



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: VA/21046/2012
VA/21051/2012
VA/21060/2012
VA/21067/2012
VA/21071/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 23 July 2013
Prepared 24 July 2013**

**Determination
Promulgated
On 29 July 2013**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**MRS RAHIMA BEGUM (1)
MR ANAMUL HAQUE CHOWDHURY (2)
MR MD RUHINUL HAQUE CHOWDHURY (3)
MISS TAIYEBA JANNATH CHOWDHURY (4)
MASTER REDWANUL HAQUE CHOWDHURY (5)**

Appellants

and

ENTRY CLEARANCE OFFICER, DHAKA

Respondent

Representation:

For the Appellants: Ms Qureshi, Counsel
For the Respondent: Ms Holmes, Presenting Officer

DETERMINATION AND REASONS

1. The appellants appeal with permission against the determination of First-tier Tribunal N M K Lawrence promulgated on 20 December 2012 dismissing their appeals against the decisions of the respondent made on 9 May 2012, refusing their applications for entry clearance to the United Kingdom as visitors pursuant to paragraph 41, and in the case of appellants three to five, paragraph 46 of the Immigration Rules. The respondent also refused the applications of the first and second appellants, paragraph 320(7A) of the Immigration Rules.
2. The first appellant is married and is the mother of the second to fifth appellants. In addition, she has another child, Emdadul Haque Chowdhury born in 1994. The appellants' case is that they wish to come to the United Kingdom to visit family; the first appellant's mother lives here as do three of her brothers and two of her sisters. They are to be supported and accommodated whilst here by Mohammed Abdul Hannan, husband of the first appellant's sister ("the sponsor").
3. In summary, the respondent refused the applications on the basis that when an unannounced visit had been conducted to the appellants' home on 9 February 2012, it transpired that the second appellant had serious eyesight problems and was unable to continue with his studies; that the second eldest son was at home despite it being a school day, that the third child was supposed to be at school but, when an officer went to the school, could not be found; and, the two youngest children were at home.
4. The respondent considered that the first and second appellants had not mentioned properly the second appellant's eyesight problems and inability to continue with his studies, that therefore the information supplied - that he was a student - was incorrect and would thus engage paragraph 320(7A). Further, that the first appellant had failed to provide details of her youngest child and whilst one innocent mistake might be acceptable, in combination they amounted to an attempt to mislead the respondent with regards to the appellants' circumstances in Bangladesh.
5. The respondent considered that the attempt to mislead undermined the credibility of the application as a whole leading him to doubt their intentions, noting also that the husband's bank account had recently been inflated and that no provenance for these funds had been provided. He therefore refused the applications on the basis that he was not satisfied that the appellants were genuine visitors who intended to leave the United Kingdom at the end of the period, or that they could meet the costs of their onward and return journey.
6. The respondent considered also, in the case of the third to fifth appellants, that as their mother had been refused entry, they had not demonstrated that suitable arrangements had been made for their travel to and reception and care in the United Kingdom.
7. In the grounds of appeal it is stated:

- (i) that the appellant has five children; that the youngest is Redwanul (the fifth appellant) and that the second son, Emdadul, did not apply for a visa as he did not get permission from school;
- (ii) that the application form was completed on the appellants' behalf by Mr Ahsan Chowdhury who made a mistake when completing the forms, omitting the youngest applicant's name from the form (sic);
- (iii) that the two eldest children, Anamul (the second appellant) and Emdadul, are both in education, confirmed by attached letters; and, that although the second appellant did have a problem with his eye, this has now improved, he has resumed his studies and therefore no necessary information was withheld;
- (iv) that on the date of the UKBA visit, Ruhinul (the third appellant) was in school and the school denies receiving any contact from UKBA officials on the date in question;
- (v) that the fourth appellant was at home on the day from school as she had a stomach pain and could not attend school;
- (vi) that the large recent deposits into the husband's bank account were from the sale of a vehicle;
- (vii) that there had been no attempt to deceive in any way.

8. In the Entry Clearance Manager's ("ECM") review, it is stated:

- (i) that no weight can be attached to the documents showing that the husband's bank account was inflated due to the sale of a vehicle;
- (ii) that no weight can be attached to the letter from the second appellant's school stating that he had returned as it postdates the decision and is not pertinent to the circumstances at the date of decision;
- (iii) that no weight should be attached to the letters from the various schools attended by the appellants, in particular the letter stating that the second appellant (sic) was at school on the day of the visit despite him being found at home and this should not challenge to the grounds of appeal;
- (iv) that it was not credible that all the children bar the one who did not apply would be at home sick on the same day. It was not credible that the school letters provided would be in English if signed in Bengali; and,
- (v) that if the appellant had signed the application forms to declare that the information contained was true and complete, signing a

declaration that they did not use an agent to complete the forms, now they say that, contrary to that declaration, they did use an agent.

