



**Upper Tribunal
(Immigration and Asylum Chamber)**

**Appeal Number: HU/06614/2016
HU/06612/2016**

THE IMMIGRATION ACTS

**Heard at Field House
On 13 October 2017**

**Decision & Reasons Promulgated
On 17 October 2017**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

UZMA AAMIR

A A A

Appellant

And

ENTRY CLEARANCE OFFICER, SHEFO

Respondent

Representation:

For the Appellant:

Mr. S. Jaisri of counsel instructed by Lee Valley Solicitors Ltd

For the Respondent:

Mr. T. Wilding, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The 1st Appellant, who was born on 28 July 1984, is a national of Pakistan. She married Aamir Aqeel, who is a British citizen, in Pakistan on 18 April 2014. At that time, he was still married to his previous wife in the United Kingdom.

2. The 2nd Appellant was born in Pakistan on 12 January 2015. His mother is the 1st Appellant and Aamir Aqeel is his father.
3. On 2 December 2015 the Appellants applied for entry clearance to settle here with Aamir Aqeel. They were refused entry clearance on 24 February 2016. They appealed on 1 March 2016 but their appeals were dismissed by First-tier Tribunal Judge Khan in a decision promulgated on 3 July 2017.
4. The Appellants appealed against this decision and they were granted permission to appeal by First-tier Tribunal Judge Pickup on 27 July 2017. The Respondent filed a Rule 24 response on 30 August 2017.

ERROR OF LAW HEARING

5. Both counsel for the Appellant and the Home Office Presenting Officer made oral submissions and I have referred to the content of these submissions, where relevant, in my decision below.

DECISION

6. Counsel for the Appellants accepted that the 1st Respondent had not entered into a valid marriage, as at the time of her marriage, Aamir Aqeel was already married to another woman in the United Kingdom. This was because, even though it is possible to marry more than one wife in Pakistan, as Aamir Aqeel was domiciled in the United Kingdom at the time he married the 1st Respondent, the marriage was not valid for the purposes of section 11(d) of the Matrimonial Causes Act 1973.
7. Therefore, the 1st Appellant was not entitled to entry clearance as the wife of a British citizen. In addition, she had not been able to provide all of the evidence required to establish that he was in receipt of the necessary income, as a self-employed person, for the purposes of Appendix FM-SE of the Immigration Rules.

8. However, the First-tier Tribunal Judge also had to consider whether she was entitled to entry clearance in order to ensure that a breach of Article 8 of the ECHR did not occur. He gave very brief consideration to this issue in paragraph 23 of his decision but he did so on the basis that the 2nd Appellant was not a British citizen.
9. In particular, in paragraph 21 of his decision, First-tier Tribunal Judge Khan stated that the 2nd Appellant “is said to be a British citizen, however, he does not currently have a British passport”. However, a passport is merely evidence of British citizenship. It is not a condition for exercising the rights which derive from British citizenship.
10. Section 2(1) of the British Nationality Act 1981 provides that:

“(1) A person born outside the United Kingdom after commencement shall be a British citizen if at the time of the birth his father or mother-

 - (a) is a British citizen otherwise than by descent”.
11. The Appellants’ bundle contained a certificate confirming that Aamir Aqeel had obtained British citizenship by naturalisation, as opposed to descent. The 2nd Appellant’s birth certificate also confirmed that Aamir Aqeel is his father and paternity has not been disputed by the Respondent.
12. Section 50(9A) of the British Nationality Act 1981 states that:

“For the purposes of this Act a child’s father is-section

 - (a) the husband, at the time of the child’s birth, of the woman who gives birth to the child
 - (b)...
 - (c) where neither paragraph (a) nor paragraph (b) applies, any person who satisfies prescribed requirements as to proof of paternity”.
13. Regulation 2 of the British Nationality (Proof of Paternity) Regulations 2006 states that:

“For the purposes of section 50(9A) of the British Nationality Act 1981, the prescribed requirements as to proof of paternity is that the person must satisfy the Secretary of State that he is the natural father of the child”.

14. At the hearing before me the Home Office Presenting Officer confirmed that there was no doubt as to the 2nd Appellant’s paternity. As a consequence, I find that the First-tier Tribunal Judge made an error of law in relation to the 2nd Appellant’s nationality.
15. In addition, he erred in law in relation to any entitlement to leave outside the Immigration Rules which the 1st and 2nd Appellants may be entitled to as he did not take into account the fact that the 2nd Appellant is a British citizen.
16. I accept the submissions made by the Home Office Presenting Officer in relation to any jurisdiction to consider the 2nd Appellant’s EEA rights as the appeal before the First-tier Tribunal Judge had been brought on the basis of family life under the Immigration Rules or outside the Immigration Rules.
17. As a consequence, I find that First-tier Tribunal Judge Khan did make material errors of law in his decision and reasons.

DECISION

- (1) The Appellant’s appeal is allowed.
- (2) The appeal is remitted to a First-tier Tribunal Judge other than First-tier Tribunal Judge Khan.

Signed

Date 13 October 2017

Nadine Finch

Upper Tribunal Judge Finch