



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01887/2018

THE IMMIGRATION ACTS

Heard at Field House
On 23rd August 2019

Decision & Reasons Promulgated
On 18th September 2019

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

MOHAMMAD WASIF SAYEM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD

Respondent

Representation:

For the Appellant: Mr Chowdhury, the Sponsor

For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh born on 7 April 2000. He appeals against the decision of First-tier Tribunal Judge Eldridge promulgated on 5 April 2019 dismissing his appeal against the refusal of entry clearance as the child of a person settled in the UK.
2. The Appellant appealed on the following grounds. The First-tier Tribunal erred in law in:

- (i) failing to make adequate or clear findings on the Appellant's evidence, the Sponsor's evidence (the Appellant's father) and the evidence of the Appellant's grandmother;
 - (ii) effectively imposing a requirement that responsibility needed to be demonstrated before 2017 and corroboration was required;
 - (iii) by effectively rejecting the Appellant's evidence as self-serving; and
 - (iv) failing to rule that Article 8 was engaged.
3. Permission to appeal was granted by Upper Tribunal Judge Keith on 18 July 2019 on the grounds that: "The FTT arguably erred in the adequacy of his reasoning at [31] of the Decision that family life did not exist between the minor appellant and his father, which arguably resulted in the FTT then failing to consider the proportionality of the respondent's refusal. While the other grounds appear to be weaker, and in essence, a disagreement with the FTT's findings (with the FTT giving reasons for his concerns about the evidence of the appellant and his grandmother at [22] and [23]; and dealing with the issue of the apparent brevity of the claimed dependency at [27]), nevertheless, permission is granted on all grounds."

Submissions

4. Mr Chowdhury, the Sponsor, clarified that two copies of one document were submitted in March 2017 and there had been a mistake by his lawyer in indexing those documents. He went on to state that the Appellant had documents that had not been submitted with the application or put before the judge. This had been a mistake by his lawyer and although the Sponsor was present at the appeal he did not notice at the time.
5. Mr Chowdhury submitted an email dated 2 July 2017 and copies of his passport showing that he had made visits to Bangladesh in November 2015 and February 2018 and a further visit in 2019. He accepted that his passport was not put before the judge. Mr Chowdhury submitted that all the documents submitted were served with the application and were not for the purpose of the appeal. He accepted that the declarations of non-responsibility were dated December 2017 after the refusal. However, the letter from the Appellant's teachers was before the refusal and had been submitted with the application.
6. Mr Chowdhury taught maths and physics privately and had started a teacher training course but because of the Appellant's circumstances he could not concentrate and could not submit assignments on time. If there was insufficient evidence of sole responsibility, he was the Appellant's father and he was helping other people in the UK. He was distressed by the fact that he could not do anything for his son and asked the court to allow the Appellant's appeal notwithstanding any lack of evidence. His mother was old and had engaged a servant. He was worried that his son would be derailed.

7. Ms Fijiwala dealt with the four grounds of appeal upon which Mr Chowdhury relied in addition to his oral submissions. She submitted that the judge had considered all the evidence in the round in concluding that the Sponsor did not have sole responsibility. The declarations of non-responsibility postdated the decision but, in any event, the judge took into account the other letters from doctors and teachers, the telephone records and statements. The failure to refer to the letter from the Bangladeshi lawyer was not material because the factual position was the relevant one. The Entry Clearance Manager's review made it clear that there was no evidence before 2017 submitted with the application and most of the evidence that was submitted was from around the time of the application.
8. The judge was entitled to conclude that the documents had been contrived for the purposes of the application and for the appeal and the Sponsor accepted in his evidence before the First-tier Tribunal that he had specifically asked for documents to support the appeal. Ms Fijiwala submitted that the judge was well aware of the tests to be applied which he set out at paragraphs 18 to 20. He did not limit the test of sole responsibility to the production of evidence before 2017. The judge decided the case on the evidence before him and concluded that the Appellant had not provided any evidence prior to 2017 that his father had sole responsibility for his upbringing.
9. The judge did not require corroboration but was entitled to rely on evidence which the Appellant failed to produce. The Appellant's further evidence submitted by the Sponsor at this hearing should not be considered. There had been no complaint that his lawyer had failed to submit evidence previously but, in any event, the content of that evidence did not show that the Sponsor was a regular visitor to Bangladesh, as he claimed. There was no evidence prior to 2017 save for a visit to Bangladesh in 2015.
10. The judge found that the Appellant had failed to show that the Sponsor made all the important decisions in his life and the Appellant had, at the time of the appeal hearing, a relationship with his grandmother and uncles. He had been living with his grandmother with the assistance of his uncles and, on that evidence, family life with his father did not exist. Even if it did, it was so limited that the refusal of entry clearance was proportionate.
11. In response, Mr Chowdhury submitted the judge did not consider the Sponsor's statement or the remittances. He had sent money to his brother with instructions to give it to the Appellant's teachers and any medical people concerned. He agreed that he did not have sufficient evidence before 2017, but that is because he had been away from Bangladesh for ten to eleven years and he did not have the opportunity to go to school and attend functions. Bangladesh was not a developed country and prior to 2017 documents did not exist. The Sponsor submitted that he had always taken care of the Appellant, controlling him from the UK and instructing his brother, friends and teachers. There was also an insurance policy which was dated 2006.

