Foudy, sitting in Manchester, on 16 May 2013. In a combined determination promulgated on 21 May 2013, but prepared on 16 May, Judge Foudy dismissed both of the appellants’ appeals for the following reasons:

“[4] The respondent questioned each appellants’ relationship with the EEA national in the UK. They allege that they were the children of [M], a Portuguese national. However the appellants did not provide birth certificates to confirm their relationship.

[5] In the appellants’ notices of appeal they attached copies of Portuguese citizenship cards that named [M] as one parent however they still failed to submit a birth certificate to show their parentage.

[6] No explanation has been provided as to why the appellants have failed to submit their birth certificates.

[7] There is no evidence before me as to what, if any, identity documents the Portuguese authorities require in order to issue a citizenship card therefore I am not satisfied that the cards were issued after genuine birth certificates were examined.

[8] It should be a very simple step for the appellants to submit their birth certificates. Their persistent failure to do so causes me to doubt their true parentage.

[9] Each appellant has therefore failed to satisfy me that she [is] entitled to an EEA registration certificate under the 2006 Regulations.”

5. The appellants sought permission to appeal to the Upper Tribunal, enclosing with their applications (i) a typed letter dated 24 May 2013 bearing M’s name and signature and (i) a copy of a Royal Mail recorded delivery slip. The letter from M asserted that the appellants’ birth certificates had been sent to the Tribunal Service in Manchester on 20 May 2013 and received, according to the Royal Mail, on 21 May 2013. The letter further states that the delay in providing the birth certificates had been as a consequence of a delay by the Portuguese authorities in sending them to M.
6. First-tier Tribunal Judge Davidge granted the appellants permission to appeal by way of a decision dated 10 June 2013. Thus the appeal came before me.
7. At the outset of the hearing I provided Mr Avery with a copy of the documents that had been received by the Tribunal, from M, on 21 May 2013. These documents constituted (i) an undated handwritten letter bearing M’s name, such letter indicating that she was unable to provide a copy of the appellant’s full birth certificates because their had been a delay in their receipt from Portugal and (ii) two documents in the Portuguese language bearing the appellant’s names, their dates of birth and M’s name. These documents were not accompanied by a translation.
8. I thereafter invited M to make submissions on the appellants’ behalf. In doing so she confirmed that the documents sent to the Tribunal on 20 May 2013 were certified copies of the appellants’ birth certificates and that somebody else had written the covering letter on her behalf, that person having misunderstood what she had told them regarding the attached documents. M provided the Tribunal with the originals appellants’ passports. I observed that no mention is made therein of the names of the appellants’ parents.
9. In his submissions Mr Avery maintained that the First-tier Tribunal Judge had not erred in-law. He submitted that the judge had taken into account all of the documentation before her and had rationally concluded, in reliance on the failure of the appellants to provide a copy of their birth certificates along with a failure to provide an explanation for not doing so, that she was not satisfied that the appellants’ parentage had been established. Mr Avery further reminded the Upper Tribunal that the First-tier Tribunal Judge had not had the benefit of hearing from M, the appeal having been determined without a hearing at the request of the appellants. As to the production of the documents received by the Tribunal in Manchester on 21 May 2013 Mr Avery submitted that it was clear that the determination had been written by that date and indeed it had been promulgated on 21 May itself. He reminded me that the documents that had been submitted had not been accompanied by a translation; he was not prepared to accept that they were certified copies of the appellants’ birth certificates. He invited me to dismiss the appellants’ appeals before the Upper Tribunal.

10. At the end of the hearing I reserved my determination.
11. Having carefully considered all of the documents before me and the submissions of both M and Mr Avery I conclude that the First-tier Tribunal's determination does not contain an error on a point of law such that it ought to be set aside. I now give my reasons for coming to this conclusion.
12. Dealing first with the substance of the findings made by the First-tier Tribunal Judge, it is clear to me that the judge considered all of the evidence before her but nevertheless concluded that she was not satisfied to the required standard that the appellants had proved M to be their mother. The judge did not have the benefit of hearing from M. The copies of the appellants' passports that were before the First-tier Tribunal did not assist in determining the appellants' parentage and although the appellants produced citizenship cards these were only in copy form. In my conclusion the First-tier Tribunal Judge was entitled to find that the failure of the appellants, without explanation, to produce the originals or even copies of their birth certificates was a matter that caused doubt as to the assertions as to their parentage and as to the reliability of information on the copies of the citizenship cards.
13. As such I find that on the evidence available to the First-tier Tribunal its decision to dismiss the appellants' appeals was open to it, for the reasons it gives.
14. I next turn to the issue of the service of the documents served by M on the 20 May 2013. There is no dispute that these documents were received by the Tribunal on 21 May. However, I observe from the First-tier Tribunal's file that on 15 April 2013 the Tribunal sent notices to each of the appellants indicating (i) that each had indicated that they wished to have their appeals determined without a hearing (ii) that "*any written evidence and submissions must be received in this office by 13 May 2013.*" and (iii) that "*any written evidence or submissions in a language other than English must be accompanied by a certified full translation.*"
15. M could have been left in no doubt from this notice as to what was required of her and the appellants. Despite this and despite the fact that M asserts that there was a delay in obtaining the 'birth certificates' from Portugal, no application for an extension of time was made. Further, and in any event, the documents sent to the tribunal on 20 May 2013 were not translated and indeed remain so. Rule 52 of the Asylum and Immigration (Procedure) Rules 2005 requires any document filed with the First-tier Tribunal must be in English, or accompanied by a translation into English signed by the translator to certify that the translation is accurate. Rule 52(3) states that "*the Tribunal shall be under no duty to consider a document which is not in English, or accompanied by a certified translation.*" Additionally, I further observe that these documents still have not been sent to the Respondent.
16. As I identified above the First-tier Tribunal Judge prepared her determination on 16 May 2013, although it was not until 21 May 2013 that it was promulgated. This of course was the same date that the additional documentation was received by the First-tier Tribunal.

17. Given all that I have said above and in particular given that the documentation was not received until the day of promulgation of the First-tier Tribunal's determination despite the terms of the letter to the appellants from the Tribunals Service on 15 April, and given that the documentation was not in the English language and was not accompanied by a translation, I am not prepared to conclude that the appellants suffered from a breach of natural justice as a consequence of the First-tier Tribunal's failure to consider the documentation that was received by it on 21 May 2013. Nor am I persuaded that the First-tier Tribunal made a mistake of fact amounting to an error of law requiring me to set the determination aside.
18. For all these reasons I do not accept that the First-tier Tribunal's determination contains an error on a point of law such that it should be set aside. The determination of the First-tier Tribunal remains standing. Of course it is open to M to make further applications for registration certificates, on behalf the appellants', to the Secretary of State. She would be well-advised if so doing to provide certified copies of the appellants' birth certificates, accompanied by certified translations, with the applications.

Decision

19. For the reasons given above I dismiss the appellants' appeals to the Upper Tribunal. The determination of the First-tier Tribunal remains standing.

Signed:



Upper Tribunal Judge O'Connor
Date: 14 August 2013