Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: VA/13154/2013**
VA/13155/2013
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THE IMMIGRATION ACTS

Heard at Field House **Determination Promulgated**
On 24 September 2015 **On 30 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

(1) MR MUHAMMED NADEEM
(2) MRS ANWARI BIBI
(3) MISS M
(4) MISS F N
(NO ANONYMITY ORDER MADE)

Appellants

and

ENTRY CLEARANCE OFFICER – ABU DHABI

Respondent

Representation:

For the Appellant: Mr N. Bajwa, A. Bajwa and Co, Solicitors
For the Respondents: Mr L. Tarlow, Specialist Appeals Team

DECISION AND REASONS

1. The appellants appeal from the decision of the First-tier Tribunal (Judge Verity sitting at Hatton Cross on 6 February 2015) dismissing their appeals against the refusal of entry clearance as family visitors. Permission to appeal to the UT was granted on the sole ground that it was arguable that the appellants and their legal representatives had not received notice of the hearing. The First-tier Tribunal did not make an anonymity direction,

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and I do not consider that the appellants require anonymity for these proceedings in the UT.

Relevant Legal Principles

2. The requirements to be met by an applicant for a visit visa are set out in paragraph 41 of the Immigration Rules.

3. The requirements set out in paragraph 41 include the following, which is that the applicant:

“(i) is genuinely seeking entry as a general visitor for a limited period as stated by him, not exceeding 6 months; and

(ii) intends to leave the United Kingdom at the end of the period of visit as stated by him; and

(iii) does not intend to take employment in the United Kingdom; and…

(vi) will maintain and accommodate himself and any dependants adequately out of resources available to him without recourse to public funds or taking employment; or will, with any dependants, be maintained and accommodated adequately by relatives or friends; and

(vii) can meet the cost of the return or onward journey; and

(viii) is not a child under the age of 18.”

4. The burden is on the applicant to show that he meets all the relevant requirements for entry clearance as a visitor contained in paragraph 41 or, if a child, the requirements of paragraph 46A. On appeal against a refusal decision he must show, if he is a family visitor, that the decision of the respondent refusing to grant him leave to enter in this capacity is not in accordance with the immigration rules, or is otherwise not in accordance with law: see Section 84 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”), sub-sections (a) and (e), The standard of proof is on the balance of probabilities. The Tribunal may consider only the circumstances appertaining at the time of the decision to refuse: see Section 85(5) of the 2002 Act.

5. But if the applicant is not a family visitor, his appeal rights are much more restricted. Pursuant to Section 88A of the 2002 Act and the Immigration Appeals (Family Visitor) Regulations 2003, he can only appeal on the ground that the decision is unlawful by virtue of section 19B of the Race Relations Act 1976 or unlawful under section 6 of the Human Rights Act 1998.

The Application and Grounds of Refusal

6. The first and second appellants are husband and wife, and the third to fourth appellants are their children. They applied to visit the UK for one month in order to attend a family wedding. The parents' applications were refused on 21 May 2013 under sub-paragraphs (i), (ii) and (vii) of paragraph 41 of the rules. The reasoning of the ECO was that Mr Nadeem had not provided adequate evidence of his claimed self-employment as "Nadeem Motors" or of his claimed income from such self-employment; and that their UK sponsor (Mr Nadeem's niece) had provided bank statements which were over four months old. So the ECO was not satisfied that either the main appellant or the sponsor had given an accurate picture of their respective financial circumstances.

The Hearing before, and the Decision of, the First-tier Tribunal

7. The appeal against this decision came before Judge Verity for an oral hearing at which the ECO was represented. There was no appearance by the appellant's nominated legal representatives, Bajwa & Co, although the notice of hearing had apparently been sent to their address. The judge noted that no additional information had been provided by way of appeal in answer to the concerns raised by the ECO, and she dismissed the appeal *inter alia* on the ground that the appellants had failed to discharge the burden of proof.

