



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/04383/2013
OA/04384/2013
OA/04386/2013
OA/04388/2013

THE IMMIGRATION ACTS

Heard at Stoke
On 11 September 2014
Decision given orally

Determination Promulgated
On 25 September 2014

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS ZAKIA
MISS TAHIRA
MISS FAHAMA
MASTER SHUKRULLAH

Respondents

Representation:

For the Appellant: Ms C Johnstone, Senior Presenting Officer
For the Respondents: Ms K Smith, instructed by Iris Law Firm

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Oliver, who for reasons given in his determination dated 13 January 2014

allowed the appeals by the respondents. I shall refer to the respondents as the claimants. They comprise four Afghan nationals being the wife and children of Mr Khalil Hussayni. He is also an Afghanistan national and has indefinite leave to remain in the United Kingdom which was granted on 13 January 2010.

2. The claimants made application for entry clearance to settle in the United Kingdom with the sponsor on 14 June 2012. Their applications were refused for reasons given in decisions dated 22 November 2012. The sponsor had relied on income from a pizza business to meet the maintenance requirements of the Immigration Rules then in force. So far as the first claimant was concerned, paragraph 281(v) required that the parties would be able to maintain themselves and any dependants adequately without recourse to public funds. Different Immigration Rules related to the other claimants, whose applications were refused in line with that of their mother but the problem they faced was the same.
3. The Entry Clearance Officer did not accept the evidence that the sponsor was on target to earn £23,504 before tax and national insurance in the year of application. He observed that the claimants needed to demonstrate a minimum of £1,327 per month net income after the costs of accommodation of £400 per month and council tax of £100 per month had been taken into account, this being the current threshold for public funds.
4. The judge heard evidence from the sponsor and had before him a volume of documentation produced to support the claimed income stream from the pizza business. He noted some of that evidence in the determination but did not undertake a detailed analysis. He concluded at paragraph 9:

“I had no reason to doubt the honesty of the sponsor and therefore accept that he had been running the pizza business for a sufficient time to be able to make a reasoned estimate of his likely earnings as reflected in his self-assessment figures to HMRC. On this basis he not only meets the relevant DWP figures but would even satisfy the new and much more onerous figures without even touching the surplus in his bank account.”
5. The challenge by the Secretary of State is in essence to the adequacy of the judge’s reasons for finding in the claimants’ favour. The complaint is that the judge had failed to give adequate reasons why he accepted the sponsor’s oral evidence in the absence of any corroboratory documentation.
6. Ms Smith, on my direction, helpfully tabulated the documentation relied on by the claimants which she then discussed with Ms Johnstone. Although Ms Johnstone observed that some of the documents before the judge had not been before the Entry Clearance Officer and thus there had been no opportunity for the Entry Clearance Officer to verify them, nevertheless she conceded that a number of the documents did show that the claimants could meet the level of income support rate. There was no dispute that they did not relate to the date of decision. Candidly she accepted in the light of the exercise that had been undertaken by Ms Smith that it was open to the

Tribunal to find that any error by the judge was not material. In the light of that approach it is not necessary for me to carry out an analysis of the documents.

7. It has to be said that the judge's determination is thin on reasoning and it is a pity that he did not provide further reasons for his conclusion. Had he done so it may well have meant that there was no need for the Secretary of State to bring her challenge.
8. Ms Johnstone had no further submissions to make beyond those I have set out above. My conclusion is that the judge erred but that his error was not material on the basis that the material before him clearly supported the conclusion he had reached.
9. Accordingly the appeal by the Secretary of State in the Upper Tribunal is dismissed. The decision of the First-tier Tribunal stands.

Signed

Date 25 September 2014

A handwritten signature in blue ink, appearing to read 'Dawson', with a horizontal line extending to the right.

Upper Tribunal Judge Dawson