



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
VA/14537/2013**

**APPEAL NUMBER:
VA/14539/2013**

THE IMMIGRATION ACTS

Heard at: Field House

**Determination
Promulgated**

On: 30 July 2014

On: 12 August 2014

Prepared: 11 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

**MRS RAZIA BEGUM (1)
MR KAWSAR RASHID (2)
NO ANONYMITY DIRECTION MADE**

Appellants

and

ENTRY CLEARANCE OFFICER: DHAKA

Respondent

Representation

For the Appellants: Mr M K Noor, legal representative (Noor Law Associates)

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are nationals of Bangladesh. The second appellant is the son of the first.
2. Their applications dated 11th June 2013 for an entry clearance as family visitors were refused on 2nd July 2013 as the respondent was not satisfied that they would leave the UK at the end of the period of their visit.

3. In a decision promulgated on 1st May 2014, First-tier Tribunal Judge Walters dismissed their appeals under the rules.
4. On 17th June 2014, First-tier Tribunal Judge Cruthers granted the appellants permission to appeal on the basis that it may be arguable that the Judge gave insufficient reasons for rejecting the evidence that might have been taken as supporting the case for the appellants.
5. At the hearing before me, Mr Noor relied on two grounds. The first ground was to the effect that even though the appellants received remittances from their UK relatives, they had regular earnings in Bangladesh from family owned agricultural land. That was evident from the evidence of the sponsor who stated that his parents and brother have some agricultural land. He gets enough from it. Sometimes it is not enough. His brother's study expenses are financed by the family in the UK.
6. The Judge however had misdirected himself in finding that the family in Bangladesh were "almost entirely dependent on remittances from the UK [19]".
7. Mr Noor relied on the decision of **Ogunkola v SSHD [2002] UKIAT 0238**, where the Tribunal held that the comments made in an earlier case of **Blair (1997)** were still valid.
8. Accordingly, if lack of economic incentive to return to the country of origin was sufficient to found a refusal of a visit application then no person living overseas whose standard of living there was lower than that prevailing in the UK could ever come on holiday here, or visit relations settled here. That is not the law. The Tribunal in **Ogunkola** adopted that comment.
9. The second ground was that the Judge's determination, reflected at paragraph 20 and concerning the appellant's intention to depart from the UK was arguably based upon mere suspicion. That is contrary to other quoted authority. Cases should not be decided on the basis of suspicion as to intentions.
10. He submitted that no findings of credibility were made. Further, although the appellant did not produce a bank statement, her husband had such a statement.
11. There had also been failure by the Judge to consider the fact that the appellants had their own family in Bangladesh. There was a husband and son remaining there. She has two daughters in the UK whom she would wish to see.
12. On behalf of the respondent, Ms Everett accepted that it was wrong to find that just because a person may be financially not well off, there was

no incentive to return. She referred to paragraph 2 of the witness statement of Mrs Dipa Begum before the First-tier Tribunal.

13. Ms Begum is the sponsor. She stated that her aunt has no bank account, but her uncle does. They have transferred money on several occasions. It was therefore not clear why the majority of the income came from the UK.
14. At paragraph 19, the Judge also stated that he could not understand why the first appellant would seek to undertake the journey to the UK. He would have thought that it would have been preferable for her family in the UK to visit her in Bangladesh.
15. There was no record of this ever having been put by way of cross examination to the sponsor. It had not been raised by the respondent.
16. Accordingly, although the Judge's reasoning relating to financial circumstances could be sustained, Ms Everett accepted that 'the balance is tipped' when regard is had to the Judge's 'finding' that her "very weak health condition" made it preferable for her family to visit her in Bangladesh.
17. Accordingly, Ms Everett accepted that that finding, which was not supported by any evidence, constituted a material error. She accepted that the decision would have to be re-made.
18. I accordingly set aside the determination and re-make the decision.
19. I have had regard to the bundle of documents produced by the appellants in anticipation of this hearing. There was also further documentation which the appellants sought to produce pursuant to Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. This consisted of the death certificate and copy of the British passport of Somokjan Bibi, (the appellant's late mother) and an affidavit from Mr Hafizur Rahman with supporting documents.
20. Ms Everett did not oppose the production of such evidence.
21. Mr Rahman stated in his affidavit that he is a Bangladeshi national. He has been self-employed as a farmer for the last 30 years and owns six acres of farming land. His house has five bedrooms and two sitting rooms. He lives there together with the appellants. The appellant is a housewife and his son is in full time education.
22. His six acres of land is cultivated with a substantial market value of 60 lakh.

