



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/03308/2016
EA/03313/2016
EA/03314/2016
EA/03315/2016
EA/03321/2016
EA/03322/2016
EA/03323/2016

THE IMMIGRATION ACTS

Heard at Field House
On 20 June 2018

Decision & Reasons Promulgated
On 29 June 2018

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

FK (FIRST APPELLANT)
ZK (SECOND APPELLANT)
MK (THIRD APPELLANT)
LK (FOURTH APPELLANT)
AH (FIFTH APPELLANT)
IK (SIXTH APPELLANT)
MA (SEVENTH APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: A Allam of Counsel instructed by S-K Solicitors
For the Respondent: Mr T Melvin

DECISION AND REASONS

1. The Appellant, FK, is a citizen of Pakistan. Her date of birth is 3 April 1975. The remaining Appellants are her and the Sponsor's children, namely ZK (date of birth 19 July 1988), MK (date of birth 24 September 1999), KL (date of birth 15 September 2002), AH (date of birth 20 June 2004), IK (date of birth 12 December 2008), MA (date of birth 19 June 2010). They are all citizens of Pakistan. Their father, the Sponsor, MKB, is a Portuguese citizen purporting to exercise treaty rights here in the UK.

2. The Appellant along with her six children made an application for entry clearance under the EEA 2006 Regulations to join the Sponsor. The application was refused by the ECO on 22 February 2016. The ECO was not satisfied that the evidence relied on by the Appellants was sufficient to establish their relationship with the Sponsor. The Appellants appealed against the decision of the ECO. Their appeals were allowed by Judge of the First-tier Tribunal N M K Lawrence in a decision dated 9 July 2017, following a hearing on 22 June 2017. I set aside the decision of Judge Lawrence having concluded that he materially erred for the following reasons:
 - "5. I conclude that the judge materially erred. He considered documents that the sponsor took from his bag after the conclusion of the evidence to be reliable. From what the judge stated at [8] and [9], it is clear that had it not been for this evidence he would have dismissed the appeal. The documents, according to the sponsor, were registration documents of his children's births and were contemporaneous. The judge accepted this, finding the evidence "cogent" because "they [the documents] give the impression of being contemporaneous." It was an issue that the documents all showed the same signature and the judge did not find this to undermine the reliability of the documents finding that it appeared that civil servants "do not move jobs as they do in the UK". It is not clear on what evidence he based this finding. I conclude that the finding of the judge (that the documents were cogent evidence of the relationship between the sponsor and the appellants) is at best inadequately reasoned, at worst perverse. It is not clear from the decision why the judge accepted that the documents produced at the eleventh hour were sufficient to assuage any doubt in respect of the documents that the applicants had submitted with the application and appeal. There was no evidence given to explain the late production of the documents.

 6. The judge also found the sponsor to be a "truthful" witness but gave no reasons for this. Whilst there was evidence of trips the sponsor had made to Pakistan and photographic evidence capable of supporting the

appellants, the judge did not adequately reason why he found the sponsor to be credible, taking into account the late production of evidence which he found determinative of the appeal. Whilst there was no application by the respondent to adjourn the hearing to consider the evidence that had been produced at the last minute, the judge did not factor into his findings that the respondent had not had the opportunity to seek to verify the documents.”

3. I made directions in relation to the filing and service of evidence making it clear to the Appellants that whether or not the Sponsor was exercising treaty rights was now an additional issue as raised by the Respondent at the hearing before the FtT.
4. At the resumed hearing the Appellants submitted a bundle prior to the hearing which included DNA evidence capable of establishing paternity. Mr Melvin indicated that paternity was accepted and therefore the only remaining issue was whether or not the Sponsor was exercising treaty rights.
5. At the start of the hearing Mr Allam sought to submit evidence that was not in the Appellants’ bundle relating to the Sponsor’s financial circumstances. He produced original bank statements showing regular credits into his bank account up until May 2018, a letter from an accountant, Ahmed & Co, of 20 June 2018 confirming that he was self-employed and trading as a security guard. In addition, there was an ID card, a licence for the Sponsor which expires on 27 November 2012 issued from what appears to be the Security Industry Authority. Mr Melvin did not take issue with any of the documentation.
6. At the hearing the Sponsor gave evidence about his employment and was cross-examined by Mr Melvin. In submissions Mr Melvin indicated that in the light of the documentation and the Sponsor’s evidence he would not be surprised if the appeal was to succeed because the oral evidence was clear that the Sponsor was working as a security guard.
7. I found the Sponsor to be a credible witness. The issue is whether he is exercising treaty rights. His evidence was clear and consistent and supported with documentary evidence. On this basis I allow the appeal under the Immigration (European Economic Area) Regulations 2006.

Notice of Decision

The appeal is allowed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Joanna McWilliam

Date 28 June 2018

Upper Tribunal Judge McWilliam