9. The appeals then came before First-tier Tribunal Judge Lawrence who heard evidence from the sponsor. The judge noted [12] that Ahsan Chowdhury said in his letter that he is related to the first appellant and her husband and that he had erred in not including the name of one of the children. He notes also that the sponsor “denied that Ahsan Chowdhury is related to the first appellant” and that “if the sponsor is telling the truth Ahsan Chowdhury is not and vice versa. In either event I am unable to accept either and act on it”. He considered that the contradiction in the evidence undermines the credibility of the appellant and so he was unable to rely on the documents has adduced in support of the appeal and did not accept her explanation for the mistake. He found that the first appellant did attempt to mislead the respondent [15] thus dismissed all the appeals.
10. The appellant sought permission to appeal on the grounds that:
 - (i) the judge had erred in finding a discrepancy between the evidence of the sponsor and the first appellant given that it was not reasonable to expect the sponsor to know each and every relative of the first appellant and her husband [2] and that the sponsor had said that the person may be a relative but he was not aware of him; and,
 - (ii) that the judge had failed to give adequate consideration to documentary evidence provided in particular evidence showing that the UKBA officials had not returned to the school.
11. On 10 May 2013 Designated Judge McDonald granted permission on all grounds noting that the Record of Proceedings appeared to record the sponsor as saying “I do not know if related” which would dilute or eliminate the contradiction founded on so strongly by the judge.

Does the determination of the First-tribunal involve the making of an error of law?

12. When the matter came before me, I ensured that both parties had copies of the Record of Proceedings. It was agreed that the relevant part as recorded by the judge is as follows:

“I do not know who Ahsan Chowdhury. He may be the person who completed the form. I do not know if he is related.”

Ms Holmes very fairly conceded that there is a clear difference between “I do not know if they are related” and a denial that they are related. It follows that the judge misunderstood the evidence before him and that the finding that there was a discrepancy was based on a misreading of the evidence and was therefore irrational and thus, amounts to an error of law.

13. This was not a finding of fact on a minor matter. The entire determination and the adverse credibility findings in respect of the appellant are predicated on this discrepancy. It follows from this that the error was capable of affecting the outcome of the determination. It also follows that, given the rejection of the appellants' credibility was used to reject all the other documentary evidence, none of the findings of fact can stand.
14. For these reasons, and as I announced at the hearing, the determination of the First-tier Tribunal did involve the making of an error of law. It is necessary to set it aside, and it requires to be re-made. I directed also that the remaking would proceed on the basis that none of the findings of fact made by the previous judge could stand.

Remaking the decision

15. I then heard evidence from the sponsor who adopted his witness statement subject to amending paragraph 6 to read second eldest son. He said that his wife is the first appellant's elder sister but he did not know who Ahsan Chowdhury is as he had not seen him but he is related to the appellant's husband. He said that of the first appellant's five children, the second oldest, Emdadul, would be staying behind. The sponsor said that the first appellant has four brothers and two sisters living in the United Kingdom and no siblings currently living in Bangladesh. He said that the first appellant's mother is not in good health, suffering from a mental condition as well as diabetes and has not returned to Bangladesh since she arrived here some twenty years ago. He said that he would be providing accommodation and maintenance for the family whilst they are here but that they will be paying the cost of the air fares. There was no cross-examination.
16. Ms Holmes indicated that she would be relying on the refusal letter although only in asking me to determine the appeal indicating that she considered the first appellant had made a genuine mistake and that there would have been no benefit to her in concealing the existence of a child who would not be travelling to the UK given that that would be likely to indicate stronger ties to that country.
17. Ms Qureshi submitted that the appeal should be allowed, submitting that the refusal notice was confused as to the identities of the children and it was indicative of the confusion that the visit report had not been adduced and that therefore there was no evidence to back-up the allegations in respect of the schools. She submitted that sufficient evidence had been adduced to confirm the provenance of recent deposits into the husband's account and that there were letters on file confirming that the first appellant's mother suffers from schizophrenia and type 2 diabetes. She submitted also that there was no challenge to the sponsor's evidence that, owning a five bedroom house with two reception rooms, she would be

able to provide adequate accommodation and, had the resources to cover the appellants' costs in the United Kingdom.

