



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/00557/2017**

Appeal Number:

A/00552/2017

E

A/00554/2017

E

EA/00560/2017

EA/00556/2017

THE IMMIGRATION ACTS

Heard at Field House

Decision &

Reasons

On 13 March 2018

**Promulgated
On 16 April 2018**

Before

**UPPER TRIBUNAL JUDGE GRUBB
UPPER TRIBUNAL JUDGE CANAVAN**

Between

**ZH AND OTHERS
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: In person (the first appellant – ZH)
For the respondent: Ms A. Fujiwala, Senior Home Office Presenting
Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity should be granted because the case involves issues relating to the welfare of children in the UK. Unless and until a tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent.

DECISION AND REASONS

1. The appellants appealed against the respondent's decision to refuse to issue residence cards recognising a permanent right of residence as the family members of an EEA national.
2. The appellants are French citizens. They came to the UK with their parents in 2008. The appellants were refused residence cards alongside their parents in decisions dated 11 December 2016. The respondent was not satisfied that there was sufficient evidence to show that the EEA national sponsor had been residing in accordance with The Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations 2006") for a continuous period of five years or that there was sufficient evidence to show that the other applicants were his 'family members' within the meaning of the regulations.
3. First-tier Tribunal Judge Anstis ("the judge") allowed the appeals of the appellants' parents (EA/00148/2017 & EA/00550/2017). He was satisfied that there was sufficient evidence to show that the appellants' father had acquired a right of permanent residence. He was also satisfied that the translation of the marriage certificate was sufficient to show that their mother was his 'family member'. However, he dismissed the children's appeals for the following reasons:

"39. The position is, however, different for the remaining Appellants. Despite being specifically mentioned as missing in the refusal letter, and despite a translation of the marriage certificate having been produced, there are no birth certificates in the Appellants' bundle, nor are there any alternative documents providing the relationship, and there is no explanation for the absence of these documents. At least one of the Appellants was born in the United Kingdom, and even if there may be difficulties with birth certificates for the others then a copy of that birth certificate ought to be available and accessible to the Appellants."

4. The appellants applied for permission to appeal to the Upper Tribunal attaching, for the first time, translations of birth records from the French family book (but not a copy of the original document). First-tier Tribunal Judge Page granted permission to appeal to the Upper Tribunal in the following terms:

".... The application for permissions to appeal states that their family documents translated into French were available, but were missing from what was before the judge. It may be that there was evidence that could have satisfied the judge

that the appellants were related to their parents as claimed but that evidence was not before the judge for whatever reason. It may be that there has been a defect of a procedural nature that could give rise to a differently constituted Tribunal taking a different view of the evidence. In the circumstances fairness dictates that permission to appeal should be granted.”

5. We are conscious of the fact that the appellants do not have the benefit of legal representation.
6. The role of the Upper Tribunal is to consider whether the First-tier Tribunal decision involved the making of an error of law. The Upper Tribunal will only consider new evidence if the First-tier Tribunal decision is set aside because the judge made a mistake in the law or there was a procedural error.
7. It is clear from our conversation with ZH at the hearing that there is further evidence relating to the children’s dates of birth in the form of a French family book (and a translation). It is likely that the evidence was with the appellants at the hearing before the First-tier Tribunal, but it is clear the family book was not given to the judge to consider. The appellants prepared a large bundle of evidence, but a copy of the family book and the translation was not included in the bundle.
8. The judge cannot be criticised for failing to make findings on evidence that was not given to him to consider. Nor could it be argued that the judge made a procedural error if the evidence was not shown to him at the hearing. The reasons for refusal letter made clear that the birth certificates of the children were missing. Even if the appellants were unrepresented, it would have been clear that this evidence needed to be produced in support of the appeal before the First-tier Tribunal. The fact that the appellants have now been able to produce the evidence does not disclose any errors of law in the First-tier Tribunal decision. We are forced to conclude that the First-tier Tribunal decision did not involve the making of any errors of law and there was no procedural unfairness.

Observations on the evidence

9. These observations do not form part of the decision and are not binding on the respondent. However, it seems clear that there is evidence that would address the reasons for refusal. A copy of the family book and the translation is now on the Home Office file. Ms Fujiwala accepted that this further evidence was likely to be sufficient for the youngest three children. Ms Fujiwala said that the best way for this evidence to be considered would be by way of a fresh application for residence cards.
10. It is accepted that the parents have acquired a right of permanent residence. They have been issued with residence cards since the First-tier

Tribunal decision. It is a matter for the respondent whether she chooses to exercise discretion to issue residence cards to the rest of the family based on the evidence on file. If she chooses not to, the appellants will need to make fresh applications with supporting evidence. To assist the respondent to decide whether to exercise discretion, or the appellants to make a fresh application, we note the following evidence is now on file.

ZH (DOB: 03/08/91) (EA/00557/2017)

- Family book naming parents and confirming date of birth.
- Letter from [.....] (19/12/16) confirming attendance at [.....School] from 08/09/08 to 31/08/10.
- Letter from [..... University] (12/10/10) confirming enrolment.
- Enrolment confirmation from [..... University] (10/01/17).
- Employment contract with [..... School] confirming commencement of employment as a teacher on 01/09/17.
- ZH told us that she has always lived at home and has been dependent on her parents throughout her studies. This is consistent with the addresses on the evidence. We found her to be a credible witness and have been given no reason to doubt her evidence.

MH (DOB: 02/01/95) (EA/00552/2017)

- Family book naming parents and confirming date of birth.
- Letter from [.....School] (December 2016) confirming attendance from 01/09/11 to 20/07/12.
- Letter from [..... College] (19/12/16) confirming enrolment on 30/08/12.
- Letter from [.....University] (05/01/17) confirming enrolment on degree programme 29/09/14, but withdrawn 31/07/15.
- Letter from [.....University] (14/10/16) confirming enrolment on Extended Degree Programme in Engineering on 26/09/16.
- The evidence is addressed to the appellant at the family's home address. It is reasonable to infer that, like her sister, she has always lived in the family home.

STH (DOB: 27/08/96) (EA/00554/2017)

- Family book naming parents and confirming date of birth.
- Letter from [.....] (19/12/16) confirming attendance at [.....School] from 24/09/08 to 31/08/12.
- Letter from [.....College] (19/12/16) confirming enrolment and attendance on several courses 2012-2015.
- Document from [..... College] (01/11/16) confirming enrolment on 30/08/16.

DYH (DOB: 17/02/03) (EA/00560/2017)

- Family book naming parents and confirming date of birth.
- Letter from [..... Primary School] (19/12/16) to confirm attendance from 07/7/08 to 23/05/13.
- Letter from [..... Primary School] (19/12/16) to confirm attendance from 04/06/13 to 23/07/14.

- Letter from [..... School] (20/12/16) confirming attendance at school from 08/09/14 until current time.

YH (DOB: 27/04/09) (EA/00556/2017)

- Family book naming parents and confirming date of birth.
- Letter from [..... Primary School] (19/12/16) confirming attendance from 10/07/13 until current time.

DECISION

The First-tier Tribunal decision did not involve the making of an error of law

The decision shall stand

Signed  Date 11 April 2018
Upper Tribunal Judge Canavan