



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000518
First-tier Tribunal
No:HU/00323/2022

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On the 12 June 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

ISFAQUL ROWSHAN
[ANONYMITY DIRECTION NOT MADE]

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr A Slatter, Counsel

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 19 May 2023

DECISION AND REASONS

Anonymity

1. The First-tier Tribunal did not make an anonymity order. The Upper Tribunal has not been asked to make an order. I take into account the principles of open justice and I see no reason to make an order in this case.

Background

2. The Appellant appeals against the decision of First-tier Tribunal Judge G Ferguson promulgated on 17 November 2022 (“the Decision”). By the Decision, Judge Ferguson dismissed the Appellant’s appeal against the Respondent’s decision dated 13 January 2022 refusing his application for entry clearance to enter the United Kingdom as a dependant child of his father, Mr Mohammad Rowshan, a British citizen (hereinafter “the Sponsor”).
3. The Appellant is a national of Bangladesh. His date of birth is disputed, but he claimed that he was born on 16 February 2004. According to that date of birth, at the date of application on 21 January 2021, the Appellant would have been 16 years old.
4. The application for entry clearance was made pursuant to paragraph 297 of the Immigration Rules, it being claimed by the Appellant that his mother is deceased and/or the Sponsor has sole responsibility for his upbringing. The application was supported by, amongst other things, a copy of the Appellant’s birth certificate, his passport and his mother’s death certificate.
5. The Respondent refused the application on the basis that his birth certificate and his mother’s death certificate had been verified as false. Consequently, she did not accept the Appellant’s claimed date of birth or the identity of his parents were as stated. The Respondent’s decision was further informed by the contradictory statements made by the Sponsor during an interview and in his Statement of Facts, after he was encountered in the United Kingdom in 2005, which indicated that he left Bangladesh either eleven months or nine months prior to the Appellant’s birth. She further noted that the money transfer receipts were made to another person, and further, that there was no evidence of contact between the Appellant and the Sponsor. Further still, the Appellant had not established that he met the maintenance requirements of the Immigration Rules. In view of all these matters the Respondent concluded that Article 8(1) ECHR was not engaged and, in the alternative, refusal was justified by the need to maintain effective immigration controls.
6. The Appellant appealed to the First-tier Tribunal. The appeal came before Judge Ferguson on 24 August 2022. By that date the Appellant had filed DNA evidence which established with a high percentage of probability that the Sponsor is the father of the Appellant. Accordingly, the Respondent did not maintain that aspect of her decision before the judge. It was common ground before the judge, however, that the primary issue was whether the Appellant had submitted false documentation to support his application, it being accepted that if his mother is deceased, the issue of sole responsibility did not arise under the Immigration Rules.
7. Both parties were represented and the judge heard evidence from the Sponsor and a witness Mr Shah Shahriar - the Appellant’s solicitor. The

relevance of Mr Shahriar's evidence was that he had accessed the online verification service of birth and death registrations in Bangladesh, which established that the Appellant's date of birth and his mother's date of death had been registered on the system as 16 February 2004 and 23 December 2020 respectively as claimed.

8. The Sponsor's evidence to the judge was that he entered the United Kingdom on the 1 September 2003, clandestinely, and applied for asylum two years later after he was encountered by the police in 2005. During his screening interview he gave the Appellant's date of birth as 16 November 2002. It was the Sponsor's evidence that he made a mistake in giving that date because he was unwell and not in a good state of mind from being detained.
9. The Sponsor said that since his arrival in the United Kingdom he financially supported his late wife and the Appellant. He also said that he was currently in employment with an income exceeding £19,000, in addition, to receiving a monthly sum of £864 of public funds. His evidence was that he lived alone in rented accommodation and that his two minor children in the United Kingdom lived with their mother with whom he did not have a relationship.
10. In dismissing the appeal the judge approached the evidence in the following way.
11. Whilst the judge accepted that the online verification system was a genuine system established by the Bangladeshi government to allow for the verification of information registered of a person's birth or death, it did not establish that the date of birth on the system is the correct date; it only established the date of birth that was declared. The judge considered that if the registration system accurately reflected the information recorded on the birth certificate, then it would have recorded the date of registration as 21 July 2004 and not the 21 October 2020 - the date on the face of the verification record.
12. The judge found, all other things being equal, the date of birth recorded by the online verification system may be sufficient to establish a date of birth, however, in the Appellant's case there were reasons to believe that his date of birth had been changed to make him younger.
13. The judge reached that view because at a time when the date of birth was not significant, namely, during his asylum screening interview, the Sponsor gave the Appellant's date of birth as 16 November 2002. The judge did not accept the Sponsor's explanation that he was confused about the questions he was asked during the screening interview and further, amongst other things, he took the view that had the Appellant been born in 2004, the Sponsor would not have said during that interview that he last saw the Appellant in 2003.

