



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/01658/2017

THE IMMIGRATION ACTS

Heard at Birmingham
On 25 January 2019

Decision & Reasons Promulgated
On 14 March 2019

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

I N
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT
(by an Entry Clearance Officer)

Respondent

Representation:

For the Appellant: Mr A Alam, Counsel instructed by Shehzad Law Chambers,
solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

(extempore judgement)

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 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 this order because the appellant is a minor.

2. This is an appeal by a national of Pakistan who was born in June 2001. She appeals the decision of the First-tier Tribunal on 6 February 2018 dismissing her appeal against the decision of the respondent by an Entry Clearance Officer on 23 December 2016 to refuse her leave to enter the United Kingdom as an adopted child. The appellant relies on an EEA right. The appeal is brought under the Immigration (European Economic Area) Regulations 2006. Her uncle and purported adoptive father is an EEA national exercising treaty rights in the United Kingdom and it is the appellant's case that she is to be treated as his descendant because she is adopted. She is not adopted by a mechanism recognised in English law but by a mechanism that is a feature of the law of Pakistan. It is a matter of interest and legal debate whether this is satisfactory for the purposes of the EEA Regulations.
3. That there is uncertainty is clear because the Supreme Court has itself expressed uncertainty and has referred the matter to the European Court of Justice. However until the outcome of that decision is known the decision of the Court of Appeal is clearly binding on me and it was decided in **SM (Algeria) [2015] EWCA Civ 1109** that the kind of arrangement here is not an adoption for the purposes of the EEA Regulations.
4. I regard that point as entirely unarguable before me because I am plainly bound by precedent. I make it clear that Mr Allan did not abandon the point and if the law is decided differently in the Court of Justice of the European Union then it will be apparent to anyone reading this Decision that it was very much the appellant's case that she was entitled to rely on Regulation 7.
5. There is an alternative route. Unlike the child in **SM**, this appellant is a "relative". She is the niece of the EEA national and may be able to satisfy the requirements of Regulation 8. The appellant has failed to do that so far because the Entry Clearance Officer and, in due course, the Tribunal, were not persuaded that dependency had been established. The First-tier Tribunal Judge here took as a starting point the decision of First-tier Tribunal Judge Astle and came to a like conclusion. I accept Mr Allan's submission that Judge Astle did not find the sponsor's evidence to be dishonest but merely inadequate. This is an important difference. It means that the appellant's uncle does not start his evidence with the disadvantage of having been found to be dishonest.
6. I have gone through the evidence with some care with the assistance of the representatives, particularly Mr Allan. There is clearly some evidence of regular payment. It does not necessarily follow that the payments are in fact payments on which the appellant is dependent. However I find that the First-tier Tribunal erred in law because it was clearly the appellant's case in the oral evidence of both the adoptive parents that the money was paid for the purposes of the maintenance and upkeep of the appellant and that point has not been dealt with in the First-tier Tribunal's decision. It is capable as a matter of law of being decisive and a decision should have been made on the claim. Failing to decide the point was clearly a material error. I therefore set aside the decision in part.

7. There is a lurking suggestion that the appellant may be a relative living in the household of the EEA national. I find that completely unarguable on the evidence. There is no evidence to support a conclusion that the home where she lives is the EEA national's "household". I anticipate that the living arrangements can be described as a compound. It may be somewhere where the EEA national has links to his family but it cannot be said on the evidence that it is his household.
8. As indicated above, I am satisfied that the First-tier Tribunal erred by not making findings on the oral evidence that money sent was for the maintenance of the appellant and it was money on which she depended and to that extent only I rule the First-tier Tribunal erred in law.
9. The appeal has to be reconsidered. If she is to succeed the appellant must show that she is in fact dependent on her United Kingdom relatives.
10. Having heard proposals from the parties on how to deal with that error I heard evidence intended to persuade me to allow the appeal.
11. I have the documents before the First-tier Tribunal and I have additional documents produced at the hearing. Regrettably they were not produced until the hearing but they are of a kind very similar to those that have been produced before and Mr Mills realistically took no objection to their late production. These are records of sums paid by the appellant's uncle in the United Kingdom to an uncle in Pakistan.
12. The evidence is not entirely satisfactory. The appellant has not produced a spreadsheet showing all the sources of income that go into the family and how this is dissipated. If the appellant has a good case it would have been better if she had but I have to deal with what I have got and as Mr Allan has properly reminded me I have to decide what is probable.
13. I heard oral evidence from the sponsor and his wife. I am entirely satisfied that they send money frequently and that the sums they send are significant. The most recent payslips indicate payments in the order of £3,500 over the twelve months. This is a significant amount of money from a man whose take home income is around only £1,000 a month and it is something I have to think about carefully. This suggests to me strongly that the family in Pakistan are not living wealthily. The sums that are sent from the United Kingdom are clearly sacrificial and they are sent to people who need it. They are not sent as tokens of responsibility.
14. I find that Mr Allan made a good point when he said that are adoption documents here. The fact that they are not recognised in English law is of little relevance to the point that he made which is that there is evidence that in Pakistani law the applicant is adopted. It could be assumed that there will be financial responsibilities as a consequence of that adoption and the evidence is wholly consistent with that assumption of such responsibilities, namely that money is sent. The family in Pakistan live together. The appellant lives with her grandmother and an uncle but there are other family members close nearby and the impression I get, although the evidence was not entirely clear about this, is that there is a general pooling of

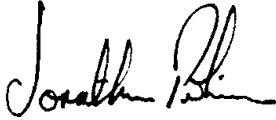
resources. I cannot say with *certainty* that the money that is sent by the sponsors in the United Kingdom is used for the appellant's benefit so that she is dependent on it. I do accept the evidence that it is sent for the benefit of the appellant and her grandmother, that is the mother of the sponsor. I am not allowed the luxury of indecision and I find it *probable* that she needs this money to get by and that without it she may stay alive but her life would be much less satisfactorily lived.

15. This is a view I reach having considered all of the evidence including the affidavits in the bundle which tends to confirm the oral evidence. I agree with the First-tier Tribunal Judge that the documentary evidence can only be given limited value because it is impossible to cross-examine the people who have given the evidence and they are not subject to the discipline of the courts if they have told untruths but the evidence entirely fits with a picture of money being sent regularly from the United Kingdom for the benefit of the family in Pakistan including the appellant who needs that money to get by.
16. My decision is the best that I could do on the evidence I have got and that means that I find in favour of the appellant and I substitute the decision allowing the appeal.
17. I must say immediately this is not a decision that the appellant is allowed to come to the United Kingdom. It is simply a decision that I am satisfied that she is dependent on her sponsor and that the case must now go back to the Entry Clearance Officer who will consider his discretion about whether or not it is right to allow the appellant to come. I deliberately make no comment whatsoever on that which should not be interpreted as any kind of indication one way or the other it is simply a matter for the Entry Clearance Officer to do his job.

Notice of Decision

The First-tier Tribunal erred in law. I set aside its decision and I substitute a decision allowing the appeal. The Respondent must now exercise his discretion in the light of my findings.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 11 March 2019