



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/05397/2014
OA/05394/2014
OA/05403/2014
OA/05402/2014

THE IMMIGRATION ACTS

Heard at North Shields
On 8th March 2016

Determination Promulgated
On 27th April 2016

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

AA AND OTHERS
(ANONYMITY DIRECTION MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellant: Mr Morgan Read, Counsel, instructed by Newcastle Legal Centre
For the Respondent: Mr John Kingham, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellants are children or young adults.
2. The appellants appeal against the decision of the First-tier Tribunal dismissing the appellants' appeals on immigration and human rights grounds against a decision taken on 16 March 2014 refusing entry to join their parents in the UK.

Introduction

3. The appellants are citizens of Bangladesh born in 1995, 1997, 1999 and 2001. They sought entry clearance to join their parents, SB who has a certificate of abode for the UK and NH who has limited leave to remain for 27 months as the husband of SB.
4. The respondent refused the applications on financial and accommodation grounds under paragraph 301 of the Immigration Rules. The claimed combined parental income of £31,727 was not accepted and the respondent did not accept that NH lived at the claimed family home in South Shields, thereby leading to the conclusion that documents in relation to the claimed family home were not reliable.

The Appeal

5. The appellants appealed to the First-tier Tribunal and the parents attended an oral hearing at North Shields on 23 January 2015. The judge found that the parents were earning what they claimed but was not satisfied that they were living together at the claimed family home. There was no doubt that the accommodation at that address would be adequate to house all of the appellants but the judge could not be satisfied that there was an adequate income going into that household to maintain the appellants. The judge was not satisfied that NH's earnings were available for the maintenance of the appellants.

The Appeal to the Upper Tribunal

6. The appellant sought permission to appeal on 24 February 2015.
7. Permission to appeal was granted by First-tier Tribunal Judge Bird on 15 April 2015 on the basis that it was arguable that the judge had made contradictory findings and had given no adequate reasons for the rejecting the evidence which showed that the parents were living at the same address. All grounds were arguable.
8. In a rule 24 response dated 3 June 2015, the respondent sought to uphold the judge's decision on the basis that the witness evidence was unsatisfactory, the tenancy agreement was only in the name of SB and there was only one piece of documentary evidence from the council referring to NH residing at the claimed family home.

9. Thus, the appeal came before me.

Discussion


10. Mr Read submitted that there was no dispute about the marriage and there was a presumption that the parties would be living together. Balance of probability was satisfied. There was a reasonable explanation for the fact that NH was registered to vote at a different address. The letter from the council clearly supported the proposition that the parents were living together at the time. No grounds or reasons were given by the judge for rejecting the letter from the council as unreliable.
11. Mr Kingham submitted that the presumption of marriage was not raised at the refusal stage. The document verification report showed that NH was not living at the same address. The judge carefully considered all of the documents and the conclusions drawn were properly open. The further evidence now submitted was not before the judge and did not create an error of law. There was no contradiction in the judge's findings. There would have been enough income if the parents were in the same household but they were not living together.
12. Mr Read submitted in response that the judge gave insufficient reasons for finding at paragraph 13 that the parents were not living together. The accommodation was adequate on the basis that the parents were living together.
13. I find that the judge made a series of positive findings in favour of the appellants. The joint parental income was sufficient to meet the requirements of the Rules and the accommodation was, in itself, adequate to house the appellants. There were bank statements with NH's name at the claimed family home and a communication from HMRC to that address. There was a letter from the council stating that the writer had been advised that NH was living at the claimed family home. However, the judge was also not satisfied that there was adequate income going into the claimed family home to maintain the appellants. I find that the judge's reasoning is somewhat tortuous and agree with the submission that the judge has not given adequate reasons for rejecting the strong evidence that NH was living at the claimed family home at the date of decision.
14. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeals involved the making of an error of law and its decision cannot stand.
15. I have not found it necessary to hear further evidence before re-making the decision. The judge was concerned about the fact that NH appeared on the electoral roll at a different address but I am satisfied that the parents gave an adequate explanation for that fact; namely that they previously lived together at the different address and moved together to the claimed family home in 2013. The judge was concerned that different dates were given for the move to the claimed family home; namely May 2013 in the grounds of appeal, July 2013 by SB and August 2013 by NH. I find that

the grounds of appeal were plainly in error and there was no significant difference in the dates given by SB and NH.

16. The letter dated 7 October 2013 from the council clearly refers to NH and SB living together at the claimed family home. That address is a four bedroom council house which is suitable for the parents and the appellants. It would be unusual for the parents to have organised a four bedroom council house and made the application for entry clearance for the appellants if they were not living together and wishing to live as a family with their children. There is nothing in the documents to suggest that NH was not living at the claimed family home. I am satisfied that the only sustainable conclusion from the evidence is that NH and SB were residing together at the date of decision and that the requirements of the Rules were met.

Decision

17. Consequently, I set aside the decision of the First-tier Tribunal. I remake the decision by allowing the appeals under the Immigration Rules.

Signed 

Date 22 April 2016

Judge Archer

Deputy Judge of the Upper Tribunal