



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

Appeal Number: VA/19502/2012

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court

**Determination
Promulgated**

On 11th September 2014

On 22nd September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR SIDDIK AHMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellant: No legal representation
For the Respondent: Mr David Mills (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Chohan, promulgated on 20th September 2013, following a hearing at Sheldon Court on 16th September 2013. In the determination, the judge dismissed the appeal of Siddik Ahmed. The Appellant subsequently

applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Bangladesh, who was born on 16th August 1987. He appealed against the decision of the Respondent Entry Clearance Officer dated 26th April 2012 to refuse his application to visit his sponsoring cousin, Mr Aref Ahmed, and two other cousins, Mr Katar Ibn Shahin and Mouhammed Saleh, under paragraph 41 of HC 395.

The Appellant's Claim

3. The Appellant's claim is that he is single, lives with his father, and his two younger sisters. He is self-employed, and owns his own business, and has agricultural land. He wishes to come to the UK on a family visit.

The Judge's Findings

4. The judge observed "how, when one considers the documentary evidence as a whole, it is not easy to follow" (paragraph 6). However, he held that he was satisfied with the personal and financial circumstances of the Appellant in Bangladesh (see paragraph 6). The judge had more difficulty with the question of the relationship of the Appellant with his cousins that he was visiting in the UK. The judge went on to observe that the Appellant had been given a full right of appeal and "it was made clear that upon any appeal the Appellant would be expected to show evidence of his relationship" but that on this occasion the Sponsor has "simply reaffirmed" the relationship and that "no documentary evidence has been submitted" with respect to the relationship. The failure of the Sponsor, Mr Aref Ahmed to attend with "no satisfactory explanation for his non-attendance" was telling because it was clear that the relationship could not be proved (see paragraph 7). The judge went on to hold that "it is not clear who is actually sponsoring the Appellant and the fact that Mr Ahmed failed to attend the hearing" was fatal (see paragraph 8).

Grounds of Application

5. The grounds of application state that the judge was wrong to have dismissed the appeal in the circumstances that he did.
6. On 29th January 2014, permission to appeal was granted on two grounds. First, that the judge made no actual finding as to whether the Appellant was related in the manner claimed. Second, although the judge held that the Appellant was not generally seeking entry as a visitor he made no reference to the evidence which caused him to reach that conclusion.

The Hearing

7. At the hearing before me on 11th September 2014, Mr Aref Ahmed, the Sponsor, attended in person. He explained that this was the fourth time

that he had come to the appeal hearing. The first time he attended in London for an appeal hearing. He could not understand why the judge had taken the view that he had chosen not to attend. He explained that when he arrived at the hearing in Birmingham on 16th September 2013 the official at the reception told him that there was no need for him to go into the court room. He said he was there to give evidence. However, he was prevented from doing so.

8. For his part, Mr Mills submitted that if it indeed was the case that there had been an administrative error preventing the Sponsor from attending the hearing and giving evidence about his relationship then there had clearly been a failure of a duty to afford a fair hearing to the Appellant and in these circumstances the matter should properly be remitted back to the First-tier Tribunal so that Mr Aref Ahmed can give evidence. However, it must be born in mind that both the Upper Tribunal Judge, UT J King, and Mr Chohan, the First-tier Tribunal Judge, were baffled by the extent of the documentary evidence submitted, which was wholly disorganised, and difficult to follow. Mr King submitted that there was today before this Tribunal a single bundle, but it referred to the Appellant's financial situation, and there was still no evidence whatsoever in relation to the family ties between the Sponsor and the Appellant. He had to provide that evidence in a bundle that could be followed.

Error of Law

9. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that it falls to be set aside. My reasons are as follows.
10. The Sponsor, Mr Aref Ahmed did attend the hearing before Judge Chohan, I find, but was prevented from entering the court room by the official at the reception desk. The attendance of the Sponsor was vital to the determination of the issues before Judge Chohan.
11. Indeed, Judge Chohan held that, but for the non-attendance of Mr Aref Ahmed, he may well have been satisfied that the claimed relationship existed between the parties, so as to enable him to find in favour of the Appellant on this issue. Judge Chohan was satisfied about the financial circumstances. He was not satisfied about the family relationships.
12. In the circumstances, this clearly was a material issue before the judge, but its materiality was not allowed to be assessed on the evidence, because Mr Aref Ahmed was prevented from going into the court room. In these circumstances, under Practice Statement 7.2, the only proper course of action is for this matter to be remitted back before a First-tier Tribunal Judge, other than Judge Chohan, to be determined de novo.
13. The Appellant is directed to leave in place his last submitted bundle of some sixteen pages that deals with his financial situation. He is directed, however, to submit a further short bundle that deals with his relationship

with his cousin's in the UK. This must be done in a single stapled bundle that is paginated with page numbers, and which is easy to follow, so that a person hearing it can note the details of the relationship.

14. A failure to submit this evidence may be construed against the Appellant. That will be a matter for the judge at first instance to determine whether the matter arises before him. This appeal is allowed to the extent that it is remitted back to the First-tier Tribunal.

Decision

15. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal to be determined de novo by a judge other than Judge Chohan with the view to determining the evidence relating to the relationship of the Appellant with the Sponsor, and making a final decision as to whether the Appellant can discharge the burden of proof that is upon him under paragraph 41 of HC 395.
16. No anonymity order is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

20th September 2014