Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HU/06838/2017
HU/07192/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 May 2019	**On 21 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

MAHMID IDRIS ALAMIN
ADIL IDRIS ALAMIN
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellants: Miss Thirmaney, Solicitor, Shervins Solicitors
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. In this matter the Appellants had sought entry clearance to join their uncle here in the United Kingdom. The matter had come for hearing before First-tier Tribunal Judge Beg at Taylor House on 11 February 2019. On 19 February 2019 she dismissed the appeals, relating both to the Immigration Rules and in respect of Article 8 ECHR.

2. Permission to appeal was granted by Designated First-tier Tribunal Judge J McCarthy. He said in his grant of permission dated 15 April 2019 in part as follows:-

> "2. The Appellants state that their aunt gave evidence during the appeal hearing and the judge has failed to have regard to her evidence. I note that the Appellant's bundle contains a witness statement from their aunt even though at paragraph 11 the judge says there was no witness statement from her. I am aware that the judge's notes of the hearing do not refer to evidence from the aunt, but it is arguable she was present given the fact that she had prepared a witness statement and was in the UK, having joined the Appellant's uncle (her husband) in May 2017.
>
> 3. The failure to consider what might be very material evidence has the potential to undermine the outcome and for that reason I find this ground is made out. Although I am less confident that the other grounds identify arguable legal errors on their own, I acknowledge that they should not be restricted because they overlap with the second ground."

3. Miss Thirmaney in her oral submissions said she relied on the grounds of appeal and the grant of permission to appeal. She said the key point was whether or not these minor Appellants were part of the Sponsor's family. The Sponsor having been granted refugee status and whereby he had clearly mentioned the two Appellants as well. She invited me to look at paragraphs 8 and 11 of the judge's decision and also at paragraph 20. She said when looking to the bundle of documents that was presented to the First-tier Tribunal it was clear from the index and the contents that indeed there was a witness statement from Selma Saleh and indeed paragraph 2 of the witness statement I observed that the witness statement refers to the Appellants as being "my children".

4. Mr Tufan in his submissions said that there does appear to be an error at paragraph 11 of the judge's decision, namely that it was incorrect that there was no witness statement from the aunt, but that had actually referred to the issue of funds and whether or not they had or had not been sent. It was that context that the judge was referring to. The Sponsor's wife was not saying anything more than that. Mr Tufan said that therefore his initial view was that there was an error of law but that it was not material and the issue was whether paragraph 35 of the Immigration Rules was met. Was the family pre-flight or not? Could they be children of the Sponsor legally or not? Insofar as the adoption order is concerned there was a guardianship letter. Mr Tufan said that the translation of that was within the Appellants' bundle but it did not appear that the original was submitted and it was not clear why not. It was not known whether it was a court order or just a stamp by the interpreters. Overall there was a lack of provision of documentation. It was to be noted that at paragraph 16 the judge also referred to the lack of a death certificate. There was a complete lack of documentary evidence. At paragraph 17 the judge had applied the relevant standard of proof and had arrived at the conclusions

that she did. Mr Tufan said that therefore although there was an error of law it was not material.

5. I then heard from Miss Thirmaney in reply. She said, as she did previously, that although not specifically referred to within the grounds, some of the matters raised by the judge in the decision were not within the scope of the initial refusal by the Entry Clearance Officer and nor indeed were those issues raised during the hearing. Miss Thirmany said she had attended the hearing before the judge. She also confirmed earlier that the aunt was present at the hearing before the First-tier Tribunal Judge and indeed she gave evidence, albeit she only had to adopt her witness statement and no questions were asked of her. Similarly, she said that the aunt was in attendance today as well.

6. Having considered the matter, I go back first to the refusal letter itself. The Entry Clearance Officer's decision dated 10 May 2017 has one bullet point and it says as follows:-

> "You do not meet the requirements of this paragraph of the Rules as you are not the biological child of a person with refugee status".

7. The relevant Immigration Rule was paragraph 352D and the Entry Clearance Officer referred to only 352D(i). 352D(i) states as follows:-

> "The requirements to be met by a person seeking leave to enter or remain in the United Kingdom in order to join or remain with the parent who currently has refugee status are that the applicant:
>
> (i) is the child of a parent who currently has refugee status granted under the Immigration Rules in the United Kingdom …".

8. Therefore, what Mr Tufan says in terms of the materiality of the error of law has a significant bearing. Namely that even if the judge had not properly considered the evidence which was presented, how might it be that the Appellants would be able to meet paragraph 352D(i), i.e. in terms of the children of the uncle? Having reflected on this and having noted that the judge refused the appeal, not only in respect of the Immigration Rules but also in respect of Article 8, I am just persuaded that the error of law is material.

9. The Appellants will have to understand though that the evidence which needs to be submitted will have to be significant. It will not be sufficient to rely on a translation and photocopies alone. The case law in respect of adoption from abroad is a significant matter and the Tribunal must be made aware of the case law in respect of it when this matter is reheard. I am concerned however that the judge materially erred. She said that there was no evidence form the aunt, but in fact not only was there a witness statement, the aunt had been tendered in evidence. The judge's error was significant on any assessment. It is not safe to assume that the judge might have come to the same decision had she considered that evidence presented to her. In my judgment there is no alternative but to conclude that there is a material error of law in the judge's decision.

Notice of Decision

9. As the Appellants have not had a proper hearing at the First-tier Tribunal it is appropriate for this matter to be remitted to the First-tier Tribunal for there to be a rehearing. The rehearing will be on all issues. None of the findings currently made shall stand.

10. No anonymity direction is made.

Signed A Mahmood Date: 28 5 2019

Deputy Upper Tribunal Judge Mahmood