



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/07818/2014

THE IMMIGRATION ACTS

Heard at Field House
On 12 November 2014

Determination Promulgated
On 13 November 2014

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Mrs KIRANJEET KAUR GREWAL
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms S Sreeraman, Home Office Presenting Officer

For the Respondent: Mr B Panikkar, Authorised Representative
(Law & Lawyers Solicitors)

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Ford on 9 October 2014 against the determination of First-tier Tribunal Judge Maxwell who had allowed the Respondent's appeal in a determination promulgated on 3 September 2014.
2. The Respondent is a national of India, born on 6 October 1986, who had applied on 6 January 2014 for further leave to enter the United Kingdom as a Tier 2 (General) Migrant. The Respondent's existing leave in that category had been curtailed so as to expire on 7 January 2014. The latest application was refused by the Secretary of State on 20 January 2014. The refusal was stated to be because the Respondent's Certificate of Sponsorship stated her annual salary as £22,000.00 for a 39 hour working week which equated to £21,153.85 for a 37.5 hour week. The minimum acceptable salary for occupation code 2231 Nurses (Appendix J of the Immigration Rules) was £21,176.00. The judge found that there was no error by the Respondent's employer in the Certificate of Sponsorship, however the judge went on to find that the difference of £22.15 per year was *de minimis*. The judge referred to [21] of Miah and ors v SSHD [2012] EWCA Civ 261 and allowed the appeal on the basis that there had been substantial compliance by the Respondent with the Immigration Rules.
3. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Ford because she considered that it was arguable that the judge had fallen into error because the relevant Immigration Rule was clear and had not been met.
4. Standard directions were made.

Submissions – error of law

5. Ms Sreeraman for the Appellant relied on the application for permission to appeal and grant of permission to appeal. Miah (above) explained at [25] and [26] that there was no "near miss" principle. The Respondent had a remedy because she could make a fresh variation of leave application: there was a 28 day window available to her.

6. Mr Panikkar for the Respondent submitted that the judge had been entitled to reach his decision. It was a minimal shortfall. There was no alternative remedy as the category of leave was no longer open, as from September 2014. The Respondent would now have to pass an Observed Structured Clinical Examination.

No material error of law finding

7. The tribunal reserved its determination which now follows.
8. The First-tier Tribunal Judge's determination is succinct. It was not disputed, here and below, that the relevant authority was Miah (above). The judge was careful to draw a distinction between a "near miss" and *de minimis*, citing [21] of Miah in support of his conclusion. As the judge pointed out, Miah was particularly relevant because the Court of Appeal were considering an application made within Tier 2 of the Points Based System. To indicate why he considered that the *de minimis* principle applied, the judge showed that the shortfall from the appropriate salary was 1p per hour, per 5 day working week. On that basis the judge found that the Immigration Rule had been met.
9. No further authority was cited by either party to the appeal. In the tribunal's view the judge's decision was properly reasoned and his conclusion was correct. He found, properly, that the Respondent's application was a not a "near miss", but rather an utterly trivial shortfall. No doubt in reaching that conclusion the judge had taken into account the fact that the Respondent had been in the United Kingdom lawfully since 2008 and that her application had been an obviously meritorious one.
10. The possibility that there was an alternative remedy open to the Respondent does not appear to have been argued before the judge by the Secretary of State. It is not mentioned in the determination. Thus it is not appropriate for the tribunal to consider the point, particularly as it is far from clear, with the constant changes made to the Immigration Rules and guidance that such a remedy exists.
11. Accordingly, the tribunal finds that there was no error of law in the determination and there is no basis for interfering with the judge's decision.

DECISION

The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

Signed

Dated

Deputy Upper Tribunal Judge Manuell

12 November 2014