



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/12246/2012  
OA/12248/2012

**THE IMMIGRATION ACTS**

Heard at Field House  
On 25th September 2013

Determination Promulgated  
On 25<sup>th</sup> September 2013

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MISS KIRANJIT KAUR  
MISS RAJWINDER KAUR  
(ANONYMITY ORDER NOT MADE)

Claimant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mrs T White (instructed by Ali Sinclair Solicitors)  
For the Respondent: Mr N Bramble (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. This is an appeal to the Upper Tribunal, with permission, by the Appellants against a determination of the First-tier Tribunal (Judge Moore) promulgated on 23<sup>rd</sup> April 2013 by which he dismissed the Appellants' appeals against the Entry Clearance

Officer's decision to refuse them leave to enter the UK as the children of their UK Sponsor, their father.

2. At the time of the applications both Appellants were under the age eighteen.
3. The grounds seeking permission to appeal have been expanded upon by Mrs White in a skeleton argument helpfully provided for the hearing before me and in her oral submissions. The ground in which it is said that the Judge erred is simple, namely that the Judge did not engage with the evidence of the two Appellants who had filed witness statements. Had their evidence been taken into account it would have affected the Judge's findings as to the relationship the Appellants had with their sponsoring father and would have been material to the Article 8 decision.
4. Mrs White also asserts that the First-tier Tribunal erred on the basis that the Judge did not say that the Sponsor had no contact or financial responsibility for his daughters and was thus not entitled to say as he did that the Sponsor had abdicated responsibility for them. She also drew attention to the Judge's recital of the Entry Clearance Officer's position who acknowledged that the sponsoring father had been sending money and had had contact with his daughters.
5. Mr Bramble defended the determination pointing out that the Appellants' witness statements were both identical; there was no difference in nuance or in their evidence. The Judge who heard oral evidence from the sponsoring father had made adverse credibility findings in particular as to the whether the Appellants were still in contact with their mother and as to the Sponsor's insistence that he did not know the mother's whereabouts, despite the fact that she had submitted an affidavit for the appeal. The Judge's adverse credibility findings would affect the amount of weight to be attached to the Appellants' statements.
6. Additionally Mr Bramble pointed out that the issues dealt with in the Appellants' statements as to contact with the Sponsor, contact with their mother and financial responsibility are all addressed by the Judge in his determination. He submitted that the Judge dealt with all of the issues raised by the Sponsor and the Appellants and made full reasoned findings and it could not be said that the Judge was not aware of or failed to take into account any aspect of the case.
7. In his Article 8 findings the Judge took those adverse credibility findings as a starting point and conducted the appropriate balancing exercise.
8. Mr Bramble submitted that it was not the case, as asserted in the grounds seeking permission, that the Judge concentrated only on the Sponsor and failed to take into account that it was not the Sponsor's appeal but the Appellants'. Where the Judge referred at paragraph 36 to the Article 8 right to respect for " his family life" that is clearly a typographical error because it is apparent from the remainder of that paragraph that it is the two Appellants' best interests that the judge is considering.
9. Mrs White then referred me to paragraph 36 of the determination where the Judge said:-"despite the elderly nature of the grandparents I am not satisfied that their

health conditions prevent them from continuing to accommodate the Appellants, and indeed as the two Appellants get older they may be able to assist their grandparents when needed." She suggested that the Judge, far from looking at the best interests of the Appellants was rather looking at the best interests of their grandparents.

