Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/15531/2012
OA/15533/2012

THE IMMIGRATION ACTS

Heard at : Field House

On : 4 July 2013

Determination Promulgated
On : 8 July 2013
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Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

VIJAYARAJINE RAVINTHARADAS
MUHIRTHTHANAA RAVINTHARADAS

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms A Hena, instructed by Krish Solicitors
For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, mother and daughter, are citizens of Sri Lanka born on 15 March 1965 and 21 June 1996 respectively. They have been given permission to appeal against the determination of First-tier Tribunal Judge Rhys-Davies

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dismissing their appeals against the respondent's decision to refuse them entry clearance.

2. The appellants applied for entry clearance to settle in the United Kingdom as the spouse and child of the sponsor, Ravintharadas Kathiravelu, a British national. The first appellant's application was refused on the grounds that she was unable to meet the requirements of paragraph 281 of HC 395 and the second appellant's application was refused as a consequence of that decision. With regard to the first appellant, the respondent noted that she had married the sponsor on 8 September 1982 and had not seen him since July 1997. He had come to the United Kingdom in November 1999. It was not accepted that their relationship was subsisting or that that they intended to live together as husband and wife, in view of the lack of evidence of contact between them. In addition, the appellant had failed to provide an original English language test certificate from an approved English language test provider.

3. The appellants appealed against the decisions and their appeals were heard in the First-tier Tribunal on 3 April 2013. Judge Rhys-Davies heard from the sponsor and found him to be a credible witness. He accepted his evidence of regular contact and financial support and accepted that the first appellant's and sponsor's marriage was subsisting and that they intended to live together permanently as spouses, despite their many years apart. However he did not accept that the first appellant had met the English language requirement of the rules.

4. It was argued before the judge that the first appellant fell within the exceptions at paragraph 281(i)(a)(ii)(b) and (c) since she was medically unfit to pass the test. Two letters from doctors at Jaffna Teaching Hospital were produced concluding that she had a low IQ and a mental age of 11 years and six months. The sponsor also gave evidence that she had never been well-educated and had always had difficulties and had started seeking medical treatment when she began to develop headaches from trying to study for the English language test. The judge found the medical evidence to be entirely unreliable and attached no weight to it, but in any event noted the limitations of the single IQ test and noted that the medical evidence did not state that her condition prevented her from meeting the English language requirement. He accepted the sponsor's evidence that his wife was "slow" and got headaches from studying, but found that that was not sufficient to prove that she had a mental condition that prevented her from meeting the English language requirements or that that amounted to exceptional compassionate circumstances. He accordingly dismissed the appeals under the immigration rules and on Article 8 grounds.

5. Permission to appeal against the decision was sought on behalf of the appellants on the ground that the judge had failed to have proper regard to the medical evidence and to the case of Chapti & Ors, R (on the application of) v Secretary of State for the Home Department & Ors [2011] EWHC 3370 and had erroneously applied the test under the exception to be higher than it should be.

It was asserted that the appellant's background and her IQ led her to fall within both exceptions.

6. Permission was granted on 30 May 2013 on all grounds

Appeal hearing

7. At the hearing I heard submissions on the error of law.

8. Ms Hena agreed that the judge's determination was detailed and looked at the relevant issues, but she submitted that the judge had failed to apply the principles in Chapti to the first appellant's circumstances. She referred to paragraph 37 of the judgment in regard to the consultation paper leading to the introduction of the English language requirement into the rules, which had stated a need to take into account the literacy level of spouses, and to the factors set out at paragraph 143 affecting the ability to comply with the English language requirement. She submitted that, in view of the judge's acceptance of the sponsor's evidence about his wife's difficulties, namely her headaches, the fact that she came from the rural areas and the fact that she had made an attempt to study for the test, there was sufficient to show exceptional compassionate circumstances. With regard to the medical evidence, the judge had failed to give adequate consideration to the limited facilities available to the doctors to test the appellant's IQ and to the fact that the physician may have got the diagnosis wrong. Ms Hena submitted that the purpose of the English language requirement was to benefit people moving to the United Kingdom by assisting in their integration, and it was not intended to punish people and to keep them apart from their families. The judge ought to have considered the appellant's limited financial resources in regard to taking further tests.

9. Ms Pal submitted that the judge had not erred in law. He had properly approached the evidence and had given sound reasons for finding the medical evidence unreliable. There was no evidence before him to show that the appellant's medical condition or learning difficulties prevented her from doing the English test. He had given proper consideration to the issues identified in Chapti.

10. In response, Ms Hena reiterated her previous arguments and submitted that the judge ought to have taken account of the fact that the appellant was admitted into hospital in 2011 and took an IQ test. The doctors' opinions ought to have carried weight.

