



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

Appeal Number: HU/00336/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 6 June 2019**

**Decision & Reasons Promulgated
On 19 August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

ENTRY CLEARANCE OFFICER - SHEFFIELD

Appellant

And

**MD. ASSAD ALI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms J Isherwood of the Specialist Appeals Team
For the Respondent: Mr M Hassan of Kalam Solicitors

DECISION AND REASONS

The Respondent

1. The Respondent (the Original Appellant) is a Bangladeshi born 1999. On 28 August 2017 he made an application as a child for entry clearance to join his parents in the United Kingdom. He is sponsored by his mother.

The ECO's decision

2. On 19 December 2017, the Appellant (the ECO) refused the application by reference to the Eligibility Financial Requirement of Appendix FM to the Immigration Rules finding that the Original Appellant had not shown the sponsor had sufficient income and further by way of reference to Appendix FM-SE because the Original Appellant had not produced the requisite documentation to confirm the sponsor's income. I shall refer to this in brief as the First Limb. The ECO expressly conceded the Original Appellant satisfied the Eligibility Relationship Requirements of paragraph E-ECC.1 of Appendix FM to the Immigration Rules. Paragraph E-ECC.1.6 requires that one of the Original Appellant's parents be in the United Kingdom with limited leave to enter or remain or have been granted entry clearance as a partner under Appendix FM. I shall refer to this as the Second Limb. On 20 October 2018 the Entry Clearance Manager (the ECM) upheld the decision on the grounds of the First Limb. I note in passing the ECM stated "I do not have access to any documents submitted with the application form and whilst it is claimed in the grounds of appeal that the appellant can be maintained adequately without recourse to public funds, this is not particularised in any way."

Proceedings in the First-tier Tribunal

3. The Applicant appealed and by a decision promulgated on 13 December 2018 Judge of the First-tier Tribunal Freer allowed the appeal.
4. The ECO sought permission to appeal on the basis the Judge had erred in law because the Judge had made a mistake as to a material fact namely that the Original Appellant's parents and in particular his mother who is his sponsor, was not settled in the United Kingdom and the Original Appellant's father had limited leave based on the residential status of his wife, the sponsor. The grounds acknowledge that the Presenting Officer at the First-tier Tribunal hearing was unaware of this and the grounds refer to a letter of 25 October 2018 sent by UK Visas and Immigration to the Original Appellant's solicitors refusing an application by the sponsor for a Certificate of Entitlement to a Right of Abode which had not been produced to the Judge. The grounds asserted this mis-conception infected the entire decision of the Judge.
5. On 1 May 2019 Judge of the First-tier Tribunal Andrew extended time and granted permission to appeal.

The Upper Tribunal Proceedings

6. The sponsor attended the hearing. Mr Hassan informed me she had no English at all and so would be unable to follow the hearing.
7. The parties agreed that the relevant test for maintenance and accommodation was that described in *KA (Adequacy of Maintenance) (Pakistan) [2006] UKAIT 00065*. There was no challenge to the Judge's finding that the Original Appellant succeeded under the First Limb. Ms Isherwood for the ECO produced the letter of 7 January 2014 from UK

These as and Immigration to the solicitors for the sponsor and the Original Appellant confirming issue to the sponsor of a Certificate of Entitlement to the Right of Abode and a subsequent letter of 29 September 2017 refusing her later application for another Certificate of Entitlement and a letter of 5 July 2018 rejecting the sponsor's request for reconsideration of the refusal of British citizenship.

8. Mr Hassan referred to the decision of the ECO. It identified two eligibility requirements. Even if the sponsor's passport which had been endorsed with a Certificate of a Right of Abode had now expired, her status as a British citizen by descent remained. He produced a letter of 3 May 2019 from the Passport Office dealing with the sponsor's failed application. Copies were made for the ECO and the Tribunal.

Submissions for the ECO

9. Ms Isherwood relied on the grounds for appeal. The issue was that to succeed the Original Appellant's parents had to have the requisite residential status and the sponsor's Certificate of Entitlement had expired with the expiry of her passport in 2016. There was no automatic extension and the sponsor had not successfully made a further application. Mr Hassan had not cited any authority for his earlier submission that notwithstanding expiry of the 2014 Certificate of Entitlement the sponsor's status was automatically continued.
10. She referred to paragraphs 13 and 18 of the Judge's decision. These state:

"13. Either both parents are present and settled or the father is present but not yet settled. It appears he is allowed to work here. There is one reference to him having "limited leave" but I was not offered proof or disproof of that statement.

