



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

Appeal Number: OA/08840/2014

THE IMMIGRATION ACTS

**Heard at: Columbus House, Decision & Reasons Promulgated
Newport
On: 18 December 2015**

On: 27 January 2016

Before

**MR C M G OCKELTON, VICE PRESIDENT
DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

Between

ENTRY CLEARANCE OFFICER - MANILA

Appellant

And

V S

Respondent

Representation

For the Appellant: Mr I Richards, Home Office Presenting Officer

For the Respondent: Mr B Halligan, Counsel instructed by Dias Solicitors

DECISION AND REASONS

1. This appeal is subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party invited us to rescind the order and we continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).

2. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Del Fabbro in which he allowed the appeal of VS, a citizen of the Philippines, against the Secretary of State's decision to refuse to grant leave to enter the United Kingdom for settlement as the child of the Sponsor NC. We shall refer to VS as the Claimant, although she was the Appellant in the proceedings below.
3. The application for leave to enter was refused by reference to paragraph 297(1) and 320(7A) of the Immigration Rules (HC395) on 1 July 2014. The Claimant exercised her right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Del Fabbro on 5 May 2015 and was allowed. The Secretary of State applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Simpson on 22 July 2015 in the following terms
 1. The respondent seeks permission to appeal against a decision of the First-tier Tribunal (Judge Del Fabbro) who, in a decision promulgated on 16 June 2015, allowed A's appeal against the Manila ECO's decision to refuse leave to enter under paragraph 297(i) as the dependent child of a person present and settled in United Kingdom.
 2. A was refused entry clearance because a false marriage certificate had been submitted yet the birth certificate asserted that the parents were married. The ECO was not satisfied as to the identity of A and in any event, the submission of false documents or the making of false representations, whether or not the knowledge of the appellant, undermined the credibility of the application and the application was therefore refused under paragraph 320(7A).
 3. The respondent avers that the Judge has made a material error of law in that:
 - (a) the judge failed to make the findings in relation to the identity and nationality of the appellant even though this is clearly a fact in issue of a material matter;
 - (b) the judge failed to apply his mind to the domino effect that results from the sponsor's reliance on a false marriage certificate as proof of identity or nationality;
 - (c) the judge failed to properly consider the requirements of paragraphs 320(7A) and 320(3) of the immigration rules;
 - (d) the judge erred in failing to observe that the evidential burden had properly shifted to the appellant to show that a marriage certificate was not in fact required when issuing a birth certificate or a Philippines passport;

(e) the judge's finding that the appellant can meet all the requirements of paragraphs 297(i) is flawed and unsustainable.

4. It is clear that the absence of a presenting officer has had serious implications in this case if only because it is arguable that the judge did not consider whether the sponsor had sole responsibility of the appellant. Such consideration must flow from the fact that a false marriage certificate had been relied upon. It is arguably not relevant that there was no indication that the appellant was not the sponsor's daughter; what had to be shown was that the appellant's mother had sole responsibility and that has not been established.

4. A rule 24 response was filed on behalf of the Claimant on 15 October 2015 addressing the grant of permission and opposing the appeal.

5. At the hearing before us the Secretary of State was represented by Mr Richards and Mr Halligan appeared for the Claimant. Answering questions from us Mr Richards accepted that the Entry Clearance Manager's review did not list the marriage certificate amongst the papers submitted in support of the application but said that it must have been submitted. The fact that it is missing from the list does not mean that it was not submitted and it was quite clear that the Entry Clearance Officer had looked at it. It was difficult to say from the bundle how it came to be with the papers or how the birth certificate of the Claimant's brother, K, came to be there. Mr Richards confirmed that he emailed the Entry Clearance Officer and was told that the original marriage certificate had been submitted and a copy had been sent to him. Mr Richards produced the copy. He accepted that this copy was an altogether unsatisfactory document: it has the appearance of being scanned from another document using optical character recognition (OCR) software causing a distorted and jumbled result. Mr Richards said that he could not assist any further over the allegation that a fake document had been submitted. He accepted that there was no evidence put forward to the First-tier Tribunal to support the assertion that Filipino law required the production of the parents' marriage certificate to obtain a birth certificate and passport. So far as findings in relation to paragraph 297(i)(f) were concerned Mr Richards relied upon the grounds of appeal and said that these findings were not adequately reasoned. We did not ask Mr Halligan to address us.

