



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL

APPEAL NUMBERS: HU/10589/2018

HU/10591/2018

HU/10597/2018

THE IMMIGRATION ACTS

Heard at: Field House

On: 16 May 2019

Decision and Reasons Promulgated

On: 23 May 2019

Before

Deputy Upper Tribunal Judge Mailer

Between

ENTRY CLEARANCE OFFICER

Appellant

and

FOZLE [A]

[S B]

[T B]

(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer

For the Respondents: Mr I Khan, counsel, instructed by Lumbini Solicitors

DECISION AND REASONS

1. For the sake of convenience I shall refer to the appellant as 'the entry clearance officer' and to the respondents as 'the claimants'. The claimants are nationals of Bangladesh born on 13 January 2000, 16 December 2003 and 7 August 2002 respectively.
2. The entry clearance officer appeals with permission against the decision of First-tier Tribunal Judge Place promulgated on 28 February 2019 allowing the claimants' appeals against the entry clearance officer's refusal dated 1 April 2018 to grant them

leave to enter the UK pursuant to paragraph 297 of the Immigration Rules, as the children of their claimed father, Mr Mohammad [A].

3. In refusing their applications, the entry clearance officer was not satisfied that there was sufficient evidence that Mr [A] and the claimants were related as claimed. Nor was the entry clearance officer satisfied that Mr [A] had sole responsibility for the claimants or that there were very serious and compelling family reasons which made their exclusion undesirable. The entry clearance officer noted that the claimants' mother is still living but stated that there was insufficient detail regarding her role in their upbringing.
4. Judge Place considered the evidence of Mr [A] and found him to be a consistent and credible witness. Mr [A] stated that the claimants are the eldest of his five children. Their mother has mental health problems and is unable to care for them. Since he left Bangladesh in 2006, his wife and children have moved from their family home to the two room house owned by his wife's brother.
5. He used to take care of the children when he was in Bangladesh. His wife has had mental problems for some time but they have become worse in the last year or so. He has full control over matters including their education, religion and medical care. He is in regular contact with their school and religious teachers and their doctor.
6. He has not provided DNA evidence as he cannot afford it.
7. He was not applying for his wife to join him in the UK. She would not be able to pass the English language test as a result of her mental health problems.
8. Judge Place noted that he sends money to his wife on a fairly regular basis.
9. She found, relying on his "compelling oral evidence", which is supported by birth certificates, that the claimants are his children [15]. Although the entry clearance officer has questioned why the birth certificates were issued several years after the claimants' births, no evidence had been adduced to suggest that they are not authentic.
10. She also accepted Mr [A]'s evidence, backed up by a brief doctor's letter, that his wife has been suffering from mental health problems for some time which have become worse over the last year or so and which have left her unable to care at all for any of her five children, including the claimants.
11. She found that Mr [A] gave compelling evidence about the role he plays in their lives, unhesitatingly naming their various teachers and doctor [16]. He also regularly provides financially for his wife and the claimants.
12. She found the circumstances of this case to be unusual in that the claimants' mother is still present in Bangladesh and living in the same house as them. She was however persuaded that she is not capable of caring for them physically or

emotionally. She found that as at the date of the applications and decision, Mr [A] had continuing control and direction over the claimants' upbringing, including making all important decisions in their lives [19].

13. She accordingly found that as at the date of the entry clearance officer's decision, the claimants met the requirements under paragraph 279(i)(e) of the Immigration Rules.
14. She considered whether the entry clearance officer's decision constituted a breach of their right to family life under Article 8 of the Human Rights Convention. She took account of the fact that the first claimant is now 19. However, he is still at school and is dependent on his father. He does not have an independent life and family life for the purpose of Article 8 exists between all the claimants and their father.
15. She considered whether the decision was proportionate in the circumstances. As she found that the claimants met the requirements of the Immigration Rules at the date of the decision, there is no public interest in excluding them from the UK. The balance of proportionality is in favour of the claimants.
16. In granting the entry clearance officer permission to appeal, First-tier Tribunal Judge Davies stated with regard to the contention that fraudulent documents were submitted by the claimants, that the burden of proof is on the entry clearance officer. Nor was there a requirement that the claimants must establish their relationship by way of DNA evidence.
17. He found it arguable however that the Judge had not conducted the proportionality test with the thoroughness that it required. She should have made clear what matters were weighed in the balance. On that basis, she had arguably made an error of law.
18. At the commencement of the hearing before me, Mr Khan produced a DNA report, recently commissioned, which concluded that the claimants were related to Mr [A] as claimed.
19. Mr Walker accepted that now that the DNA evidence had been produced, the entry clearance officer's complaint fell away. Accordingly, so must the complaint regarding the proportionality assessment fall away.
20. The claimants had accordingly satisfied the requirements under paragraph 297(i)(e) of the Immigration Rules. He accordingly accepted that the decision of the First-tier Tribunal Judge should stand.

### **Assessment**

21. There has been no challenge to the assertion that the claimants' father has been solely responsible for their upbringing. He has regularly and consistently provided financial support.

22. On the basis of the DNA report produced, I am satisfied that Mr Walker has properly conceded that there has been no error of law.

**Notice of decision**

The decision of the First-tier Tribunal did not involve the making of any error on a point of law. It shall accordingly stand.

No anonymity directions made.

Signed

Dated 22 May 2019

Deputy Upper Tribunal Judge C Mailer