18. The status of the father was not challenged by either the ECO, the ECM or the HOPO. It is possible that the father is not settled, like the mother. It would have been helpful for the ECM to make clear findings on these points as the ECM had accepted the 297 point applied and it is a complex Rule."

She submitted that the Judge had expressly accepted he had no proof to support his findings, the Original Appellant's application form stated the sponsor is a British citizen but in her statement she describes herself as a Bangladeshi citizen. The letter of 3 May 2019 produced at the hearing only made matters worse for the Original Appellant.

Submissions for the Original Appellant

11. Mr Hassan relied on his earlier submission that expiry of the Certificate of Entitlement did not adversely affect the sponsor's status as a British Citizen by descent.
12. The Judge had before him an appeal on human rights grounds by a child who is the child of a settled person, that is a person upon whom there are

no immigration restrictions or who has a right of abode as a British citizen. By issuing a Certificate of Entitlement of the Right of Abode in 2014 the Secretary of State had accepted that the sponsor was a British citizen by descent. She had produced all the requisite documents in 2014 on the basis of which a Certificate of Entitlement had been issued. He referred to s.2 British Nationality Act 1981 dealing with acquisition of British citizenship by descent. He referred to paragraphs 17ff of the judgment in *R (Md Sanu Miah) v SSHD [2017] EWHC 2925 (Admin)* and page 4 of the Home Office guidance on Nationality: right of abode of 23 May 2018 that the right of abode is a statutory right which a person either has or does not have subject to possible exercise of the power of deprivation of the right of abode in s.2A Immigration Act 1971.

13. He submitted that the third paragraph of the letter of 7 January 2014 from UK Visas and Immigration was incorrect in stating that the Certificate of Entitlement is valid for the duration of the validity of the passport to which it is attached. The position was that in the letter of 3 May 2019 the Secretary of State now sought to reject or find insufficient documents which had previously been accepted as sufficient to grant a Certificate of Entitlement. Once status had been granted it continued until revocation. The sponsor's status had not been revoked. The letters from the Passport Office of 3 May 2019 and from UK Visas and Immigration of 29 September 2017 did not revoke the sponsor's residential status. There was no allegation of fraud and neither letter purported to remove her status as a British citizen by descent.
14. He continued that the Judge had made no finding on the sponsor's residential status because he had not needed to in the light of the concession contained in the original decision of the ECO and the ECM had not sought to withdraw that concession. The Second Limb had not been an issue before the First-tier Tribunal.
15. The only other issue was that of finance - the First Limb - in respect of which the Judge's findings had not been challenged in the grounds for appeal.

Response for the ECO

16. Ms Isherwood noted that the sponsor's passport on which a Certificate of Entitlement had been endorsed had expired in 2016 and that a Certificate of Entitlement ceases to have effect on the expiry of the passport to which it is affixed. There was now an issue over the sponsor's status because of the discrepancies in her date of birth given in various documents. This issue had still to be resolved and in the meantime the Original Appellant had supplied no further information about his father's residential status. The sponsor relied on a statutory right and the burden of proof was on the sponsor or in this appeal the Original Appellant and it had not been discharged. The concession had been incorrectly made.