14. The judge accordingly found that the Appellant was born on 16 November 2002, and that the date of birth recorded by the online verification system and the Appellant's passport was not his true date of birth. Accordingly, the judge concluded at the date of application on 21 January 2021, the Appellant was not under the age of 18, and his application for entry clearance as a child therefore could not succeed.
15. Whilst that finding was dispositive of the appeal, the judge further took the view that the Sponsor had not been truthful about his family circumstances in the United Kingdom, and found that in all likelihood he was Islamically married to the mother of his two children and that they all lived together. The judge did not refer to the evidence relating to the Sponsor's finances, but nonetheless concluded that it had not been established that there would be adequate maintenance for the Appellant and the rest of the Sponsor's family.
16. Accordingly he dismissed the appeal.
17. The Appellant appeals the Decision. The grounds are not set out under separate heads of challenge but essentially they can be identified as follows: *first*, the judge failed to consider independent third party evidence establishing the Appellant's date of birth as 16 February 2004; *second*, the judge failed to make findings on the evidence in respect of the death of the mother and whether the requirements of paragraph 297(i)(d) of the Immigration Rules was met and; *third*, the judge failed to take into account evidence of the Sponsor's income in the form of six-months payslips and bank statements.
18. Permission to appeal was granted on renewed application by the Upper Tribunal on the 24 March 2023.
19. On 17 April 2023 the Respondent filed a Rule 24 response opposing the Appellant's appeal. Whilst it was accepted the judge did not explicitly refer to all of the documentary evidence, it was argued that there was no duty upon him to refer to every single piece of evidence. The decision was sufficiently reasoned and the grounds amounted to no more than a disagreement with the judge's findings.
20. The matter comes before me to determine whether the Decision contains an error of law and, if I so conclude, to consider whether to set it aside. If the Decision is set aside, it is then necessary for the decision to be re-made either in this Tribunal or on remittal to the First-tier Tribunal.
21. I had before me a core bundle of documents relating to the appeal, the Respondent's bundle and the Appellant's bundle(s) which were before the First-tier Tribunal. I heard submissions from the representatives whose respective submissions aligned with the Appellant's grounds of appeal and the Respondent's Rule 24 response. The submissions are reflected in my decision where necessary below.

Discussion

22. As a general point of principle, Ms Isherwood is correct in her contention that it is not incumbent on a judge to refer to every single piece of evidence in a decision. A judge nonetheless is required to demonstrate that he has considered all the evidence relevant to an issue in the appeal and give adequate reasons as to why that evidence is either accepted or rejected. The essence of the Appellant's challenge is that the judge failed in that duty.
23. The central issue in this appeal concerned a dispute between the parties over the Appellant's date of birth and whether his mother was in fact deceased. In support of his application the Appellant submitted, inter alia, a copy of his birth certificate and his mother's death certificate. The Respondent stated that these documents had been verified as false and in refusing the application invoked the General Grounds of Refusal under Part 9 of the Immigration Rules. A Document Verification Report setting out the reasons for non-verification does not appear to have been adduced by the Respondent before the judge. It is not clear why that was the case, but no issue appears to have been taken by the Appellant in consequence.
24. The judge was clearly unimpressed by the evidence and set out his reasons for rejecting it at [15 to [23] of the Decision. Ms Isherwood correctly points out that this included the judge's assessment of the Sponsor's evidence, who the judge found was not being open and honest about his personal circumstances. I have borne that in mind, and whilst the Decision is otherwise adequately reasoned, the judge reached his conclusions without reference to relevant evidence upon which the Appellant relied, which may have assisted him in determining whether the Appellant's date of birth as claimed is true.
25. The documents which it is said were left out of account are: first, a letter dated 1 June 2022 from the Mayor's Office in Bangladesh confirming the birth certificate issued on 21 July 2004 is a genuine document and contains the correct date of birth of 16 February 2004 (the grounds also make reference to a further letter from the Mayor's Office dated 20 July 2022), and second, a letter dated 21 July 2022 from the Appellant's High School Headteacher. This evidence is exhibited in the Appellant's bundle and supplementary bundle both of which was before the judge. There is no dispute about that and nor is there any dispute that there is no consideration of this evidence in the Decision.
26. Whilst, it cannot be said (and it is not said) that this evidence was either, individually or cumulatively, sufficient to establish the Appellant's claimed date of birth, the evidence was directly relevant to the primary issue in the appeal and is from sources independent of the evidence the judge considered. The letters from the Mayor's Office, for example, not only purport to confirm the Appellant's date of birth, but provides an explanation for the anomalies as to the date(s) on the birth certificate(s)

(the first being “reprinted” at a later date), and the letter from the Appellant’s Headteacher, purports to confirm the records they hold in respect of his date of birth, admission date and leaving date. Ms Isherwood challenged the evidential value of the latter on the basis that the Headteacher was reiterating what he had been told (she did not state by whom), however, there is no evidence to support that contention and in my view it is not a proper reading of its contents.

27. I am satisfied that the judge failed to consider material documentation that should have formed part of an evaluative assessment of the evidence. It may be the case that had the judge considered this evidence, he may have reached the same conclusion, but I cannot be satisfied that he would have done so, and in any event, I have reservations about the manner and route by which the Decision has been reached on the primary issue for the reasons stated herein. The judge’s task was to conduct a holistic assessment taking into account all the evidence. The judge was entitled to reject the evidence that he did take into account, for the reasons he gave, but obviously needed to do so along with the other evidence which he did not take into account.
28. I adopt this view because the potential ramifications for the Appellant who has been found to have submitted false documents in support of his application are indeed very serious, and is likely to affect any future application he may wish to make. Given the consequences of such a finding being made it required the judge to give consideration to all of the relevant evidence and provide adequate reasons as to why that evidence was either accepted or rejected. That did not occur in this case.
29. I accept therefore that the judge clearly did not factor into his assessment evidence that was potentially corroborative of the Appellant’s case and needed to be considered. That in my view is a material error of law.
30. The appeal to this Tribunal hinges on this ground and it is sufficient in my view to vitiate the Decision. There was no need for the judge to consider the position in relation to the mother if, as he found, the Appellant was not a child, and his findings in relation to maintenance, such as they are, do not save the Decision given the import of the above error. In any event, any such finding was a factor relevant to, but not determinative of, an Article 8(2) assessment.
31. In light of those conclusions, it is appropriate to set aside the Decision. I do not preserve any findings.
32. In view of the nature of the error found it is appropriate to remit the appeal to the First-tier Tribunal for re-hearing. The appeal turns on issues of credibility and in fairness to the Appellant, it would be wrong to deprive him of a layer of appeal. In reaching that conclusion I have had regard to the recent guidance given in the case of *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC).

Decision

The Decision of First-tier Tribunal Judge Ferguson involves the making of a material error on a point of law. I therefore set aside the Decision. I remit the appeal to the First-tier Tribunal for hearing before a judge other than Judge Ferguson.

Signed R Bagral
2023
Deputy Upper Tribunal Judge Bagral

Dated: 11 June