Conclusion and Reasons

12. The judge concluded that the issues before him were whether the Sponsor, the Appellant's father, had sole responsibility for the Appellant and whether there were serious and compelling circumstances or considerations that would warrant entry to the UK. The application was made on 31 August 2017. In support of the application the Appellant submitted documents, most of which failed to cover the period before 2017. The application was refused on 28 November 2017.
13. The judge made the following relevant findings:
 - (i) The declarations of non-responsibility from the Appellant's grandmother and two of his uncles were dated December 2017 and were not credible because it was not until the decision to refuse the Appellant's application was made known that these declarations of non-responsibility emerged.
 - (ii) The emails from a teacher in Bangladesh were dated April, July and August 2017;
 - (iii) The doctor's notes, issued in March 2017, did not suggest the Sponsor had paid for any treatment or had commissioned it.
 - (iv) The telephone records covered the first half of 2017, but it was impossible to see which of these were between the Appellant and the Sponsor as his telephone account showed a multitude of calls to a great variety of numbers;
 - (v) The Sponsor visited the Appellant between 25 January and 5 February 2019 for the occasion of a medical emergency following a call from the family doctor. The letter from Dr Reza dated 28 November 2018 seemed to suggest a diagnosis of a depressive illness and apathy. It did not demonstrate any chronic condition or any problems while the Appellant was a minor or up until the time he made his application;
 - (vi) The Sponsor failed to provide any of the conventional evidence, such as copies of flight bookings or receipts for flights undertaken, to show that he had been a regular visitor to see his son in Bangladesh;
 - (vii) There was nothing beyond assertion to show any intervention in this Appellant's life by the Sponsor before 2017, a few months before the application was made;
 - (viii) The Appellant has lived for most of his life with his grandmother and has had the assistance of his uncles;
 - (ix) The Appellant's mother has not been a part of his life for very many years;
 - (x) The Sponsor has not had sole responsibility for the Appellant for any significant period;
 - (xi) The Appellant continued to live with his grandmother and there was other family support available;
 - (xii) The documents were produced entirely for the purpose of the appeal and were not credible;

- (xiii) The requirements of paragraph 297(i)(e) and (f) were not met;
 - (xiv) The Appellant had lived all his life in Bangladesh with close family and continued to enjoy their support and continued to be in education;
 - (xv) The Sponsor had failed to demonstrate 'sole responsibility' and Article 8 was not engaged;
 - (xvi) The Respondent's decision did not breach Article 8.
14. I am not persuaded that the judge failed to take into account all the evidence that was before him. It is quite clear that he took into account the documentary evidence in the Appellant's bundle, the Appellant's statement and the Sponsor's statement. There was insufficient evidence to show that that the Sponsor had sole responsibility for the Appellant who, for the last ten years, had been living with his grandmother with the assistance of his uncles.
 15. The evidence of the Sponsor's involvement with the Appellant's life was limited, the documentary evidence was limited to matters arising after 2017 save for a stamp in the Sponsor's passport showing a visit to Bangladesh in 2015. The assertions in the Sponsor's witness statement were vague and were not supported by documentary evidence which the Sponsor ought to have been able to produce if his account was true.
 16. The Sponsor claimed, after coming to the UK, he tried to see his son at least every four to seven weeks, every time he went to Bangladesh. The further evidence he produced was not before the judge and the judge cannot be criticised for failing to take it into account, but even if it had been produced, it would not have taken matters any further. The evidence did not support the assertion that the Sponsor made regular visits to Bangladesh.
 17. The Sponsor accepted in his witness statements that his mother was looking after his son during his absence and there was insufficient evidence to show that he had day-to-day control of his son's life. The judge assessed the totality of this evidence and concluded that it was insufficient to establish sole responsibility. The judge took into account all relevant information and his findings were open to him on the evidence before him.
 18. The family life that exists between the Appellant and the Sponsor is that of father and son. The refusal of entry clearance does not interfere with that family life because the position remains the same. There were no compelling circumstances to warrant a grant of entry clearance outside the Immigration Rules because at the time the application was made the Appellant was still living with his grandmother with the assistance of his uncles. The declarations of non-responsibility postdate the decision and the judge gave adequate reasons for why he attached little weight to them.

19. The Appellant could not satisfy the Immigration Rules and the refusal of entry clearance did not breach Article 8. I find that there was no material error of law in the decision promulgated on 5 April 2019 and I dismiss the Appellant's appeal.

Notice of Decision

Appeal dismissed

No anonymity direction is made.

J Frances

Signed

Date: 16 September 2019

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed

Date: 16 September 2019

Upper Tribunal Judge Frances