18. There is a substantial degree of confusion in both the refusal letter and the ECM's review as to which children were identified by the officer who visited the home as being there. It is accepted that the first appellant has five children, however as the names of the children are not given in the refusal notice, it is not possible to discern from it who the respondent considered to be is the youngest child. The youngest of the appellants was born in 2010 and all the evidence points to the child who was omitted from the applications being the second oldest.
19. The reference to the "second son" in the refusal letter appears to be a reference to Emdadul and his absence from school that is confirmed in the letter from Lutfur Rahman High School dated 5 June 2012 (AB, page 18). The reference to the second son being home would appear to be a reference to Ruhinul, (the third appellant) and the third oldest child. The reference to the third child is apparently a reference to the fourth appellant, Taiyeba, but as it is noticed that the two youngest children are at home, the 6 year old has yet to have started education.
20. The confusion continues further in the grounds of appeal where [3] the eldest two children, Anamul and Emdadul, are said to be in school; that the UKBA officials state that they visited Ruhinul's school [5] and that Taiyeba was at home on the day of the visit [6].
21. In the ECM's review it is recorded that the grounds of appeal make the submission that the second, fourth and fifth appellants were at home from school as well as the fifth child due to various illnesses. It is stated "I did not find it credible that all children bar one (the one who did not apply) would be at home sick on the same day".
22. The difficulty with this statement is that the fifth appellant was born in 2010 and elsewhere the Secretary of State asserts that the fourth appellant had not yet started school. Had the actual report been produced it may have been possible to disentangle this confusion, but it is not.
23. I bear in mind that the appellants do not speak English and are therefore dependent on the application forms being explained to them. I accept, on the basis of the evidence put before me, that a relative, Mr Ahsan Chowdhury, assisted with the completion of the forms. I consider that it is entirely plausible that the child who was not coming to the United Kingdom, Emdadul, was not included in the application form for that reason. I accept the evidence of the sponsor, which was not challenged, that Mr Ahsan Chowdhury is not known to him but he has been told, is a relative of the appellant's husband.
24. Whilst that does therefore result in the declaration from the appellants that they had not used an agent in completing the form to be less than truthful, I accept the submission that they were unaware of this and that in

any event Mr Chowdhury was a relative assisting rather than an agent acting on a commercial basis or for a fee. I am satisfied that this was an innocent mistake. I am satisfied also that what Mr Chowdhury said, that the fifth child was omitted as an error, is also truthful.

25. It is not at all clear how the respondent concluded that the second appellant had ceased education owing to serious eye difficulties. It is the appellants' case, supported by documentation which has not been challenged before me, that he did have problems with his eyes, but that this has now been resolved; and, that he has resumed education. It is, however, accepted that his education had been prolonged on account of the eye problems having to be resolved. Accordingly, I considered that he has not been deceptive about his status in his application.
26. Whilst I note the objection to the documents from the appellants' various schools, I do not consider that they could be rejected on the basis that they do not relate to circumstances as at the date of decision or prior thereto. They can fairly be taken into consideration. They are written in English, but signed in Bengali, it does not necessarily follow that these are unreliable. Given that the documents were prepared for use in proceedings in the United Kingdom, I consider that it is plausible that they were therefore drafted in English for the benefit of the authors. This is not a case in which the respondent has contacted the relevant schools to obtain confirmation of whether the letter as being false or not.
27. Taken with the evidence of the sponsor and the witness statement of the first appellant, I am satisfied that the letters are reliable and I note that in any event the respondent has adduced no evidence of any attendance at any school attended by any of the appellants.
28. I have considered carefully the evidence relating to the husband's bank account and the documents relating to the sale of a vehicle. Whilst I noted the objection to the sale receipt, that the original has not been produced so that the translation could be verified, I find this objection has no merit. The translation has been certified, copies of the original document have been produced in the appellants' bundle. They are therefore made available to the respondent who, at the hearing, took no objection to this.
29. Accordingly, I am satisfied on the basis of the evidence before me that the appellants have provided a sufficient explanation for the large recent deposits into the husband's bank account.
30. In conclusion therefore, I find that the respondent has failed to satisfy me that the appellants have made any false representations or statements in connection with their applications and accordingly, that paragraph 320(7A) is not engaged. Whilst the applications did not contain full information, I am satisfied that this was on account of an innocent mistake.
31. I am satisfied also, in the light of that finding, and in the light of the findings in relation to the husband's bank account, and reading the

evidence as a whole, in the absence of any submissions to the contrary, that the appellants are genuine visitors to the United Kingdom, seeking in the case of the first appellant to see her mother who is unwell and relatives who are settled in the United Kingdom.

32. The appellants have significant ties to Bangladesh, through their father and Emdadul, who will remain in Bangladesh during the short visit to this country. I am satisfied also, in the light of the evidence supplied by the sponsor, which is not challenged, that he is able to provide accommodation and maintenance for the appellants. I am satisfied also, from the documentary evidence before me, including the bank statements, that the appellants can meet the cost of their onward or return air flights.
33. As the mother of the third to fifth appellants, now be granted entry clearance to the United Kingdom as a visitor, there will, in light of the other findings, be sufficient arrangements in place for their care and reception in the United Kingdom. I therefore allow the appeals under the Immigration Rules.

Summary of Conclusions

1. The determination of the First-tier Tribunal did involve the making of an error of law. I set it aside.
2. I remake the decision by allowing the appeals under the Immigration Rules.

Signed

Date

Upper Tribunal Judge Rintoul