



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

Appeal Number: VA/17550/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 5 February 2015
Oral judgment**

**Decision & Reasons
Promulgated
10 February 2015**

Before

UPPER TRIBUNAL JUDGE COKER

Between

ENTRY CLEARANCE OFFICER

Appellant

and

**DILWARA BEGUM
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Miss A Holmes, Home Office Presenting Officer

For the Respondent: Mr M Bhuiyan, Legal Representative, Universal Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Entry Clearance Officer against a decision of First-tier Tribunal Judge Beckford following a hearing on 8 September 2014. Mrs Dilwara Begum had sought entry clearance as a visitor to visit her husband who is present and settled in the UK. She was refused entry clearance because the Entry Clearance Officer was not satisfied that she was a genuine visitor who intended to leave the UK at the end of her visit. She had previously made an application for settlement which had been

refused in 2011. Her husband has lived in the UK since 1971. He suffered a heart attack in 2012 and is suffering from continued ill health. But he has visited Bangladesh since the heart attack.

2. The Entry Clearance Officer sought permission to appeal on the grounds that although the judge gave reasons for accepting that Dilwara Begum's daughter intends to leave the UK at the end of her visit because she had what were described as demanding family ties, the judge was silent on the first appellant's intentions or anything that might act as an incentive for such an intention. There is reference in the grounds to the judge's findings in paragraph 36 that "I have hesitantly come to the conclusion that the appellants have satisfied the burden of proof and that these appeals should succeed".

4. The Entry Clearance Officer asserts that the judge has failed to give any reasons as to why he finds that the first appellant i.e. Mrs Dilwara Begum is a genuine visitor who intends to leave the UK at the end of her visit, particularly in the light of her failed settlement application.

5. Permission was granted on the grounds

"The judge's reasoning is indeed inadequate - his conclusion at paragraph 36 does not mention the first appellant at all. There is no attempt logically to reconcile the conclusion that she had satisfied the burden of proof with his findings in the two preceding paragraphs that appears adverse to her credibility.

There is therefore an arguable error of law disclosed by the application."

6. The conclusions of the First-tier Tribunal Judge are set out in paragraphs 32 - 37. He starts by referring to an earlier decision which settles previous disputes as to the relationship between Dilwara Begum and Mr Anwar Ali. He finds as fact that Dilwara Begum has discharged the burden of proof as regards maintenance and accommodation and the cost of the journeys to and from the UK. He identifies that the sole issue before him is the intention of Dilwara Begum to return to her home at the end of her proposed short stay.

7. He sets out in paragraph 33 that there are a number of favourable indications upon which the appellants can rely. Firstly that there is no reason to think that the appellants or the sponsor are anything other than law abiding (and the case of the sponsor hard working) citizens of their respective countries. There is no suggestion that they have breached immigration law. They have made this application in a perfectly proper way and have put before the Tribunal a bundle of evidence.

8. The judge accepts that Mr Anwar Ali is indeed suffering from ill health and he notes that Mr Anwar Ali's last visit to Bangladesh was after he had had

a heart attack in 2012. He says that he is not entirely persuaded that he could not visit Bangladesh despite his ill health.

9. It is incorrect for the Entry Clearance Officer to assert that there is no reference by the judge to Dilwara Begum. In paragraphs 32 and 33 the judge refers specifically to the appellants in the plural, which is both Dilwara Begum and her daughter who was successful in the appeal.
10. In paragraph 34 the First-tier Tribunal Judge identifies issues which can be categorised as adverse to Dilwara Begum. Firstly, that the way in which the relationship between Mr Anwar Ali and his wife has developed over the years is mysterious. Secondly, that the answer to the Entry Clearance Manager's observation that he could not see any evidence in Mr Anwar Ali's travel to Bangladesh between 1994 and 2012 had not been forthcoming. He also refers to there having been a previous application by Dilwara Begum to come to settle in the UK and he notes that that previous application suggests that Dilwara Begum has "indeed an interest in coming to live in the UK and raised the possibility that they may still have such an interest".
11. The judge at the same time quite properly says "It should not automatically follow from such a failed application that a person cannot later successfully apply to make a family visit where there appears to be a proper justification."
12. The First-tier Tribunal Judge goes on to then recognise that it is difficult to reconcile and resolve those competing strands. He states that if he had been provided with a better explanation of the apparent lack of contact the resolution of the tensions might have been easier.
13. However in paragraph 36 he says:

"Looking at the circumstances the two appellants including the evidence which I have accepted that the younger appellant has demanding family ties in Bangladesh, I have hesitantly come to the conclusion that the appellants have satisfied the burden of proof and that these appeals should succeed."
14. The judge has clearly weighed the competing issues. He set out the evidence and findings in Dilwara's favour. He has identified the issues that are adverse to her. There is nothing else that has been identified that should have gone in the balance that the judge has failed to consider. It is a difficult case. There are no other reasons that he could have given. He has taken account of the burden of proof and he quite rightly acknowledges that it is a hesitant conclusion. The fact that it is a hesitant conclusion does not render it any less of a conclusion; there is no allegation or assertion by the Entry Clearance Officer that the judge failed to apply the correct standard or burden of proof. It is difficult to understand what other reasons he could have given other than perhaps to

set out his paragraph 36 as two separate paragraphs, the result of which would have been the same.

15. Miss Holmes very properly acknowledged that it would be difficult to say that the decision is perverse and confirmed that the Entry Clearance Officer did not seek to rely on that ground of appeal.
16. Although many judges would not have reached this conclusion, and many judges would have separated out the last paragraph of the determination in order to make it clearer that he had weighed everything separately for each appellant, it is sufficiently plain when the determination is read as a whole, particularly when paragraphs 33 to 36 are read, that the judge has very properly identified, set out and weighed the evidence and information before him and has reached a conclusion that was open to him.
17. I therefore dismiss the appeal of the Entry Clearance Officer. The decision of the First-tier Tribunal stands.

Conclusion

There is no error of law in the determination of the First-tier Tribunal such that the decision is set aside to be re-made.

The appeal is dismissed; the determination of the First-tier Tribunal stands.

No anonymity direction is made.

Signed

Date **5 February 2015**

Upper Tribunal Judge Coker