Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA 28975 2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 3 July 2013	**On 16 July 2013**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SAEEDA KHATOON AKHTAR

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Singer of Counsel, instructed by HRS Solicitors LLP
For the Respondent: Ms E Martin, Home Office Presenting Officer

DETERMINATION AND REASONS

1. It is accepted that the appellant is a citizen of Pakistan who was born on 7 April 1947 and so is now 66 years old. She applied for indefinite leave to remain in the United Kingdom as a dependant relative of a person present and settled there and the application was refused.

2. One of the reasons for refusal was that the appellant did not satisfy the requirements of paragraph 317(iii) of HC 395 which requires her to show that she is financially wholly or mainly dependent on a relative present and settled in the United Kingdom. Clearly the First-tier Tribunal Judge was not satisfied on this point and if this decision is sound then any error relating to another part of the rules is immaterial.

3. However, although the decision that the appellant's evidence on this point might eventually be seen to have been right I cannot be satisfied that the First-tier Tribunal Judge would have disbelieved that evidence if he had not disbelieved other strands of evidence and I am satisfied that some his

findings of fact were skewed by error. It follows that, having considered all of the material before me, I have decided that all the findings of the First-Tier Tribunal must be set aside.

4. At paragraph 10 of the determination the First-tier Tribunal concluded by saying:

> "I regarded it as unhelpful to the appellant's case that even the question of her relationship to the sponsor raised so many unsatisfactory evidential issues".

5. This remark concludes a paragraph which, read as a whole, creates the impression that the First-tier Tribunal Judge was wholly unpersuaded that the appellant and sponsor are related as claimed or even related at all. Ms Martin, for the Secretary of State, argued that this is precisely what the Judge meant. He was not, she said, persuaded that the appellant and sponsor are related as claimed.

6. The difficulty is that in paragraph 14 of the determination the Judge says that he is not satisfied that the appellant "had been in the United Kingdom between 2002 and 2012 enjoying family relationships with the sponsor and her other children in the country". Ms Martin says there is no inconsistency here. The First-tier Tribunal Judge accepted that the appellant had children in the United Kingdom but the sponsor was not one of them. I cannot agree with that. I can make no sense of this finding unless I accept that the sponsor is a child of the appellant. No other interpretation that I could see gives a conventional meaning to the word "other" in the phrase "other children in the country.

7. It follows therefore that I am persuaded that the First-tier Tribunal Judge has not shown if he accepted that the appellant is the sponsor's son.

8. I also accept Mr Singer's submission that this equivocation has necessarily impacted on the assessment of the sponsor's means. It is not clear how much of the sponsor's evidence is believed and whilst it might be appropriate to disbelieve the sponsor's evidence about his means if he is unreliable in other respects I am not satisfied that his evidence should be disbelieved if he is telling the truth about his relationship with the appellant, at least as he understands it.

9. The uncertainty about whether or not the appellant is the son of the sponsor is reflected in the Reasons for Refusal Letter. Again, Ms Martin energetically argued that it was clear from the Reasons for Refusal Letter that the Secretary of State did not accept that the appellant and her alleged son are related. Having read the letter quite satisfied I am satisfied that might be the meaning of the letter but I am do not agree that this is its clear meaning. This uncertainty impacts on the conclusions that can be drawn from the failure of the appellant to support her case with DNA evidence. It is accepted in the Reasons for Refusal Letter that the appellant is aged over 65 years. Given that that is accepted, if it is the respondent's case that the appellant is not related as claimed then it would have made sense to have refused the application with reference to paragraph 317(i)(a) and to have stated that the decision maker was not satisfied that the appellant was a parent (who was divorced, widowed,

single or separated) aged over 65 years. The Secretary of State did not rely on that rule. Rather she relied upon paragraph 317(i)(f) which applies where there is a son, daughter, sister, brother, uncle or aunt over the age of 18, if living alone outside the United Kingdom in the most exceptional compassionate circumstances. This is a Rule that might be applicable in the case of a relative other than a parent and relying on this rule might have been the decision maker's way of saying that it is not accepted that the appellant is the son of the sponsor but it would have been helpful if the point was clear beyond argument.

10. For my part I would find it potentially significant if the appellant failed to produced DNA evidence to support a disputed claim to be her sponsor's mother but I do not think it right to make such findings when the respondent's case is equivocal.

11. Before me Ms Martin made it clear beyond argument that the respondent does *not* accept that appellant is related to the sponsor as claimed. Now that is clear the appellant know the case that she must meet and any failure to produce scientific evidence can be a proper matter for comment.

12. Quite contrary to my initial thoughts about this appeal I am persuaded that there has been no clear finding of fact on a matter of fundamental importance in this case and that therefore the appeal needs to go back to the First-tier Tribunal to be decided again.

13. The consideration of the claim on human rights grounds will be done best with the benefit of clear findings about the nature of the biological relationship, if any, between the appellant and her supporters. Without deciding the point it seems to me that it would be perfectly possible, although very unlikely, that an appeal ought to be allowed on human rights grounds if they are taking care of her even if there is absolutely no physical relationship at all. Everything would depend on findings that have not yet been made.

14. It may be that this is a vexing decision for the First-tier Tribunal Judge who may have been clear in his own mind about what he meant. It is not clear in the determination and that is what I have to consider.

15. It follows therefore that I rule the decision is wrong and I allow the appeal and direct that the case is decided again in the First-tier Tribunal.

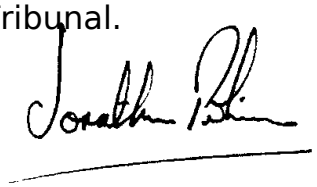
16. I accede to Mr Singer's request to make plain that I am not preserving any of the existing findings. They are all tainted by error.

17. This case should not be listed before 3 September 2013 because now that the appellant knows that her relationship to the sponsor is in issue she should be given time to prepare her case but I decline to give formal directions as the First-tier Tribunal can organise its own affairs.

Decision

I set aside the decision of the First-tier Tribunal and order that the appeal be decided again by the First-tier Tribunal.

Signed



Jonathan Perkins
Judge of the Upper Tribunal

Dated 8 July 2013