Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/14379/2015
HU/14393/2015, HU/14397/2015
HU/14402/2015, HU/14407/2015
HU/14412/2015, HU/14415/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1 February 2018	**On 23 February 2018**
Determination prepared 1 February 2018	

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

ENTRY CLEARANCE OFFICER - ISLAMABAD

Appellant

and

BIBI [A]
SARA [A]
[S A]
[A S A]
[A A]
[AB A]
[SB A]
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:
For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondents: Mr D Coleman, of Counsel, instructed by Messrs Nandy & Co

DETERMINATION AND REASONS

1. The Secretary of State appeals with permission against a determination of Judge of the First-tier Tribunal Hodgkinson, who in a determination promulgated on 11 May 2017 allowed the appeal of [Bibi A] and her children against a decision of the Entry Clearance Officer Islamabad, who had refused their applications to join the first appellant's husband, who is the father of the other appellants in Britain, the father being [Iqbal A], who is a recognised refugee in the United Kingdom. The refusals were made under paragraphs 352A and 352D of the Immigration Rules and Article 8 of the ECHR. In brief, it was not accepted by the Entry Clearance Officer Islamabad that the appellants were related as claimed to the sponsor.

2. For ease of reference I will refer to the Secretary of State, although she is the appellant before me, as the respondent as she was the respondent in the First-tier. Similarly, I will refer to [Bibi A] and her children as the appellants as they were the appellants in the First-tier.

3. [Iqbal A] arrived in Britain on 18 August 2011 and applied for asylum. When interviewed he named his wife and all the children apart from the youngest, who had not at that stage been born, as his wife and children. However, it was not until 2015 that an application for his wife and children to join him in Britain was made. The Entry Clearance Officer refused the applications on 16 November 2015. In brief, the Entry Clearance Officer referred to the marriage certificate produced as well as the birth certificates and stated that as neither the marriage certificate was issued at the time of marriage nor that the birth certificates had been issued when the children had been born it was not accepted that those documents were genuine. Similarly, although family photographs had been produced it was stated that these were relatively recent and there were no photographs showing the history of the marriage from 1997 onwards. It was stated that it was not unreasonable to expect an applicant who had been married for eighteen years to be able to produce evidence of an ongoing and subsisting relationship throughout that period rather than a few recently issued documents and some photographs taken shortly prior to the submission of the application. It was therefore not accepted that [Iqbal A] was married to the first appellant nor that the other appellants were his children. The application was also refused on human rights grounds.

4. At the beginning of the hearing before the judge in the First-tier the appellants' representative made an application for an adjournment so that DNA evidence could be obtained. This was opposed by the Presenting Officer and the adjournment was refused. The judge went on to hear the evidence of the sponsor. This he set out in some detail in paragraphs 7 onwards of the determination. In paragraphs 22 onwards the judge said that the appeals were based upon the Article 8 human rights of the appellants and the sponsor. He also set out the submissions of the

Presenting Officer before considering at considerable length the evidence submitted on behalf of the appellants. He noted the photographs which had been taken despite evidence from the sponsor that taking photographs of Afghani women was not culturally acceptable. He considered that that was a potential inconsistency which was potentially damaging to the credibility of the appellants and the sponsor. He noticed that the documents were not contemporaneous with the events which they showed. He said that he did not find the explanation given that birth certificates were not usually issued on the same day as the birth to be particularly satisfactory although he stated that it was not wholly implausible. He noted that all the birth certificates were in identical format even though they referred to several births several years apart. He said that he found the produced documentation to be documentation on which little weight could be placed. However, he placed weight on the fact that the sponsor when claiming asylum had mentioned the appellant as his wife and correctly gave her year of birth and that he referred to the five children having being born at that stage. He considered the submission of the Presenting Officer that the sponsor in the photographs which were before him could be with people not related to him in the manner claimed but he did not consider that that had any particular merit. He noted, however, that the sponsor had travelled to Pakistan to, so he claimed, visit his family. He said that he had had opportunity of seeing the sponsor and hear his oral evidence and that the sponsor had presented as credible in the manner of his delivery.

5. The judge concluded that taking into account the totality of the available evidence and the standard of proof of the balance of probability and even allowing for credibility concerns which had been raised by the respondent he was satisfied that the first appellant was the sponsor's wife, that they had a genuine and subsisting relationship and that all six children were the biological children of both the appellant and the sponsor. He therefore stated that he accepted that the appellants met the requirements of the relevant Immigration Rules and that they would also qualify for leave to enter under the provisions of Article 8 as the decision of the respondent was not in accordance with the law. He therefore said that the decision was disproportionate and allowed the appeals on human rights grounds. It was of course also the case that the appeals should succeed because the requirements of the Immigration Rules were met.

6 The Secretary of State appealed, pointing to the various credibility issues which had concerned the judge and in effect arguing that in the absence of DNA evidence the judge must have applied a lower standard of proof than that of the balance of probabilities. It was suggested that he had not applied rigorous scrutiny to the evidence. Mr Bramble relied on those grounds.

Discussion

7. This is a detailed determination in which the judge considered all the evidence in the round. He properly said what evidence he accepted and what evidence concerned him. He, having weighed up the evidence, concluded that the appellants were the wife and children of the sponsor. I consider that that was a conclusion which was fully open to him and that was a conclusion which he reached having applied the correct standard of proof – that of the balance of probabilities - and noting that the burden of proof lay on the appellants. There was nothing irrational or perverse in his decision.

8. I therefore find that there is no material error of law in the determination of the judge in the First-tier Tribunal and find that his decision to allow these appeals shall stand as there is no material error of law therein.

Decision

The appeal of the Secretary of State is dismissed.

No anonymity direction is made.

Signed  Date 19 February 2018

Deputy Upper Tribunal Judge McGeachy