Upper Tribunal
Immigration and Asylum Chamber **Appeal Number: OA/18233/2012**

THE IMMIGRATION ACTS

Heard at Field House	**Promulgated**
On 27 August 2013	**On 29 August 2013**

Before

Upper Tribunal Judge Kekić

Between

Md Dulal Ali

Appellant

and

Entry Clearance Officer
Dhaka

Respondent

Determination and Reasons

Representation
For the Appellant: Mr S Karim, Counsel
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

Details of appellant and basis of claim

1. This case comes before the Upper Tribunal following the grant of permission to appeal by First-tier Tribunal Judge on 16 July 2013 in respect of the determination of First-tier Tribunal Judge Blake promulgated on 7 June 2013 dismissing the appeal for entry clearance.

2. The appellant is a citizen of Bangladesh who claims to have been born on 8 May 1996 making him 16 years old at the date of the decision on 29 August 2012. He seeks to join his parents for settlement. The Entry Clearance Officer was not satisfied the appellant was related as claimed to his sponsors and also expressed dissatisfaction with the recently issued birth certificate. He also considered the appellant's domestic circumstances and concluded that he could not be satisfied that all the requirements of paragraph 297(i)(a)-(f) were met.

The Hearing

3. The appeal came before me on 28 August 2013. I heard submissions from the parties as to whether or not the First-tier Tribunal had made an error of law and at the conclusion of the hearing reserved my determination.

4. The appellant was represented by Mr Karim who submitted that the most glaring error of law was that the judge had mistakenly considered the appeal under paragraph 297(i)(f). He submitted that where the appellant was under 18 and had both parents present and settled in the UK, there was no necessity to consider whether there were serious and compelling family or other considerations which made exclusion undesirable. He argued that the appellant was not leading an independent life as he still lived with family members. There was also no need for a judge to address every point raised by the ECO.

5. In response, Mr Jarvis submitted that material points raised by a party had to be taken into account by judges when the evidence was assessed. The ECO had raised the issue of the recently issued birth certificate and the judge should have engaged with that concern. Issues had also been raised about the whereabouts of the appellant's mother who did not give oral evidence and did not attend the hearing. Whilst there were difficulties with the judge's failure to engage with these and other material matters, he had made a sustainable finding with regard to the appellant leading an independent life. The case law did not require an appellant to be leading a life independent of anyone, just independent of his parents. As that finding was sustainable, the requirements of paragraph 297 could not be met and the determination should stand. If, the Tribunal did not agree with that argument, the whereabouts of the appellant's mother should be highlighted as a live issue for the resumed hearing.

6. Mr Karim replied. He submitted that the judge had not considered the birth certificate in isolation; he had also looked at other evidence and then accepted relationship. Had there been other matters the judge was unhappy with he should have clarified this at the commencement of the hearing so that the appellant was not deprived of the opportunity to respond. The judge

misapplied paragraph 297(i)(f). However despite that error, he had made clear finding on the relationship and the whereabouts of the appellant's parents. Those findings alone justified the appeal being allowed outright. If there was to be a re-hearing the finding on relationship should be preserved.

Findings and conclusions

7. Having carefully considered the submissions, the determination and the evidence I take the view that this appeal needs to be re-heard on all issues.

8. The judge is criticised for having considered paragraph 297(i)(f) when it was the appellant's case that both parents were settled in the UK. Whilst it is puzzling as to why he should have done this, unless he was not satisfied that both parents were in the UK, the appellant's representative at the hearing made extensive submissions on the issue of exceptional circumstances. It may be that this led to his consideration of the point but it is not clear. This is just one reason why I conclude that the determination is muddled and confused.

9. There are also other serious difficulties. Contrary to what Mr Karim submitted, the judge makes findings which are difficult to reconcile with others made elsewhere in the determination. For example, the judge noted that the DNA evidence only took a sample from the appellant's father and that no sensible reason had been given for the absence of a sample from the mother. He also noted that the sponsor was not a credible witness (in at least four separate paragraphs of the determination), that he knew nothing much about the appellant's life and displayed no interest in it, that he had not provided any good reason for not bringing the appellant to the UK with the rest of the family, that there was no evidence of ongoing contact, that the money transfers conflicted with the sponsor's oral evidence and that the appellant had not travelled to Saudi Arabia with him and the rest of the family. Despite these difficulties, he found that the appellant was related as claimed to the sponsor. That conclusion is difficult to reconcile with all the other adverse findings made. It should also be noted that there is no finding on whether he is related as claimed to his mother, the second sponsor. The relationship to both was brought into question by the ECO and remains unresolved.

10. Mr Karim argued that the judge was not obliged to make findings on all the reasons given by the ECO for the refusal. With respect, I do not agree. The respondent has put forward a case and it is for the judge to engage with it and address the reasons for refusal. The appellant's recently issued birth certificate and its unreliability has not been touched upon. Mr Karim argued that the judge had taken into account "other documents" when making his decision on the relationship but it is wholly unclear what these other documents are. They are not specified and given the absence of any

documentary evidence showing contact and the unreliability of the school documents, it is difficult to guess at what the judge had in mind.

11. The judge also found that the appellant's sponsors were both present and settled in the UK. Mr Karim argued there was evidence in the bundle to support this finding and pointed to a tenancy agreement and evidence of the grant of ILR. With respect, those documents do not show the mother's continued presence in the UK. The judge found it strange that she did not attend the hearing or provide any supporting evidence and he also noted that no evidence of her travel history had been produced. Given these factors, his conclusion that both sponsors were present in the UK lacks adequate reasoning.

12. For these reasons alone, the determination is flawed and cannot stand. I set it aside in its entirety except as a record of proceedings. No findings are preserved. The appeal shall be re-heard by the First-tier Tribunal on all issues. The appellant is on notice that it is for him to show that he meets *all* the requirements of the relevant rules and his representatives should prepare for the hearing with that in mind. No submissions were made on Article 8 but that would stand or fall with the appeal on immigration grounds unless there are issues over maintenance and accommodation once concerns over age and relationship are resolved.

Decision

13. The Tribunal made errors of law and the determination is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing on all relevant aspects of paragraph 297 and on Article 8, if applicable.

Dr R Kekić
Judge of the Upper Tribunal

29 August 2013