Consideration and findings.

11. It is asserted in the grounds that the judge failed to give proper consideration to the guidance in Chapti and that, had he considered the first appellant's circumstances in the light of that guidance, with particular reference to the factors set out at paragraph 143 of the judgment, he ought to

have concluded that the exceptions to the English language requirement applied to her.

12. However the judge did consider the appellant's circumstances within the guidance in Chapti. At paragraph 11 of his determination he referred to the judgment having been submitted before him and at paragraph 25(h) he recorded in detail the submissions made on behalf of the appellant in regard to the guidance at paragraph 111 of the judgment. Whilst he did not go on specifically to refer to it in his findings, it is clear that he had the case in mind and the findings that he made were consistent with the guidance and principles therein.

13. The judge gave careful consideration to the medical evidence before him and concluded, at paragraph 33, that it was "entirely unreliable". He gave clear and cogent reasons for so concluding and was fully entitled to make the findings that he did and to attach the weight that he did to the two letters, given the discrepancies they contained. It was Ms Hena's submission that he ought to have considered the possibility that the physician had got the diagnosis wrong and that weight should be given to the fact that the appellant had had to see the doctors in hospital and had undergone an IQ test. However, it was not for the judge to speculate as to reasons for the discrepancies arising in the letters and he was entitled to place no weight upon the information they contained for the reasons properly given. It is, furthermore, relevant to note that at paragraph 15 of his determination he recorded the sponsor's lack of direct knowledge about the letters. Of further relevance is the sponsor's evidence, as recorded in that paragraph, which indicated that his understanding was that his wife had only started seeking treatment in February 2012 after developing headaches when trying to study for the English language test, whilst the two doctors' letters referred to her attending their clinic in December 2011 and commencing treatment at that time.

14. Thus the only evidence before the judge that he was prepared, for reasons properly given, to accept as reliable was the sponsor's oral evidence about the first appellant's difficulties. That evidence is set out at paragraphs 15 and 16 of the determination and his findings on it appear at paragraph 32 and have not been challenged. There has been no suggestion that the evidence at paragraph 5 of the sponsor's statement was anything other than an adoption of the information in the two doctors' letters and thus not within the sponsor's direct knowledge. Accordingly, what was accepted by the judge was that the first appellant was not well-educated, that she was "slow" and that she developed headaches when attempting to study for the English language test.

15. Ms Hena, in her submissions, proceeded on the basis that the first appellant was illiterate, and relied on the guidance in Chapti in that respect, referring in particular to paragraphs 37 and 111 of the judgment. However, there does not appear to be anything in the evidence that was before the judge to suggest that she was illiterate or even semi-illiterate and the only reference to illiteracy, at paragraph 25(h) of the determination, was by way of general submissions on the findings at paragraph 111 of Chapti. On the contrary, the

evidence was that she would get headaches when reading, the sponsor referred in his evidence at the hearing to correspondence, albeit limited, from the first appellant and the documentary evidence included envelopes for letters sent from her. Furthermore, with reference to paragraph 37 of Chapti, there was no suggestion that the appellant had attempted but failed the test. Accordingly I find that Ms Hena's reliance upon such circumstances was somewhat misconceived.

16. It seems to me that there is nothing in the judge's findings at paragraph 32, 35 and 41 that was inconsistent with the guidance in Chapti. At paragraph 143 of the judgment in that case, Mr Justice Beatson referred to various factors that could have an impact upon the ability of certain applicants in taking the English language test. However, as Ms Pal submitted, those were simply suggested factors and did not set a benchmark that had to be applied in every case. In any event it is clear that those were matters that the judge took into account when reaching his conclusions. Ms Hena submitted that he erred by failing to consider the financial constraints of attempting further English language tests. However that was never raised as an issue before him and it was not for him to speculate as to such circumstances. He gave consideration to the matters relevant to the first appellant, as accepted on the evidence before him, and concluded that the fact that she was slow, not well-educated and got headaches from attempting to study was not sufficient to demonstrate that she had a mental condition or that there were exceptional compassionate circumstances preventing her from meeting the English language requirement. He found, at paragraph 41, that she was able to pass the test and that it was open to her to attempt it or to put forward proper evidence to show that she could not be expected to do so. As such he concluded that requiring her to do the test was not disproportionate or in breach of Article 8. That was a conclusion that was open to him on the evidence before him and which he was fully entitled to reach. Any suggestion to the contrary is no more than a disagreement with that conclusion.

17. Accordingly I find that the judge did not make any errors of law in his decision.

DECISION

18. The making of the decision of the First-tier Tribunal did not involve the making of an error of law. I do not set aside the decision. The decision to dismiss the appeal therefore stands.

Signed
Date
Upper Tribunal Judge Kebede