Consideration

17. At the date of the hearing before the Judge, the sponsor had been granted a Certificate of Entitlement and the passport to which the Certificate had been fixed had expired in 2016 before the date of the Original Appellant's application. It appears from the letter of 29 September 2017 from UK Visas and Immigration to the sponsor that she had made a further application for another Certificate of Entitlement which had been refused for lack of submission of the relevant documents. It appears from the letter of 5 July 2018 from UK Visas and Immigration to the solicitors for the sponsor and the Original Appellant that the sponsor had applied for British citizenship and been refused initially and a request for reconsideration had been made which in turn had been refused by a letter of 25 October 2018.
18. There is some merit in the submission that the Original Appellant's solicitors should have made these letters available to the First-tier Tribunal for the hearing on 7 December 2018. On the other hand, the ECO had already conceded the issue of the status of the Original Appellant's parents under paragraph E-ECC.1.6 of Appendix FM. The letters were disclosed at the Upper Tribunal hearing on 6 June by the ECO, not by the solicitors for the Original Appellant who in response to disclosure by the ECO produced the Passport Office's letter of 3 May 2019, declining on the evidence before it to issue a British passport to the sponsor. As Ms Isherwood submitted this refusal assisted neither the Original Appellant nor the sponsor.
19. There is no evidence in the Upper Tribunal's file that at any time the ECO has sought to withdraw the concession or decision under appeal by way of reference to the uncertain status of the Original Appellant's parents or either of them. The ECO's application for permission to appeal was some 13 weeks out of time which delay was explained by noting that it was not until 4 April 2019 that the Specialist Appeals Team had been approached by the ECO with concern about the Judge's decision. Time was extended by Judge Andrew in her grant of permission to appeal.
20. Regulation 6 of the Immigration (Certificate of Entitlement to Right of Abode in the United Kingdom) Regulations 2006 provides that a certificate of entitlement will only be issued where the appropriate authority is satisfied the applicant has a right of abode. Regulation 8 provides that the certificate will cease to have effect on expiry of the passport to which the certificate is affixed.
21. The sponsor's Certificate of Entitlement expired before she took any action to obtain a document confirming her British citizenship. She now has no Certificate of Entitlement to show that she is entitled to British citizenship by descent. The letters from UK Visas and Immigration and the Passport Office show that the authorities have taken the point that they are no longer satisfied the sponsor has shown she has a right of abode. Accordingly, she has not shown that she is entitled to British citizenship by descent. The argument that she is a British citizen by descent relies either on the expired Certificate of a Right of Entitlement or on requirements which the sponsor has been unable to evidence she meets them as

indicated in the letters of 29 September 2017 and 25 October 2018 from UK Visas and Immigration and of 3 May 2019 from the Passport Office.

22. At the hearing before the Judge the ECO had not withdrawn the concession that the Original Appellant met the Eligibility Relationship Requirement of paragraph E-ECC.1 of Appendix FM and the letters of 29 September 2017, 5 July 2018 and 25 October 2018 did not seek to cast doubt on the Certificate of Entitlement which had previously been issued and which had expired but they did show that a then recent application for another Certificate of Entitlement had been refused. Both the sponsor and the solicitors for her and the Original Appellant were aware of this and continued to rely on the ECO's concession made in the decision of 14 November 2017. The letter of 29 September 2017 was crucial because the sponsor's previous Certificate of Entitlement had expired and so ceased to be of effect and her application for another Certificate of Entitlement had been refused and there was no evidence before the Judge or the Upper Tribunal that the sponsor had sought to appeal that decision, as advised in the decision letter of 29 September 2017
23. The information in the letters of 29 September 2017 and 25 October 2018 should have been made available to the Judge and would have had a material effect on his findings, if it had not previously prompted the ECO to seek to withdraw the concession or indeed, the whole decision. There was no explanation why the information had not previously been disclosed to the Judge or indeed to the Upper Tribunal (until the start of the hearing) by either the ECO or the Original Appellant. It is a matter which goes to the fairness of the hearing before the Judge. The Judge was concerned about the ECO's approach to the residential status of the Original Appellant's father but the relevance of this was limited because the sponsor is his mother and it was upon the basis of her status that the application had been made and in respect of whom the ECO had made the original concession in the decision letter.
24. For these reasons, I find that the Judge's assessment of the proportionality of the decision under appeal was through no fault of his own inadequate and his decision is set aside.
25. Having regard to the fact that this appeal is from a decision made in respect of an applicant who has now obtained his majority and that fresh evidence may be required with a view to establishing the residential status of the sponsor and her husband, I find it appropriate that the appeal be remitted to the First-tier Tribunal for hearing afresh with no findings preserved.

Anonymity

26. There was no request for an anonymity direction and having considered the appeal I find none is warranted.

SUMMARY OF DECISION

The decision of the First-tier Tribunal contains an error of law and is set aside in its entirety. The appeal is remitted to the First-tier Tribunal for a fresh hearing.

Anonymity direction not made.

Signed/Official Crest

Date 12. vi. 2019

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal