



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00346/2015

THE IMMIGRATION ACTS

Heard at Bradford
On 18th April 2017 and 10th July 2017

Decision & Reasons Promulgated
On 18th July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DONYA ZARE
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr Mills, Home Office Presenting Officer

For the Respondent: Mr Vaughan instructed by NBS Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Henderson made following a hearing at Bradford on 21st September 2016.

Background

2. The claimant is a citizen of Iran born on 19th November 1993. She appealed against a decision to refuse her a family permit to join her stepmother as the family member of an EEA national exercising treaty rights in the UK.

3. The sole issue before the judge was whether the appellant could meet the requirements of Regulation 7(1)(b)(ii), namely a dependant of the EEA national or her spouse, the claimant's father.
4. The judge started her consideration with a reference to the fact that the claimant's younger siblings had already made a successful application and were in the UK. They were both under the age of 21. She recorded that the claimant was studying English at university and the evidence that all her expenses were paid for by her father. The judge noted that the evidence about the amount of money which was being sent for the claimant's support was discrepant since the claimant's father and stepmother gave different accounts of the actual sums being sent and the frequency of remittance. She noted that there was no documentary evidence to support the oral evidence. The explanation was that no receipts could be provided because Iran was still under sanctions. However, her understanding was that most of the sanctions were lifted earlier this year and the articles provided recording the difficulty of sending money to Iran related to the USA.
5. She then concluded as follows:-

"The position I conclude is that the appellant's father supports his daughter as it has been accepted that he supported his two younger children in the past. The appellant relies on this income to attend university and to support herself in Iran. I am unclear who supports her mother and the appellant's father referred to his poor relationship with her. I accept that the appellant's father has been sending money by unofficial means in the form of cash from his business. He referred to this and to receiving receipts. He is clearly reluctant to provide receipts. I do not accept that this is because he is not sending the money but because as he referred to many of the transactions not being direct and I accept that this may result in problems with the authorities in Iran. This does not mean that he is not supporting his daughter. I accept that he has been supporting her and continues to support her financially. He is her natural father and it is more likely than not that he has this responsibility as he has with his younger children. So far as I am aware it was not disputed that she is in university and remains a student. The evidence on this point was consistent."
6. The Secretary of State sought permission to appeal on the grounds that the judge had erred in law, had not applied anxious scrutiny to the conflicting evidence and had not addressed the question of whether the financial support was necessary to meet the claimant's fundamental needs.
7. Permission to appeal was granted by Judge Woodcraft on 11th January 2017 for the reasons stated in the grounds.
8. Prior to the hearing Mr Vaughan submitted a Rule 24 reply defending the determination.

Submissions

9. Mr Mills relied on his grounds and in particular emphasised that the judge had erred in relying on the fact that the two younger children had been granted family permits when they did not have to establish dependency since they were under the age of 21.
10. Mr Vaughan submitted that the judge had reached a conclusion open to her on the evidence. She was obliged to consider the oral evidence and the demeanour of the witnesses before her and entitled to find the evidence truthful and credible. She was also entitled to rely upon the affidavit supplied by the claimant's mother confirming that her father supported his daughter which was consistent with the cultural expectation that he would do so, and the emotional bond between the family as a whole.

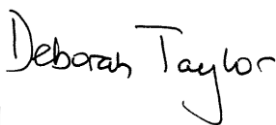
Consideration of whether there is an Error of Law

11. I am satisfied that the judge erred in law because it is clear that she relied upon an irrelevant consideration. She set out in the determination the difficulties with the evidence but appears to have been persuaded by the fact that it was, as she said, accepted that he had supported his younger children in the past. However, dependency was never an issue in their case and there was no such acceptance. Moreover, she did not consider whether the financial support was necessary to meet the claimant's financial needs (Lim v ECO Manila [2015] EWCA Civ 1383).
12. Mr Vaughan said that the claimant wished to adduce further documentary evidence which he was not in a position to supply today. Mr Mills had no objection to the matter being adjourned.
13. The decision of Judge Henderson is set aside. It will be remade at a resumed hearing on 10th July 2017.

Resumed Hearing

15. At the resumed hearing Mr Vaughan told me that he had instructions to withdraw this appeal. He conceded that the consequence would be that, the determination of Judge Henderson having been set aside, that the appeal against the Respondent's refusal to grant family permits to the Appellant would be dismissed.

Appeal Dismissed.



Signed
Deputy Upper Tribunal Judge Taylor

Date 18 July 2017