



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/02722/2013

THE IMMIGRATION ACTS

Heard at Field House
On 30 April 2014

Determination Promulgated
On 12 May 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GIBB

Between

FARRUKH SHERAZ
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER, PAKISTAN

Respondent

Representation:

For the Appellant: Mr Q S Anisudon, of S Z Solicitors
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan, who was refused entry clearance to settle in the UK with his wife, Iran Kanwal (the sponsor). The entry clearance application was refused on 5 December 2012, on the sole issue of maintenance (paragraph 281(v) of

the Immigration Rules (HC 395 as amended)). The appellant's appeal was dismissed by Judge of the First-tier Tribunal Powell. This followed a hearing at Newport on 6 December 2013, at which the sponsor gave evidence, and the appellant was represented, as before me, by Mr Anisudon. The judge's decision was based on findings that the sponsor had provided documents about her financial circumstances that were not reliable or genuine, and that she had not provided an accurate account of her employment and income. The particular documents under consideration were two letters from a branch of the National Westminster Bank.

2. Permission to appeal was granted, on 28 March 2014, by First-tier Tribunal Judge Pirotta. The grounds seeking permission to appeal had argued that the judge had entered into his own assessment of the authenticity of the bank letters without sufficient evidence; and he had erred in his consideration of Article 8. The grounds were found to be arguable. A further letter from the bank had been provided, with the application for permission to appeal. The judge granting permission noted that this letter confirming the authenticity of the bank letters could not have been anticipated by the judge, but suggested that the judge, as a matter of fairness, could have permitted the appellant to obtain further evidence to rebut matters brought up at the hearing.

Submissions

3. The submissions by Mr Anisudon, arguing that there had been an error of law, can be summarised as follows. The judge had not raised as an issue at the hearing his concern that the documents were false. The Entry Clearance Officer, in the refusal, had not made an allegation that the bank letters were not genuine, but had only drawn attention to spelling errors. The further letter had shown that the judge's adverse findings, based on a comparison of the two letters, was not correct.
4. In addition, at paragraph 12 the judge had erred in considering HC 194, which introduced Appendix FM, when this application was made just before the changes were introduced. There was also an error in paragraph 16. The judge took as an adverse credibility point that the sponsor had not previously mentioned having a period of two and a half months off work. In fact this had been mentioned in her witness statement, prepared for the appeal, at paragraph 2.
5. It was accepted, for the appellant, that any errors in considering Article 8 were not relevant if there were errors in considering the appeal under the Rules. In view of this agreement I invited Mr Bramble to make submissions limited to the position under the Immigration Rules. His submissions on these matters can be summarised as follows. It was accepted that there were errors, but it was not clear that these were material. The determination could be read in such a way that paragraph 15 could be regarded as a freestanding negative credibility finding about the sponsor. Although it was accepted that there was an error in paragraph 16, because of the witness statement, it remained the case that the conclusion at paragraph 24 was sustainable, even without paragraph 16. The finding at paragraph 24 included a finding that

something was being concealed. There remained a missing document, in the form of the June bank statement that would have confirmed the payslip income for that month.

6. As I indicated at the hearing I decided, having heard submissions from both sides, that the judge had erred in law, and that this error was material to the outcome. Mr Bramble mounted an ingenious attempt to salvage the adverse findings, but in my view paragraph 15 cannot be read as containing adverse findings. Having read the determination as a whole it appears clear to me that the findings of fact and conclusions start at paragraph 14, and run through to paragraph 25. In my view paragraph 15 is only the start, and not the end, or a partial end, of the findings process. The main findings are at paragraphs 24 and 25. The heart of the adverse findings are at paragraph 16, with the finding that the sponsor had invented an explanation to explain a discrepancy; and paragraphs 17 to 23, where there was a conclusion that the second bank letter was not genuine.
7. Mr Bramble correctly conceded that paragraph 16 contained an error, in that it was not the case that the sponsor had mentioned her absence from work at the hearing for the first time. Mr Bramble was also unable to provide any reasoned defence of the approach taken to the bank letters.
8. The case of **RP (proof of forgery) Nigeria [2006] UKAIT 00086** is well-known, and sets out the correct approach to forgery allegations. Paragraph 14 of the determination is as follows:

In judicial proceedings an allegation of forgery needs to be established to a high degree of proof, by the person making the allegation. This is therefore a matter on which the respondent bears the burden of proof. Immigration Judges decide cases on evidence, and in the absence of any concession by the appellant, an Immigration Judge is not entitled to find or assume that a document is a forgery, or to treat it as a forgery for the purposes of his determination, save on the basis of evidence before him. In the present case the evidence was limited to the Entry Clearance Officer's assertion of his own view and the defect in the document identified in the notes on the application form – that is to say, the mismatch between the run date and the date stamp on one of the remittance documents. That evidence is wholly insufficient to establish that that document is a forgery. There is no reason to suppose that it is not a simple mistake. As it happens, "petroleum" is misspelt in the Notice of Refusal. Although we would be inclined to suppose that Entry Clearance Officers can spell this word, we do not automatically assume that the Notice of Refusal is a forgery: there is no reason to suppose that it was not simply a mistake.

The point was therefore made, in that case, that spelling errors or other discrepancies on the face of a document are not enough in themselves to justify a finding of falsity. That is exactly the point here. This is an object lesson in the danger of reaching the serious adverse conclusion of a document not being genuine solely on the basis of spelling mistakes, typographical errors, or other discrepancies between letters. There were two possible explanations for these: one was that the documents were false; the other was that the authors of the documents, in the bank, had issued letters with

spelling and grammatical errors, and on paper with different headings. The judge reached the former conclusion, but the further letter provided from the bank, which was not disputed, confirms that the latter explanation was the correct one.