23. He has regular earnings from his family owned land where he produces rice, vegetables and seasonal crops. He is a self employed farmer and is financially solvent.
24. In addition to his earnings, he and his wife receive remittances from their son and other relatives settled in the UK on an occasional basis as a gift. He is not dependent on remittances from them. He has a bank account at the Sonail Bank. He regularly maintains and deposits his earnings through the account after meeting family expenses.
25. His wife and son have been sponsored to visit the UK for three months by his son, Mr Rashid and niece. Both are settled in the UK.
26. The particulars of his Islami Bank account have been produced as well as documents proving his ownership of land.
27. The appellant's sponsor, Ms Dipa Begum, gave oral evidence. She adopted her witness statement at pages 19-21, dated 17th July 2014. She is a British citizen. She is employed. She is a joint sponsor of the appellants who are her aunt and cousin.
28. Her aunt is a housewife and is dependent on her husband, Mr Rahman, a self- employed farmer. He has regular earnings from his family owned farm. They occasionally send money to his account. The family is not in any way fully dependent upon such remittances.
29. The purpose of the visit is "purely emotional and to maintain family contact." Her aunt wishes to visit and say prayers for her late mother, Mrs Somokjan Bibi. She passed away in 2008. A copy of the death certificate has been provided. She is looking forward to seeing her grandchildren and other close family members. It would be difficult and expensive for them to travel to Bangladesh.
30. Her aunt is in her old age and is unable to travel to the UK on her own. Accordingly, her son is accompanying her to provide support and assistance.
31. She had also made a witness statement before the First-tier Tribunal dated 22nd March 2014. In that statement, as noted by the First-tier Tribunal Judge, she stated that her aunt is "very weak (sic) in health condition, that is she cannot travel to UK alone and as a woman does not travel alone."
32. In cross examination, Ms Everett asked about her aunt's illness. She stated that she is losing weight. She has not seen them in ten years. She does not have a health condition. She loses weight. She is not diabetic. She needs someone to travel with her.

33. She was asked whether, if she alone were granted entry clearance, she would travel here. She could not come by herself. She needs someone to travel with her. She would not be confident to come alone.
34. Her son, who wished to travel with her, is studying in Bangladesh. Evidence of that has been provided at the end of the bundle A showing that he is registered at a Madrasa. A "testimonial" signed and dated on 12th June 2014 shows that he successfully passed an examination held under the Bangladesh Madrasa Education Board.
35. He will return to Bangladesh. They are coming to see relatives. If they refuse to return, she would call the UKBA. Her record and good name would be involved.
36. This is the first time they have applied. The appellant wants to see her granddaughter. Ms Begum said that she was last in Bangladesh in 2005. She is a single mother.
37. She is quite confident that they will return. They have to. If not, she will call the UKBA. Her aunt cannot read or write.
38. Her co-sponsor is the second appellant's brother. He married her sister. He has been here for seven to eight years.

Submissions

39. Ms Everett relied on the reasons for refusal. There are concerns about the aunt's ill health. It is not clear why it is "weak." It jars and does not quite fit in with the evidence. There are accordingly still credibility problems raised by the unexplained reference to the aunt's condition.
40. On behalf of the appellants, it was submitted that regard must be had to the evidence and documents as a whole. The health condition is not a serious one. She has lost weight.
41. The basis for the refusal still amounts to suspicion that the second appellant might stay. However, he is studying. This is a purely 'emotional visit'.

Findings and Determination

42. Since the appeal before the First-tier Tribunal, the appellants have produced a substantial bundle of documentation relating to the financial circumstances of the appellants, including documents and a statement on affidavit from her husband and family in Bangladesh. In addition, a certificate relating to the second appellant's continuing education has been produced.

43. As noted by Ms Everett there is something odd about the reference to her aunt being “very weak in health condition.” However, paragraph 4 of her earlier statement contains the explanation that she is weak in health condition, that is, she cannot travel to the UK alone.
44. I found the evidence of the sponsor to be credible. She explained that the appellant wishes to visit the grave of her deceased mother. The appellant would not be able to travel to the UK alone. She cannot read or write. She also wants to see her grandchildren and stay for a few days with them.
45. I also accept her evidence that she would report the appellants to the UKBA in the event that they sought to remain longer than permitted.
46. In these circumstances, I have no reason to suppose that the intentions of the appellants are anything other than that which they have given. I have no reason to suppose, having regard to the evidence as a whole, that there is any ulterior motive to this trip. They have strong social and economic circumstances in Bangladesh. Accordingly, they have shown that they have the incentive to return.
47. Having regard to the evidence as a whole, I find that the decision of the respondent was not in accordance with the law and the immigration rules.

Decision

Having set aside the decision of the First-tier Tribunal, I re-make it allowing the appellants' appeals.

No anonymity orders made.

Signed

Date 11/8/2014

C R Mailer
Deputy Upper Tribunal Judge