10. I do not find that the First-tier Tribunal made an error of law such that the determination should be set aside in this case.
11. The essential facts of this case are that some nine years prior to the application the Sponsor had left India leaving his wife and daughters. He and his wife were then divorced and his daughters were left with their grandparents who are now aged 71 and 67. It was claimed in the application and appeal before the First-tier Tribunal that the sponsoring father had had sole responsibility for the Appellants' upbringing and that the grandparents are no longer either able or willing to continue with their care.
12. The First-tier Tribunal heard oral evidence from the sponsoring father. It also had a statement from each Appellant signed on 11th April 2013.
13. Mr Bramble is right in saying that the Appellants' witness statements are identical. That is a clear indication that the statements were drafted by a third party, probably the solicitors and forwarded to the Appellants to read and sign. That is not to say that there is anything untoward in the preparation of the statements; it simply means that they are not expressed in the Appellants own words.
14. The Judge having heard the father's evidence had considerable concerns over his credibility. He accepted, as had the Entry Clearance Officer, on the basis of receipts, that father had been sending money to India to the grandparents for the benefit of the girls. However, none were more than two years old and the payments were not made on a regular basis. The Judge also noted that there was no evidence from the school that the father paid the school fees and had always done so; rather the evidence was that the grandfather paid the school fees. With regards to the contact which it was claimed was regular and frequent the Judge noted that save for the claims made by the parties there was no other evidence of that.
15. With regard to the role that the father had taken in the girls' lives, the Judge found the Sponsor's answers to have been lacking in clarity and vague and he specifically found at paragraph 28 that:-

"Whilst it would be fair to say that the sponsor has made some contact with his daughters and has infrequently sent money to the grandparents this is indicative of a certain interest at least by the father. However, in reality he had abdicated responsibility for their welfare and upbringing and did so many years ago, leaving that to the grandparents."

16. Contrary to Mrs White's submission I find that there is no perversity in that finding by the Judge. The Judge found that whilst the father has a certain interest in his

daughters he has in reality left their day-to-day welfare and upbringing to others. That is clearly what happened in this case.

17. The Judge then goes on to consider the situation as regards the girls' mother, the Sponsor's former wife. For reasons which he gave and which have not been challenged before me the Judge concluded that he could not be satisfied that the girls were in fact not in touch with their mother.
18. Again, contrary to the assertions by Mrs White, the adverse credibility findings in relation to the Sponsor clearly impact significantly on the case as a whole. Whilst it is true that the Sponsor is only one half of the story and that he is not the Appellants, he is giving evidence about the relationship between him and the Appellants and therefore his evidence should have been satisfactory and credible and it was not. Those findings will necessarily affect the weight to be attached to any statements filed by the Appellants which give the same evidence as the father in terms of responsibility, finances and their mother.
19. I accept that the Judge may be criticised for not specifically setting out that he was not attaching weight to the Appellants' witness statements and why; however his failure to do so, whilst an error, could not have had any material effect on the outcome of the appeal. The Appellants' credibility was also destroyed by their father and the witness statements can not be said to carry weight which would alter the outcome.
20. The Judge in looking at Article 8 has clearly had at the forefront of his mind where the best interests of the Appellants lie. The Judge referred himself to ZH (Tanzania) [2011] UKSC 4. That case, as well as stressing the primacy to be afforded to the best interests of the child, finds that a British child is entitled to be brought up in the country of its nationality and culture. In this case the Appellants are Indian nationals who have lived all their lives in India. They have had extremely limited contact with their father for the past nine years and their home has always been with their grandparents throughout their formative years and it is to their grandparents that they will have the emotional attachment. In finding that it is not a disproportionate breach of the Appellants' right to family life to dismiss the appeal and refuse them entry the Judge has clearly had their best interests to the fore.
21. Where the Judge comments about the Appellants' as they get older perhaps assisting their grandparents when needed, I do not agree with Mrs White that this is suggesting that their best interests should dictate that they look after their grandparents. Rather the Judge is noting the reality of the situation. The Appellant's closest relatives are their grandparents. They have lived with their grandparents throughout their formative years and continue to do so. The grandparents are getting older but the Appellants' need to be "looked after" diminishes as they are older teenagers and similarly their ability to offer assistance to their grandparents with whom they live increases as they get older. That is simply a fact of life and does, in my view not amount to a finding as to the Appellants' best interests.

22. I find that the First-tier Tribunal Judge made no error of law that could possibly have led to a different outcome and so the determination stands.
23. The appeal to the Upper Tribunal is dismissed.

Signed

Date 25th September 2013

Upper Tribunal Judge Martin