Error of law

6. In our judgement the decision of the First-tier Tribunal does not contain a material error of law. The grounds of appeal to the Upper Tribunal raise only two substantive issues. The first relates to the marriage certificate of the Claimant's parents which is said in the notice of refusal to have been provided with the application. The second relates to the finding that the Sponsor had parental responsibility for the Claimant.

7. So far as the first ground is concerned the Entry Clearance Officer asserts that the Claimant's parents' marriage certificate was provided with the application, that this certificate was false and that as a result the Claimant's birth certificate and passport were not reliable evidence of her identity because a false marriage document had been used to obtain them.

8. Where an allegation of forgery is made the burden of proof is on the party making it. This is a common law principle and its consequences for a matter such as this are summarised in the headnote to RP (proof of forgery) Nigeria [2006] UKAIT 00086

"An allegation of forgery needs to be proved by evidence and by the person making it. The procedure under s108 of the 2002 Act remains available to respondents. A bare allegation of forgery, or an assertion by an Entry Clearance Officer that he believed the document to be forged can in these circumstances carry no weight. The Tribunal treats a document as forged only on the basis of clear evidence before it. KS (Allegations by respondent: proof required?) Pakistan [2005] UKAIT 00171 should not be read as implying the contrary."

9. Whereas the notice of refusal contains a clear allegation of forgery it is not even clear that the document in question was submitted with the application. Mr Richards' submission that 'it must have been' is perhaps one explanation for how the document came to be with the Entry Clearance Officer's file but there are other potential explanations. The document itself, helpfully requested by Mr Richards and shown to us, is wholly unsatisfactory. As we note above the document is a copy that appears to have been irredeemably corrupted by use of OCR software. Where it is not clear that the document in question was submitted with the application and the document itself is not available in remotely readable format it must in our judgment be impossible for the Entry Clearance Officer to meet the burden of proof of showing that a false document had been submitted or false representations made in support of the application. The domino effect of this must be that there is no reason to doubt the reliability of the Claimant's birth certificate and passport. In any event as Mr Richards accepted there was no evidence before the First-tier Tribunals to support the assertion that a parents marriage certificate and a birth certificate is required to for the issue of a Filipino passport.

10. In reaching our conclusion that the First-tier Tribunal Judge did not err if law the decision and reasons shows that the Judge was very much alive to the issues that we have referred to above. At paragraph 17 the Judge notes

"... there is no evidence that a marriage certificate was actually relied upon or used in this application".

At paragraph 18 the Judge adds

"... there is no evidence before me that the birth certificate issued by Saudi authorities and recording the birth of the appellant in Jeddah was false. Likewise there is no evidence before me that the passport relied upon by

this Appellant was issued to her on the basis of a false marriage certificate relating to her parents married status.”

In our judgment the First-tier Tribunal Judge’s conclusion at paragraph 22 that there was no dishonesty or false representation on behalf of the Claimant is unassailable.

11. So far as the second ground is concerned the complaint made by the Entry Clearance Officer in the grounds of appeal to the Upper Tribunal is firstly by reference to the Claimant’s identity referring back to her parents’ marriage. For the reasons given above this is not sustainable. The only other ground of challenge is the Judge’s acceptance of the oral evidence of the Sponsor “unchallenged because of lack of a home office presenting officer”. This is equally unsustainable, where the Entry Clearance Officer (through the Secretary of State) elects not to field a presenting officer to challenge oral evidence given by a party to the proceedings this cannot detract from the weight given to that evidence. The decision and reasons shows quite clearly that the Judge considered the evidence of the relationship between the Claimant and the Sponsor on the basis of the documentary evidence and the oral evidence of the Sponsor. The Judge’s conclusion that the Claimant is the daughter of the Sponsor and that there are serious and compelling family or other considerations which make exclusion of the child undesirable was open to the Judge and reveals no error of law.

CONCLUSION

12. The making of the previous decision did not involve the making of an error on a point of law. The Entry Clearance officer’s appeal is dismissed

Signed:

Date:

**J F W Phillips
Deputy Judge of the Upper Tribunal**