



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/01533/2013
OA/01534/2013
OA/01531/2013

THE IMMIGRATION ACTS

Heard at Field House
On 20 February 2014
Prepared on 22 February 2014

Determination Promulgated
On 4 March 2014

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

ABDUL HAMID
RAZNA BEGM
MD SHAHRIAR AHMED

Appellants

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellants: Mr B Thomas, Legal Representative, Lumbini Solicitors
For the Respondent: Mr P Deller, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, who are citizens of Bangladesh, born respectively on 15 May 1970, 19 October 2007 and 30 March 2010, are the husband and children of the sponsor. They applied for entry clearance to allow them to join the sponsor as respectively her spouse and children with a view to settlement, but these applications were refused, because the respondent was not satisfied that the appellants could be adequately maintained without recourse to public funds. The respondent considered whether or not the refusal of permission would be in breach of the appellants' rights under Article 8 but was satisfied that it would not.
2. The appellants appealed against this decision and their appeals were heard before First-tier Tribunal Judge J Simpson, sitting at Taylor House on 19 November 2013, but in a determination promulgated eight days later, Judge Simpson dismissed the appeals. Having considered the evidence put before him, he was not satisfied that the appellants had established on the balance of probabilities that the maintenance requirements under the Rules has been satisfied. With regard to Article 8, Judge Simpson disposed of the appeal at paragraph 11 as follows:

“The appellants did not pursue any human rights applications and Mr Islam made no submissions on human rights issues. The appellants all enjoy family and private life together in Bangladesh and the respondent's decisions do not affect the enjoyment of those rights. If they wish to restore the family life they enjoyed together with the sponsor before she came to the UK, the respondent's decisions will not interfere with the family life but will facilitate its restoration.”

3. The appellants now appeal against this decision, leave having been granted by First-tier Tribunal Judge Nicholson on 17 December 2013.

Grounds of Appeal

4. In the grounds, complaint is made first that the judge did not take account of a job offer which had been made to the first appellant, and secondly that he did not take account of the offer of third party support. It is submitted that it had not been necessary for the third party sponsor to be present at the hearing because he had already submitted bank statements, and although the sponsor in his statement had stated that he had savings in his Santander Bank account, whereas the savings were in a NatWest Bank account, this was a clerical error which had been dealt with in the grounds of appeal.
5. With regard to Article 8, it is submitted that this had been raised in the grounds of appeal and accordingly should have been dealt with.
6. When giving reasons for granting permission to appeal, Judge Nicholson considered that it was arguable that the judge should have dealt with the appellants' Article 8 rights, even though it was acknowledged (at paragraph 6 of the reasons) that

“appellants are generally unlikely to succeed in a case in which the Rules are not met”. Permission was granted on the remaining grounds “notwithstanding that many lack merit”.

The Hearing

7. I heard submissions on behalf of the appellants and the respondent, which I recorded contemporaneously. As the record of these submissions is contained within my Record of Proceedings, I shall not set out below everything which was said to me during the course of the hearing, but shall refer only to such of the submissions as are necessary for the purposes of this Determination. I have, however, had regard to everything which was said to me as well as to all the documents which are contained within the file.
8. On behalf for the appellants, Mr Thomas submitted first that Judge Simpson ought to have considered the Article 8 rights of the appellants. This was because Article 8 gave the appellants a right to private and family life which was not considered. When asked by the Tribunal on what basis the judge could have found for the appellants under Article 8, he replied that the first appellant’s spouse was settled in the UK as a British person and therefore her husband and children had the right to join her. When he was asked what the purpose of the financial requirements contained within the rules was, Mr Thomas replied that these were satisfied because there was a third party sponsor. However when he was asked whether, with regard to Article 8, there was any factor which made this case different from other cases, Mr Thomas accepted there was not.
9. Regarding the maintenance requirements under the Rules, the sponsor had supplied bank statements. Even though there was a shortfall, the first appellant had a job offer. When asked how the judge had made an error of law when rejecting this evidence at paragraph 7 of his determination, Mr Thomas first said that this offer could be open until the appellants reached the UK, but then accepted that the judge’s finding in which he rejected this evidence had not contained any error of law.
10. Mr Thomas then referred to the third party sponsor, Mr Chaudhury, who had provided his bank statement and offered to give financial support. When asked by the Tribunal whether or not the judge had been entitled to consider other evidence when considering whether or not to accept the evidence regarding third party support, Mr Thomas responded that he had nothing to comment on that but basically he was stressing the error of law with regard to Article 8. However when asked again what there was in this case which would entitled the judge to find in favour of the appellants under Article 8 if their claims could not succeed under the Rules, all Mr Thomas was able to say was that there were two minor children who needed the care of their biological mother.
11. On behalf of the respondent, Mr Deller reminded the Tribunal that the Entry Clearance Officer had not been satisfied that there was enough money available to satisfy the maintenance requirements under the Rules. The sponsor had said that there were three matters which helped the case of the appellants. The first was that

third party support was available from her nephew. The judge dealt with that at paragraph 5 and gave his reasons why he was not satisfied on the evidence that this was realistic offer. The next matter was that there was a job offer which was open to the first appellant. The judge dealt with that at paragraph 7, in which he gave his reasons why he did not feel able to take that into account. The third matter concerned the increase in the sponsor's earnings. The judge dealt with that at paragraph 9, in which he gave reasons for rejecting that evidence.

12. Also, it was not clear that the wage increase which was said to be recent, had been effective before the date of decision, so in any event it could not have been taken into account even if the judge had been satisfied that it was a real increase, which he was not. So the respondent would say there was nothing wrong with the judge's reasoning with regard to his decision that the maintenance requirement had not been satisfied.
13. With regard to Article 8, while it was correct that the grounds for the original appeal raised Article 8, in very general terms, and it was obviously correct that the case involved consideration of a family, nonetheless a claim under Article 8 could only have succeeded at the First-tier Tribunal if reasons had been offered why there were considerations in this case which were strong enough to enable the appellants to succeed under Article 8, even though the requirements of the Rules had not been satisfied. The fact that no submissions appeared to have been made with regard to Article 8, as recorded by the judge at paragraph 11, meant there was simply no *Robinson* obvious apparent breach of duty to consider the appellants' Article 8 rights because the appeal could not have succeeded on that basis in any event.
14. The simple existence of children did not of itself make any sort of best interests case, as the family separation was elective anyway. In this case, as was apparent from paragraph 8 of the determination, the sponsor had come to this country originally intending to establish herself and then to be joined by her family. So her presence in the UK was a matter of choice rather than a matter of necessity.
15. Drawing these factors together, the respondent would say there was no error and even if the judge should have taken the lead on Article 8, as it was an obvious matter to be decided, there was no basis upon which a claim based on Article 8 could have succeeded anyway.

Discussion

16. In my judgement, there is absolutely no basis upon which this appeal could succeed. With regard to the claim under the Rules, the judge gave his reasons for finding first (at paragraph 5) that he could not rely on the evidence contained within the papers regarding the offer of third party support from Mr Chaudhury and then (at paragraph 7) why he was not satisfied that there was a genuine offer of employment for the first appellant. Then (at paragraph 9) he gave his reasons why he could not be satisfied there had been a genuine increase in the sponsor's earnings prior to the date of decision. There is no arguable error of law in any of these findings, and

accordingly no basis upon which they can properly be challenged now in this Tribunal.

17. With regard to the claim under Article 8, although this claim had been raised, in general terms, in the original grounds of appeal, such a claim was not particularised and it was effectively abandoned by the appellants' representative at the hearing before the First-tier Tribunal. In these circumstances, there was simply no basis upon which such a claim could possibly have succeeded, and accordingly the judge's failure to give any more detailed reasons for rejecting the claim on this basis cannot have made a material difference to the outcome.
18. However he had expressed his reasons for rejecting the claim under Article 8, the outcome would have been the same. The sponsor chose to come to this country in order to establish herself such that she could then maintain her family in accordance with the Rules. By the time of this application, as found by the judge, she had not done so, and there was no good reason why these appellants should not be subject to the requirements of the Rules.
19. In the absence of any specific reason why these appellants' cases should be considered differently from other cases where the requirements of the Rules have not been satisfied, any appeal under Article 8 had to be dismissed.
20. It follows that this appeal must be dismissed, and I so find.

Decision

The appellants' appeal is dismissed, on all grounds.

Signed

Date: 28 February 2014

Upper Tribunal Judge Craig