



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

Appeal Number: IA/41725/2013

THE IMMIGRATION ACTS

**Heard at Bradford
On 31st March 2014**

**Determination
Promulgated
On 7th April 2014**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MUHAMMAD HANIF

Respondent

Representation:

For the Appellant: Mr M Diwnycz
For the Respondent: In person

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Mensah made following a hearing at Bradford on 22nd January 2014.

Background

2. The claimant is a citizen of Pakistan. He applied for leave to remain indefinitely in the UK on the basis of his family and private life in the UK. He had entered the UK as a spouse on 20th June 2006 and was subsequently granted two periods of leave outside the Rules for the purpose of exercising access rights to a child, the last of which expired on 1st March 2012.
3. He was refused on the grounds that at the time of his application he had a criminal conviction for driving a vehicle with excess alcohol, driving otherwise than in accordance with a licence and using a vehicle whilst uninsured which he did not declare on his application form. Furthermore he had not provided evidence that he and his partner were legally married, nor that they had been cohabiting for at least two years prior to the date of the application.
4. The judge accepted that the appellant was lawfully married and that he was cohabiting with his wife and that he had a genuine and subsisting relationship with a child in the UK.
5. With respect to the lack of disclosure the judge wrote as follows:-

“The first issue that arose was in relation to the application form. The appellant accepts he had a criminal conviction for driving a vehicle with excess alcohol, driving otherwise than in accordance with a licence and using a vehicle whilst uninsured. He accepts he failed to declare this conviction on his application form. As such the Secretary of State refused his application under Section S-LTR.2.2.(b), and also under S-LTR.1.6., for his use of deception in the application process. The appellant was asked about this and told me that his solicitor completed the application form and failed to mention his conviction despite the fact that the appellant told the solicitor about it. During cross-examination the appellant gave vague and then inconsistent evidence about this when he first told me that he had told his solicitor about the conviction two years earlier and then when asked about that he said he had told his solicitor at the time of the application. I note that the appellant has not filed a formal complaint against the solicitor and no evidence has been produced before me showing the solicitor was given a chance to respond to these allegations/complaints. Taking those matters together I do not accept the appellant’s evidence about this. I find he has failed to show that he told his solicitor about his conviction when he completed the form and I find he must take personal responsibility for signing a form when the content was inaccurate. However on the evidence I am not satisfied it has been shown even on balance that the appellant intended to deceive and therefore I do not accept that the deception has in fact been made out.”

The Grounds of Application

6. The Secretary of State sought permission to appeal on the following grounds:-

“The reasons for refusal considered both the appellant’s position pursuant to limited leave to remain as a partner and a parent. The application was refused partly on the basis that the appellant did not meet the suitability requirements of Appendix FM, specifically S-LTR1.6 and 2.2(b), the specific issue being the non-disclosure of a previous criminal conviction.

The IJ accepted this aspect of the respondent’s refusal (paragraph 8).

The IJ has however failed to consider the mandatory requirements of Rule R-LTRP1.1(c)(ii) and (d)(i) (partner route) and Rules R-LTRPT1.1(c)(i) and (d)(i). Namely, that if an applicant falls for refusal on suitability grounds (under either route) the application must fail.

On the basis the IJ accepted the suitability requirement issue raised by the respondent, the appeal should have been refused. It is submitted this is a material error in law.”

The Hearing

7. I asked Mr Dinovych to clarify his grounds and to take me through the relevant paragraphs of Appendix FM upon which he sought to rely. He said that he was only relying on the failure to disclose.
8. I pointed out to Mr Dinovych that the judge, although she had made critical comments about the claimant’s evidence, had nevertheless concluded that she was not satisfied that there was an intention to deceive. I asked Mr Dinovych if he wished to take instructions as to whether he wanted to apply to vary his grounds to, for example, a reasons challenge.
9. Mr Dinovych sought a short adjournment and after his return told me that he was not seeking to vary his grounds and he accepted that they were misdirected.

Findings and Conclusions

10. The author of the grounds appears to believe that the judge had made a finding that the appeal ought to be dismissed on suitability grounds. However this is plainly not the case. She said in terms that she was not satisfied that there was an intention to deceive. It may well be that the reasons for her conclusion are somewhat opaque since her assessment of the claimant’s evidence would have it is thought led her to the opposite conclusion. However, Mr Dinovych was not instructed to make a reasons

challenge and on the basis of the grounds as they are drafted I can find no successful challenge to the determination of the judge. She concluded that, contrary to the statement in the grounds, that the refusal on suitability grounds was not sustainable.

Decision

11. The grounds disclose no arguable error. The Secretary of State's appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor