Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: VA/16130/2013
VA/16131/2013
VA/16132/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 May 2015	**On 9 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MRS SHIPA BEGUM (FIRST APPELLANT)
MISS MARUFA AKTER JOLY (SECOND APPELLANT)
MASTER MD TUFFAJAL HUSSAIN TAKBIR (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellants: Mr M Mustafa, Legal Representative, Kalam Solicitors
For the Respondent: Mr N Bramble, Specialist Appeals Team

DECISION AND REASONS

1. The appellants appeal to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Jessica Pacey sitting at Sheldon Court, Birmingham on 30 June 2014)

dismissing their appeals against the decision by an Entry Clearance Officer (Dhaka) to refuse to grant them entry clearance as family visitors. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the appellants should be accorded anonymity for these proceedings in the Upper Tribunal.

2. The first appellant is the mother of the second and third appellants, who are children under the age of 18. As the first appellant is the main appellant in this appeal, I shall hereafter refer to her simply as the appellant save where the context otherwise requires.

3. The appellants are all nationals of Bangladesh. On 10 July 2013 an Entry Clearance Officer in Dhaka (post reference Dhaka\639602) gave his reasons for refusing the appellant's application for entry clearance to visit the United Kingdom for a period of two weeks. The children were refused leave in line with their mother. Whilst he acknowledged that her proposed trip to the UK was to be sponsored by another party (her brother in the UK), it was reasonable to take into account her personal, social and economic circumstances in Bangladesh as part of his overall assessment of her application. She said she had been employed part-time since 1 July 2012 with Akota Department Store, earning BDT30,000 per month. There was evidence of these payments going into her bank account, but he noted that during a telephone call to her UK sponsor, he stated that this business was owned by her husband. She had not shown any evidence of his business and financial circumstances to satisfy him that Akota Department Store did in fact employ her, and that the funds in her bank account originated from that business. He further noted that her own bank statement showed transactions that could only be reconciled to her claimed income from February 2013, and not from July 2012 when she stated she started her employment. He therefore had to question if these deposits had been made solely to support the application. Without any further evidence, he was not satisfied that her income was as stated or that she was employed as claimed.

4. In the light of the above, he was not satisfied she was genuinely seeking entry as a visitor for a limited period as stated by her, not exceeding six months, or that she intended to leave the United Kingdom at the end of the period of the visit as stated by her.

5. The Entry Clearance Officer was also not satisfied that the appellant would maintain and accommodate herself and any dependants adequately out of resources available to her without recourse to public funds or taking employment, or that she would, with any dependants, be maintained and accommodated adequately by relatives or friends. He was further not satisfied that she could meet the costs of the return or onward journey.

6. His reasoning was that during a telephone conversation with the sponsor, he stated that he supported his wife and two children on his wage as a chef with a restaurant. He noted from the submitted bank statements in the sponsor's name that he was reliant on public funds to bolster his income each week. Given his responsibilities in supporting a family of four on a low wage, funding a visit by the appellant and her

two children would impose a considerable additional financial burden upon him. He was not satisfied this increased financial outlay was commensurate with his current economic circumstances, and that such funds would actually be available to her in the United Kingdom.

The Grounds of Appeal

7. In the grounds of appeal to the First-tier Tribunal, it was argued that the decisions were unreasonable, unjustified and against the weight of the evidence.

The Entry Clearance Manager's Review

8. On 8 May 2014 the Entry Clearance Manager gave his reasons for upholding the refusal decision. The appellant stated that the sponsor would cover all the costs associated with her visit. But he noted that the sponsor's declaration, while covering maintenance and accommodation, stated that the travel costs would be covered if required. He was not satisfied the concerns of the ECO had been adequately addressed in the grounds of appeal.

9. As to the appellant's circumstances, the only evidence provided by the husband was a parental consent letter. The concerns as to the origin of the deposits into the appellant's bank account had not been adequately addressed.

The Hearing Before, and the Decision of, the First-tier Tribunal

10. At the hearing before Judge Pacey, the sponsor gave oral evidence. In her subsequent decision, Judge Pacey summarised the case for the appellants in paragraph 9. They would leave the UK at the end of their visit since their husband/father was in Bangladesh, and the children were in full-time education. Evidence of the appellant's earnings had been provided, and the sponsor was in a position to maintain and accommodate the appellants during their two week stay as he had over £5,000 in savings.