The Hearing in the Upper Tribunal

8. At the hearing before me, I reviewed the convoluted procedural history of these appeals and the evidence relied on by way of appeal as establishing that the notice of hearing had not been received. Mr Bajwa produced a witness statement from the sponsor in which she sought to explain why she was not attending the hearing and why the hearing of the appeal should be adjourned for a fourth time (the hearing before Judge Verity being the third adjourned hearing in the First-tier Tribunal). Mr Tarlow submitted that even if the appellants did not receive notice of the hearing there was no unfairness as they had failed to put in evidence to discharge the burden of proof. Mr Bajwa submitted that the appellants ought to be given one more bite of the cherry. Alternatively, he invited me to remake the decision in their favour, having regard to the evidence that was enclosed with the application (which he handed up) and which, he said, the ECO had not taken into account.

Discussion

9. The appeal was first due to be heard on 25 April 2014. But on 16 April 2014 Bajwa & Co sought an adjournment because the appellant had posted documentary evidence from Pakistan which had not reached them.

He was now re-gathering the evidence, and it was expected by 28 April 2014 at the earliest. The request was granted, and this was communicated to Bajwa & Co by the service of a NOTICE OF ADJOURNED HEARING on 22 April 2014. The same notice informed them that the new hearing would take place on 13 August 2014.

10. In August 2014 there was a repeat of what happened in April. On 7 August 2014 Bajwa & Co sought an adjournment because the documents that the appellants wished to rely on had not yet reached them from Pakistan. Also, the respondent's bundle was incomplete as it did not contain the documents submitted in support of the application. The request was granted, and this was communicated to Bajwa & Co by the service of a NOTICE OF ADJOURNED HEARING on 7 August 2014. The same notice informed them that the new hearing would take place on 6 February 2015.

11. In a letter dated 31 March 2015 Mrs Selina Ashfaq of Bajwa 7 Co says as follows:

> We did receive a Notice of Hearing for the appellants for August 2014 for which an adjournment had been requested and granted. I can confirm that the Tribunal never sent us a notice for the hearing on 5 February 2015. We have a computerised postal record for over 5 years.

12. I find that Mrs Ashfaq is mistaken, and that there was a breakdown in the firm's internal administration. Mr Bajwa was unable to explain to me how the firm would have become aware that the adjournment request made on 7 August 2014 had been successful without also becoming aware of the new hearing date – as the information on both topics is contained in the same document. Absent receipt of the Notice of Adjourned Hearing, the firm would have had to proceed on the premise that the appeal hearing on 13 August was going ahead. But it is not suggested that this is what happened. On the balance of probabilities the firm received the Notice of Adjourned Hearing.

13. I do not consider that the lack of representation at the hearing in February 2015 has led to procedural unfairness, or that the appellants have thereby been deprived of a fair hearing.

14. There has been an egregious failure by the main appellant and his UK sponsor to comply with the duty to help the Tribunal to further the overriding objective. The conduct of the appeal by the appellant borders upon an abuse of the process. The grounds of appeal were purely formulaic, and did not respond to the concerns raised by the ECO. The appellant and the sponsor have had plenty of time to assemble additional evidence to address the ECO's concerns; and, with the benefit of hindsight, the grounds for seeking an adjournment of the hearings scheduled for April and August 2014 are wholly unsatisfactory and lacking in credibility. The bundle of documents handed up to me includes documents that were clearly generated after the refusal decision, such as

a witness statement from the appellant made in early 2014. So he was able to send documents to his lawyers in the UK. Remarkably, one of the excuses advanced by the sponsor in her letter of 23 September 2014 for adjourning the appeal yet again is that her uncle has not yet been able to post all the relevant documents necessary for his appeal.

15. It appears to have been overlooked that the ECO also raised concerns about the sponsor's financial circumstances. She is in the jurisdiction, and easily accessible to the appellant's lawyers. Yet she has never apparently been asked to provide a witness statement or additional documentary evidence which addresses the concerns raised about her financial circumstances.

16. The judge was wrong to find that the parents had restricted appeal rights. They had full appeal rights, as the ECM conceded. But her error on this issue was not material, as she addressed all the appeals on their merits. She gave adequate reasons for finding that the appellants had not discharged the burden of proof.

Decision

The decision of the First-tier Tribunal did not contain an error of law, and the decision stands. These appeals are dismissed.

Signed Date

Immigration Judge Monson
(Immigration Judge sitting as a Deputy Judge of the Upper Tribunal)