Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/14860/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 16 May 2018	**On 04 July 2018**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

MISS MAYA GURUNG
(no anonymity order made)

Appellant

and

ENTRY CLEARANCE OFFICER: NEW DELHI

Respondent

Representation:
For the Appellant: Mr Puar
For the Respondent: Mr Bramble

DECISION AND REASONS

1. The appellant is a citizen of Nepal born in 1989. She appeals against a decision of the respondent made on 17 May 2016 to refuse the appellant's application for entry clearance for settlement as the adult dependant daughter of her father who settled in the UK in 2013.

2. The basis of the refusal is that the respondent considered that the appellant had used fraud in an attempt to be granted entry clearance. She had submitted false educational documents to support her claim. Also checks on the name of the appellant found that all her documents state her name as Maya Gurung but she has a birth certificate in the name of Sarita Gurung. She had no proof these are the same person. It was not accepted that the appellant is the biological daughter of the sponsor.

First-Tier Hearing

3. She appealed.

4. Following a hearing at Newport on 22 August 2017 Judge of the First-Tier Suffield-Thompson dismissed the appeal.

5. Her findings are at paragraph 32ff. In summary, she noted "*a document that purports to be a birth registration certificate*" [35] but went on to state that the original was not before her only a copy with translation. However, "*there is no record to show that these were before the ECO at the time of the application or the ECM at the time of the review*" [36]. Because the appellant's bundle was handed in on the morning of the hearing the respondent was denied the opportunity to check the validity of the translation so the judge gave the birth certificate "*little weight*" [36].

6. The judge went on to note the Kindred Roll and that there is a "Sarita Gurung" on the roll but not a "Maya Gurung". She found it implausible that having changed her name legally she was unable to produce some recent documentation to show at what point in her life she made this name change. The judge questioned why the appellant had not submitted her previous passport in her old name as "*this would have been helpful evidence for the appellant*" [37].

7. The judge next (at [38-41]) considered evidence of financial dependency finding it not plausible that the sponsor would not be able to name ex-army colleagues to whom he claimed to have given money to take to his daughter. Also, there was a lack of money transfer receipts particularly pre-2015. Further, there was a lack of receipts in support of his claim to have paid for his daughter's education at Kalika College. In addition, the sponsor could give no plausible explanation why his daughter makes regular withdrawals from the bank account when he was sending over enough funds to meet her needs.

8. In the next part of the decision the judge did not give weight to items purporting to come from the appellant's college, namely, educational and other certificates, mainly because they were copies and were in English.

9. As for a verification report and emails from a computer association relating to the educational certificates that the Presenting Officer lodged on the day of the hearing which indicated that the certificates were questionable because three of them had the

same reference number when they should all be different, after assessing the evidence she gave the emails "*some evidential value*"[57].

10. The judge accepted that the sponsor had made visits to Nepal but found that there was a lack of documentary evidence particularly pre-2017. She added "*because there has been some contact between them does not make the appellant the sponsor's biological child*" [48].

11. She repeated her conclusion (at [52]) that the appellant had not satisfied her that she is the biological daughter of the sponsor and that Sarita Gurung and Maya Gurung are one and the same person.

Error of Law Hearing

12. The appellant sought permission to appeal which was granted on 5 February 2018.

13. The crux of Mr Puar's submission was that the judge was wrong to find that the appellant is not the sponsor's daughter not least because her finding that the birth certificate was not before the ECO/ECM was clearly inaccurate. The refusal letter relied on information provided in the birth certificate to reach certain conclusions. It was not concluded that the birth certificate was false, simply that it was "*unusual*". Indeed, it was not clear that the respondent gave as a reason for refusing the application that the sponsor and appellant are unrelated.

14. Further, the judge failed to have regard to other evidence which was before her that confirmed that despite the appellant being referred to as Maya and Sarita within the documentation provided, she is the same person. An explanation for why she had changed her birth name, namely that she did not like it, had not been considered by the judge. As for the claim that she should have submitted her old passport in her birth name the judge had failed to note that she had changed her name while still at school. She did not have a passport then.

15. The thrust of the remaining grounds was that the judge did not place sufficient weight, if any, on representations made by the appellant in relation to aspects of the verification report and email correspondence provided by the respondent in relation to the submission of false certificates in respect of the computer course. Mr Puar said he did not seek to address me on this because if the judge's approach to the relationship issue was flawed the appeal would need to be heard again when the other issues including proportionality can be dealt with.

16. Mr Bramble, in reply, agreed that if there had been an error in the judge's assessment of the relationship such would be fatal and a rehearing would be required. The respondent's position in the refusal letter was that the relationship was not established. Whilst the judge had been wrong to find that the birth certificate was not before the ECO at the time of the application, nonetheless, looking at the evidence in the round, the onus being on the appellant and noting the lack of

documentation in support of the change of name, the judge had been entitled to find that the relationship had not been established. Having done so there was no need to go any further.

Consideration

17. In considering this matter, whilst the ECO could perhaps have expressed his conclusion on the relationship more clearly it is evident from the refusal letter that the relationship was disputed. Mr Bramble confirmed such. Such may also have been made clear in the ECM's review. However, it is not in the file and neither side had it.

18. Whilst the judge was thus correct to deal with the matter, the difficulty is that in her analysis of the relationship she proceeded on a misapprehension of an important fact. At [36] she relied heavily on the absence until the morning of the hearing of a copy birth certificate. She finds, as indicated, that "*there is no record to show that these were before the ECO at the time of the application or the ECM at the time of the review*". She added that because of the late lodging of the item the respondent was "*denied the opportunity to check out the validity of the translation*" with the result that she placed "*little weight*" on the birth certificate.

19. However, it is clear that the birth certificate was before the ECO because he commented on it. Also, unlike the judge, who appeared to reach the conclusion that the certificate is not genuine, the ECO did not state that conclusion but, rather, found it "*unusua*l" that if she had changed her name she could not document when that had happened and why her passport was in the new name.

20. It is clear that the judge considered the late production of the copy birth certificate to be a crucial factor against the credibility of her claim to be the sponsor's daughter. In making a mistake on a material fact the judge erred in law.

21. Further, in the only other paragraph in which she considered the evidence of the relationship [37], she adopted the respondent's concern about lack of information about when the name change happened and the lack of an earlier passport.

22. Unfortunately, the judge failed to give consideration to evidence which was before her, namely, the witness statement of the sponsor where he states she changed it at school because she did not like her birth name and that such is common practice. Also, that there is documentation, namely "Certification of one and same person" (p25 appellant's bundle) issued by the government of Nepal, District Administration Office which states, indeed, that Maya and Sarita are the same person. Further, the evidence that the passport in her current name is her first passport.

23. In failing to have regard to relevant evidence the judge further erred.

24. These errors must taint the findings the judge made in relation to the other matters including financial and emotional dependency such that, as both parties agreed were material errors to be found in the assessment of the relationship, the case would have to be heard again.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of its findings are to stand. The nature of the case is such that it is appropriate in terms of Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and of Practice Statement 7.2 to remit the case to the First-tier Tribunal for an entirely fresh hearing. The member(s) of the First-tier Tribunal chosen to consider the case are not to include Judge Suffield-Thompson.

No anonymity order made.

Signed Dated 03 July 2018

Upper Tribunal Judge Conway