



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08184/2017

THE IMMIGRATION ACTS

Heard at Field House
On 14 January 2019

Decision & Reasons Promulgated
On 14 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

SHAIDA [M]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - NEW DELHI

Respondent

Representation:

For the Appellant: Mr T Shah of Messrs Taj Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant appeals with permission against a decision of Judge of the First-tier Tribunal Pacey who in a determination promulgated on 25 April 2018 dismissed the appellant's appeal against a decision of the Entry Clearance Officer, New Delhi made on 3 July 2017 to refuse the appellant entry clearance to come to Britain as the dependant of her mother, [TC].
2. The appellant was born on 28 November 2001. Her mother's evidence was that her relationship with her first husband, the appellant's father had broken down in 2003

and that they had been divorced in 2007 and since that time she has not had anything to do with him. She had remarried in 2008. She joined her present husband who is a British national in Britain in 2011. Since that time she has had two children, as well as the third child whom she lost due to a miscarriage.

3. When the appellant's mother came to Britain she left the appellant and her son who also remains in Bangladesh with family members but she was not able to make an application on behalf of the appellant until she had indefinite leave to remain in 2013, but after that, having had two children here and then a miscarriage in 2015 she had suffered from ill-health and therefore she had delayed in making the application for the appellant.
4. It was the sponsor's evidence that she had always had sole responsibility for her daughter, speaking to her both on the phone and also visiting her in 2014. She claimed that the appellant's father had never been involved in her upbringing.
5. The judge heard evidence from the sponsor about the difficulties with those with whom she had left the appellant, but having referred to relevant case law found in paragraphs 34 onwards that she did not accept that the sponsor had sole responsibility for the appellant.
6. In paragraph 36 she wrote:-

“Although I have a number of money transfer receipts showing money transferred to either [TM] or to [PC] there is nothing from either of them to confirm their identity or that they received the money for the purpose of handing it over to the appellant or to Ms [K] or indeed to anyone else for the appellant's benefit”.

7. She also wrote:

“38. Her oral evidence as to the identity of Mr [TM] was confused and evasive. She first said he was a neighbour and then that he was her uncle, then that he was not related. She appeared not to be able to answer a simple question asked three times by Mr Holt. This casts doubt on her credibility since it is reasonable to suppose that if Mr [TM] is involved with the appellant for whom she claimed to have sole responsibility and hence to determine which adults are involved in her life as she claims, she would be absolutely clear as to who he is”.

8. In the following paragraph she went on to state:

“Doubt is cast on the sponsor's credibility by the fact she did not appear to be certain whether she possessed a copy of her daughter's school report, saying she “might” have one at home. This is her daughter for whom she claimed to have sole responsibility. If this is indeed so it is highly unlikely

in my view that she would be so relaxed about her daughter's education, for which she pays, as not to be sure whether she had her report."

9. The judge went on to say that there was a lack of evidence regarding the medical condition of Ms [K], who it was claimed could no longer look after the appellant and further that there was no evidence that had been provided that either the appellant's uncle or his wife could not escort the appellant to school and back.
10. The judge added that the separation of the appellant from her mother was by the mother's choice and the refusal simply maintained the status quo. She concluded that the appellant had not discharged the burden of proof and therefore dismissed the appeal.
11. The grounds of appeal argued that the judge had ignored the supplementary bundle of evidence which contained evidence relating to those who were looking after the appellant, evidence of money being sent for the appellant's benefit and evidence relating to other members of the family and their involvement with the appellant. It is argued moreover the judge had not properly considered the sponsor's involvement with the appellant, not having properly assessed the written statements of the sponsor and her husband.
12. Permission was granted on the basis that the judge had made incorrect findings of fact that there was nothing from [TM] or [PC] confirming they had received money for the purpose of handing it over to the appellant and having made an incorrect finding as to the maternal uncle of being actively involved with the appellant or having responsibility for the appellant.
13. At the hearing before me Mr Shah relied on written submissions which took me to the relevant pages of the supplementary bundle of documents which set out full details of both [TM] and [PC], as well as a letter from the high school attended by the appellant which said that the mother was registered as the guardian, and evidence that the sponsor had visited Bangladesh in 2014.
14. Mr Shah asked me to find that on the basis of the evidence that was now before me I should not only set aside the decision of the judge in the First-tier Tribunal but remake the decision and allow the appeal.
15. Mr Bramble accepted that there were material errors of law in the determination of the judge, in that the judge had not considered the evidence in the supplementary bundle regarding the persons involved with the upbringing of the appellant in Bangladesh, as well as the school letter and the detailed evidence from the sponsor and her statement. He asked, however, that when I set aside the decision of the First-tier Judge, I should remit the appeal so the sponsor's evidence could be properly tested at a hearing.

16. I consider that for the reasons identified by Mr Shah and Mr Bramble there are material errors of law in the determination of the Judge of the First-tier Tribunal. She clearly ignored all the evidence in the second bundle. It is possible that the supplementary bundle was not before the judge although I note that it is stamped as having been received on the date of hearing and according to the judge's notes she was referred to bundles. Be that as it may, however there was substantial evidence which was not considered by the judge. That is a material error of law and I therefore set aside the decision of the judge.
17. I have given consideration as to whether or not I should remake the decision without a further hearing. I have, however, come to the conclusion that the evidence of the sponsor should be tested by cross-examination and therefore it is appropriate that this appeal be remitted to the First-tier for a further hearing.

Directions

18. The appeal will proceed to a fresh hearing before a judge in the First-tier Tribunal in Birmingham.
19. A Bengali interpreter, Sylheti dialect, is required. Time two hours.
20. No anonymity direction is made.

Signed:



Date: 26 January 2019

Deputy Upper Tribunal Judge McGeachy