11. The judge went on to dismiss the appeal for the reasons she gave in paragraphs [12] to [17]. In paragraph [12], she said: "Some documents have been provided of her husband's business, but these were not in my view adequate to demonstrate that it generated an income sufficient to support the appellants".

12. In paragraph [13], the judge observed that the children were aged 10 and 13 and hence, in her view, were young enough to engage with the UK education system. In paragraph [14], she held that the appellant's savings were not a sufficient incentive for her to return to Bangladesh since savings could be accessed from abroad or could be transferred to a UK financial institution.

13. In paragraphs [15] and [16], she found that the costs of maintaining the appellants would not be too great for someone in the sponsor's financial position to bear. However, although the sponsor said he would pay for the appellants' flights, he said at the hearing that he had no idea how much they would cost:

> Flights for three people from and to Pakistan would not, it is reasonable to suppose, be cheap and I do not find it credible that if he had agreed to pay the air fares the sponsor would not wish to ascertain how much it would cost him, both to assess whether he could afford it and whether he would be able to withdraw sufficient money from savings at the appropriate time.

14. In paragraph [17], the judge said that, on the balance of probabilities and on the totality of the evidence before her, she therefore found that the appellants had not discharged the burden of proof.

The Application for Permission to Appeal

15. The appellant applied for permission to appeal, raising three grounds. Ground 1 was that the judge had failed to give adequate reasons for finding at paragraph [12] that the documents relating to her husband's business did not adequately demonstrate that the business generated an income sufficient to support the appellants.

16. Ground 2 was that the same finding was perverse/irrational because of the documentary evidence made available at the First-tier hearing, which the representatives went on to list.

17. The judge had also been perverse in her line of reasoning in paragraph [16]. It was unreasonable for her to make a negative assessment of the sponsor's credibility on the sole basis that he could not instantaneously quote air ticket costs at the hearing, particularly as he was a lay person who had no specialist knowledge of the airline industry. Also, the sponsor at all times has held the majority of his savings in his current account, which meant that he could have withdrawn his savings as and when required. Further, the costs of the appellants' return journey would clearly have been affordable for the sponsor given that he had savings in excess of £5,000.

18. Ground 3 was that the judge had misdirected herself in law in her finding at paragraph [13] that the children would not return to Bangladesh because they were young enough to engage with the UK educational system. This was an assumption based on doubts and suspicion, instead of on evidence.

The Grant of Permission to Appeal

19. On 20 August 2014 Judge McWilliam granted permission to appeal for the following reasons:

> There is some merit in the grounds. It is arguable that the judge applied a too high standard of proof, despite having properly directed herself at [3], particularly in relation to the income generated from the appellant's husband's business.

The Rule 24 Response

20. On 27 August 2014 Mr John Parkinson of the Specialist Appeals Team settled a Rule 24 response opposing the appeal.

The Hearing in the Upper Tribunal

21. At the hearing before me, I reviewed the documents that were available to the First-tier Tribunal pertaining to the husband's business. Mr Mustafa accepted that they did not show the turnover of the business, or how much profit (if any) the business generated. On behalf of the Entry Clearance Officer, Mr Bramble submitted that the documents disclosed no causal link between the cash deposits into the appellant's bank account (which were not in any event regular, monthly deposits) with employment in the husband's business. In reply, Mr Mustafa said this did not matter, as the judge had simply not given adequate reasons for finding against the appellants. Also, the judge's approach was erroneous in law having regard to the following observation in **Ogunkola v ECO Lagos [2002] UKIAT 02238** where the Tribunal held as follows:

> If lack of economic incentive to return to the country of origin were sufficient to found a refusal of a visit application, then no person living overseas whose standard of living was lower than that prevailing in the United Kingdom could ever come on holiday here, or visit relatives settled here. That is not the law.

Discussion

22. The refusal was squarely based on the proposition that the origin of the deposits into the appellant's bank account was not credibly demonstrated, with the consequence that the Entry Clearance Officer was not satisfied that her income was as stated or that she was employed as claimed. This was reasonably relied on by the Entry Clearance Officer as calling into question whether the appellant was a genuine visitor.

23. Although the Entry Clearance Manager reiterated the Entry Clearance Officer's concern on this issue, questioning whether the deposits into the appellant's bank account may have been made purely to support the submission of the visa applications, the documentation provided for the appeal hearing did not go any way towards filling the evidential void.

24. While the documents listed in ground 2 disclosed further information about the husband's business, they did not show that the appellant was employed by the husband in the business, or that she was receiving an income from such employment. Apart from the fact that they indicated that the business was trading, they said nothing about the financial circumstances of the business, which the Entry Clearance Officer had expressly put in issue in the refusal decision. Hence, the documentation did not show that the business generated income sufficient to support the appellants. In the course of oral argument, Mr Mustafa conceded this, and so one limb of ground 2 falls away. It was not perverse or irrational for the judge to find that the documents were not adequate to demonstrate that the business generated an income sufficient to support the appellants.

25. Mr Mustafa's subsidiary argument is that this finding is irrelevant, as there is no requirement for the appellants to be well settled in their home country, and a lack of economic incentive to return to the country of origin is insufficient to found a refusal of a visit visa application. But it was not the appellant's economic circumstances per se that triggered the refusal under subparagraphs (i) and (ii) of paragraph 41. It was the asserted unreliability of the appellant's account of her economic circumstances which reasonably led the Entry Clearance Officer and Entry Clearance Manager to question whether the appellant was a genuine visitor. The burden of proof rested with the appellant on appeal to bring forward evidence which addressed their concerns, and it was open to the judge to find that the documentary evidence provided in the appellant's bundle was inadequate for this purpose.

26. I return to ground 1, which is that the judge failed to give adequate reasons for her finding at paragraph [12]. I consider the judge's reasoning was adequate in the context of the central issue which had been raised in the refusal decision, and also addressed in the ECM review. Moreover, the complaint in ground 1 is not that the judge failed to give adequate reasons for explaining the *implications* of her finding at paragraph [12], but simply that she failed to give adequate reasons for the finding itself. But this does not stand up to scrutiny. The finding is that it is not shown that the husband's business generates an income sufficient to support the appellants. The reasoning is that the documents relating to his business do not adequately demonstrate this. This is a good enough reason, and it is not disputed.

27. A separate point is raised in ground 2 in respect of paragraph [16]. The burden rested with the appellant to show, among other things, that at the date of decision she could meet the cost of the return or onward journey. As the appellant could not fund the trip herself (or had not proved that she could do so), the extant question for the judge was whether at the date of the refusal decision the sponsor was both able and willing to pay for return air tickets for the three proposed visitors, as well as incurring the much more modest cost (as found by the judge) of maintaining and accommodating them in his household for two weeks. The fact that the sponsor had savings in excess of £5,000 did not in itself establish that at the date of the decision the sponsor was willing to spend a substantial proportion of this money on the appellants' air travel to and from Bangladesh. The fact that the sponsor had not applied his mind to the costs of funding the appellants' air travel was not consistent with the proposition that at the time of the refusal decision he was willing to spend a substantial part of his savings on the appellants' air travel. It was open to the judge to draw an adverse inference from the fact that the sponsor had not applied his mind to the costs of funding the appellants' air travel, and thus to find that subparagraph (vii) of paragraph 41 was not satisfied.

28. Turning to ground 3, the judge's finding at paragraph [13] also does not disclose an error of law. In paragraph [13], the judge was addressing one of the arguments advanced at the hearing by Mr Mustafa which was that the appellants had an adequate incentive to return to Bangladesh on completion of a short two week visit, as the two children were in full-time education. It was open to the judge to reject that consideration as carrying significant weight on the ground that the two children

were young enough to engage with the UK education system instead. In short, the judge was saying that the pull factor of the children returning to their full-time education in Bangladesh was counterbalanced by the pull factor of the children continuing their full-time education in the UK. The point would have been stronger if the judge had added that the free education which would be available to the children in the United Kingdom was probably superior to the free education, if any, that was available to them in Bangladesh. Nonetheless, the pull factor of free education in the UK is, like the pull factor of free treatment on the NHS, a recognised phenomenon; and as a decision maker in a specialist Tribunal, the judge was entitled to take judicial notice of it.

29. Even if I am wrong about that, the other reasons advanced by the judge for dismissing the appeal are sufficient to sustain the adverse decision.

Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

Signed Date

Deputy Upper Tribunal Judge Monson