



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/02870/2013

THE IMMIGRATION ACTS

Heard at Field House
On 11th March 2014

Determination Promulgated

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Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MRS BABLY RANI DEB

Appellant

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellant: Mr A Chohan (instructed by Immigration Aid)
For the Respondent: Mr P Nath (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant appeals to the Upper Tribunal, with permission, against the determination of the First-tier Tribunal (Judge Fox) promulgated on 26th November 2013 by which it dismissed the Appellant's appeal against the Entry Clearance Officer's decision to refuse her entry clearance as a spouse
2. It was accepted before the First-tier Tribunal that the only issue was accommodation. In the determination the Judge set out the evidence before him between paragraphs

11 and 18, the submissions between paragraph 19 and 24 and his findings from paragraph 25 to 31.

3. The Judge noted that there was no Respondent's bundle in the file. The Respondent was however represented and had sight of the Appellant's bundle. With regard to accommodation it was said that the Sponsor resided with his parents and a sister in a three bedroom flat of which his father was the tenant. He held a secure tenancy, the landlord being Islington Council. The Judge noted that he had before him a letter from Islington Council dated 12th December 2012 which confirmed that the Sponsor's father holds a secure tenancy on the property which is a three-bedroom flat suitable for six persons. That letter also said in terms:-

"This letter does not in any way constitute permission being granted by Islington Council. I am simply providing the information as requested."

So much was noted by the Judge at paragraph 13.

4. The Sponsor told the Judge that he believed he had permission but then agreed that the Appellant did not have permission and agreed that she required permission.
5. The Judge noted that housing benefit was paid to the Sponsor's father but that the Sponsor claimed to pay rent to his father.
6. The Judge also referred to another document from the local authority listing the persons authorised to live at the property and that included a second sister. The Judge noted there was discrepant evidence as to when she left the property. The Judge was told that she had married and left in November 2012 but the housing report that the judge had been provided with, which followed an inspection in July 2012, made no mention of her occupancy.
7. In his findings the Judge at paragraph 25 said that the evidence, considered in the round, demonstrated that misleading statements had been made. He noted that the Sponsor had stated that his sister had left the address in November 2012 but that the housing report did not list her as an occupant in July 2012. The Judge said that it was reasonable to conclude that a false statement or false document had been used to facilitate the Appellant's entry to the UK. He then went on to indicate that he was unable to rely upon the Sponsor to provide an honest account of his domestic circumstances which cast doubt upon the reliance he placed upon the rent receipts to demonstrate his contribution to the payment of the accommodation. The Judge then went on at paragraph 28 to indicate that whilst he was confined to consider the sole issue of accommodation, he expressed significant concerns relating to the other documentary evidence relied upon. He placed no weight on the letter from Islington Council.
8. The Judge had earlier referred to the housing report and said at paragraph 19 that the report was unreliable as there was inconsistent reference to the author in the first and third person which did not indicate the report was written by the alleged author. He

also noted that only one bedroom had been photographed despite confirmation that the property was a three-bedroom property.

9. I find that the Judge's findings of dishonesty and the use of false statements and false documents to be unsupported by the evidence and wholly unjustifiable in the circumstances.
10. I have examined the documents closely. This Tribunal often sees less than professional housing reports in support of such appeals. In fact, this example is better than most as it does contain some photographs as well as a proper description of the property. I see nothing whatever of significance in the fact that there is only a photograph of one of the bedrooms. The property is quite clearly a three-bedroom property as confirmed by Islington Council who own it. There is also a copy of the Sponsor's father's tenancy agreement. He is the sole tenant recorded in that document which is dated January 2009. It also lists the other persons who are to live in the property as being the Sponsor's mother, two sisters and himself. That document confirms the property to be a three-bedroom property. Assuming, and I do, that the adult Sponsor does not share a room with his sister then there is sufficient accommodation for the Appellant in the property whether or not the second sister resides there.
11. However, that is not the end of the matter. Adequacy of accommodation consists of more than physical space. The accommodation must be available to the Appellant as well as of sufficient size. The availability of that accommodation for the Appellant is specifically not confirmed. The secure tenancy agreement does not list her; indeed it would not as she was not her Sponsor's spouse at the time. More tellingly, the letter of 12th December 2012, clearly obtained for the purposes of the appeal specifically rules out permission.
12. Accordingly, the Appellant, on the basis of the evidence before the First-tier Tribunal could not succeed so far as the accommodation requirement is concerned. It would have been a very simple matter to obtain that evidence and present it to the First-tier Tribunal, a follow-up letter to the council specifically asking for permission for her to reside there would have been required. This was not done. Therefore, despite the Judge making an error in his findings about dishonesty, that error is not material as the Appellant cannot succeed.
13. If it is the case that the Council is prepared to give consent then the appropriate course for the Appellant is to make a fresh application with appropriate evidence. This decision should make clear for any future application that there has been no finding of dishonesty against the family.
14. The appeal to the Upper Tribunal is dismissed.

Signed
Upper Tribunal Judge Martin

Date 11th March 2014