9. My finding that the judge erred in law in his approach to the documents is not directly based on that further letter, however. That letter was not before him. The error was that the judge embarked on his own consideration of the documents without notifying the parties, which raised a fairness issue; and in addition the judge erred in law in not following the approach set out in **RP (proof of forgery)** which would have cautioned him against the reaching of a forgery finding without proper evidence. What would have been needed would have been some form of document verification report, where a check had been conducted with the bank, as a result of which they had stated that the letter was not genuine. As is now clear, if such a check had been conducted, the letters would in fact have been confirmed.
10. Having indicated that I found there to be a material error of law, and that the findings in the determination therefore stood to be set aside, I invited submissions as to whether a remaking of the decision required further evidence.
11. Mr Anisudon, for the appellant, was of the view that there was no need for further evidence. Mr Bramble, for the respondent, was at first in agreement, but then decided that there was a need for further evidence.
12. Since the points at issue were narrow, and the matter primarily rested on a consideration of the documentary evidence, I took the view that there was no need to adjourn for a remaking hearing. There was no objection to this course from either party. As a result the sponsor gave evidence, adopting her witness statement of 6 December 2013, and explaining that she had obtained the further letter from the bank after showing them a copy of the judge's determination. She was then cross-examined by Mr Bramble. I then heard submissions from both representatives, and reserved my decision.
13. The cross-examination was concerned with why the sponsor had not obtained the missing bank statement for June 2012, whether the sponsor was still in the same employment, and what the nature of her job was.
14. Mr Bramble's submissions as to the remaking were as follows. The concern about whether the sponsor was working was that one of the three payslips was not cross-referenced to a bank statement. There was still no proper explanation as to why this bank statement was missing. The later payslips and bank statements were post-decision evidence.
15. The submissions by Mr Anisudon, for the appellant, were as follows. The employer's letter to the Entry Clearance Officer had given the tax office reference number. It was not unusual for an Entry Clearance Officer to make checks in cases of this sort. The sponsor had produced original bank statements and a letter. The

payslips were backed up by bank statements for two months, and the explanation for the missing third bank statement should be accepted on balance of probabilities. There was sufficient evidence to find that the maintenance requirements had been met.

Decision and Reasons

16. Having set aside the judge's adverse findings I have decided to remake the decision by allowing the appeal under the Immigration Rules. As a result, as was agreed between the parties at the hearing, there is no need to consider Article 8.
17. The point at issue in the refusal was a narrow one. Every aspect was accepted, save for the sponsor's employment income. The concerns in the refusal notice were based on a missing bank statement; spelling errors in the letter from the bank explaining why it was missing; the lack of original bank statements; and the fact that the payslips were of a type that was easy to reproduce and therefore of limited evidential value.
18. Having heard from the sponsor, on the subject her position at the garage, Mr Bramble, for the respondent, did not make submissions challenging her credibility. I could see nothing in her evidence about the nature of her work, which was at a relatively small garage, that suggested that she did not in fact work there. I have considered the bank letters in some detail. Without independent verification evidence I would not have found that the two letters were not genuine, but in any event there is now a third letter from the bank, which has not been challenged, confirming their authenticity, and explaining the errors. This third letter has been provided well after the refusal, but it directly concerns letters that were provided with the application, and considered at the date of decision, and is therefore an item of evidence that is admissible, because it is relevant to what the situation was at the date of decision.
19. The only other challenge to the sponsor's evidence concerned her explanation for not having produced the missing June 2012 bank statement. Her evidence at the hearing before me was candid, namely that it had not come to her mind that she needed to submit this. This appeared to me to be credible. In any event there were three payslips, and corresponding payments into the sponsor's bank account for two of them. An explanation, supported by a bank letter, now shown to be genuine, was provided to explain the absence of the third bank statement. On that basis it appears to me to be more likely than not that the three payslips were genuine, and that the amounts shown in all three were in fact paid into the sponsor's bank account. I accept the submission made on the appellant's behalf that it was open to the Entry Clearance Officer to make further checks. The issue of the missing bank statement appears to me to fall well short of the type of evidence that would be required to find that it had not been established, on balance, that the sponsor's income was as claimed at the date of decision. It is now accepted that original bank statements have been provided, although it remains disputed as to whether they were provided with the

application. The payslips may have been of a type easy to reproduce, but they are supported by the letter and bank statements, making them easy to verify.

20. For these reasons I find that the documentary evidence, considered alongside the sponsor's oral evidence, does establish, on balance of probabilities, that sponsor's income was as claimed at the date of decision. It does not ever appear to have been disputed that this income was sufficient to meet the maintenance requirements.
21. The decision refusing entry clearance on the sole ground of maintenance was therefore not in accordance with the law and the Immigration Rules.
22. It has not been suggested that there is any need for anonymity in this appeal. Since sufficient evidence was provided with the application, and it was open to the respondent to make any relevant enquiries, I have decided that there is no reason to depart from the general practice of making a whole fee award where an appeal has been allowed.

Decision

23. The judge erred in law, in a manner material to the outcome, for the reasons given above. His decision dismissing the appeal is therefore set aside.
24. I remake the decision by allowing the appeal under the Immigration Rules.

Signed

Date

Deputy Upper Tribunal Judge Gibb

Fee Award

Note: this is not part of the determination.

In the light of my decision to re-make the decision in the appeal by allowing it, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007). I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011). I make a whole fee award in the sum of £140 for the reasons given above.

Signed

Date

Deputy Upper Tribunal Judge Gibb