



IAC-AH-DN-V1

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

Appeal Number: OA/08658/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On 18 November 2015**

**Decision & Reasons Promulgated
On 2 December 2015**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR YOGAMOORTHY KANAPATHY
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr I Richards (Senior Home Office Presenting Officer)

For the Respondent: Ms K Reid (Counsel)

DECISION AND REASONS

1. I shall refer to the Appellant in this appeal to the Upper Tribunal as the Secretary of State and the Respondent as the Claimant. On 12 June 2014 the Claimant was refused entry clearance to come to the UK to join his spouse and Sponsor, Mrs Mariyamalar Yogamoorthy with a view to settlement. His appeal was allowed by the First-tier Tribunal (Judge A W Khan) in a determination promulgated on 9th March 2015. However, permission to appeal to the Upper Tribunal was subsequently granted and, in a decision promulgated on 23 October 2015 I set aside

the decision of Judge Khan, albeit preserving a good deal of his findings, on the basis that in concluding that the Appellant had not filed false documents in support of his application, he had applied an incorrect standard of proof. This necessitated a further hearing before me so that I could re-make the decision within the Upper Tribunal.

2. By way of recapping, the application for entry clearance had been considered under Appendix FM to the Immigration Rules. There were a number of components to the decision. The Entry Clearance Officer took the view that the Claimant had lodged payslips relating to his Sponsor and her claimed employment with a firm called Beake Convenience, which were false. Thus the application was refused under paragraph EC-P.1.1(c). Further, it was not accepted that the Claimant and his Sponsor were in a genuine and subsisting relationship. Finally, it was said that the Claimant had failed to meet the English language requirements and was not exempt from those requirements under E-ECP.4.2.
3. Judge Khan found in favour of the Claimant on all counts. He accepted that there was a genuine and subsisting relationship between the parties. He found that the wage slips were not false documents. He found that the Claimant was exempt from the English language test requirements.
4. As to the matter of the allegedly false documents, he said this;

“14. I therefore turn to the issue of whether the documents from Beake Convenience Stores are false. The document verification report states that the Appellant said in his Visa Application Form that his Sponsor had two jobs, namely with City Facilities Management employed at Asda Superstores and Beake Convenience Store. HMRC checks corroborated that the Sponsor was employed at Asda Superstores but checks indicated that she was not employed with Beake Convenience Store and was not employed for the duration of the payslips submitted and therefore the documents were false. Against that, I have considered the documents that were submitted in relation to the Sponsor’s employment with Beake Convenience Store in the form of confirmation from an accountant in a letter of 12th February 2014, payslips and a letter from the owners of the store. The problem I have with the document verification report is that it simply states that HMRC checks indicate that the Sponsor was not currently employed and was not employed for the duration of the payslips submitted. This could only be on the basis that HMRC did not know of the employment with Beake Convenience Store and does not necessarily mean that the Sponsor was not employed there. In accordance with the case of **RP (Nigeria) [2006] UKAIT 00086**, the burden of proof is on the Respondent to show that a document is forged and the standard of proof is more than on a balance of probabilities. It is a high standard of proof and I am not satisfied that the Respondent has discharged this to the requisite standard. The Sponsor could very well have been employed by the store in question but was not registered for income tax purposes when the search was made which means HMRC would have no records of such employment. In any event, the owners of the store said in their letter of 9th February 2014 that the Sponsor was employed as a part-time store assistant on a permanent contract since 3rd January 2014 and worked a 30 hour week. Her PAYE reference was supplied. Also, significantly, the letter states

that for tax purposes, the business was registered in their name, namely Puvanendrarasha and not Beake Convenience Store which could explain the reason why HMRC checks did not reveal that the Sponsor was employed by the store because a check is only as good as when a correct name is searched. I therefore find that the Respondent has failed to satisfy me that the documents are a forgery.”

5. I set the decision aside because I was satisfied that, with respect to the allegations surrounding false documentation, the burden of proof, which did rest upon the Respondent, was one of a balance of probabilities, albeit that the evidence relied upon had to be subjected to a heightened scrutiny, rather than any higher standard. I did however, preserve the remaining findings and conclusions. A full explanation with respect to all of this is to be found in my setting aside decision referred to above.
6. At the reconvened hearing (sometimes referred to as a continuance hearing) the issues, therefore, as agreed with the parties, were narrow ones. I had to consider whether false documents had been relied upon or not. Mr Richards, quite properly, accepted that if I were to resolve that issue against him then, in remaking the decision, I should allow the Claimant’s appeal.
7. I heard oral evidence from the Sponsor. She told me that she was working for Beake Convenience Stores at the material times and that she had not provided any false documents. She would be paid monthly and, usually, her wage would be paid into the bank but sometimes she would be given cash. She also provided some bank statements.
8. Mr Richards, having heard the evidence and having considered the bank statements said that the most likely explanation for the concerns expressed by the Entry Clearance Officer was that the employer (Beake Convenience Stores) was simply registered in a different name for tax purposes. That was why, when the respondent had enquired with HMRC, no trace of the employment could be found. Given that very fundamental and, in my judgment entirely appropriate concession, it was not necessary for me to hear from Ms Reid.
9. In the circumstances there is really no more I need to say. I accept the Appellant did not file any false documents and that the Sponsor was, at all material times, employed with Beake Convenience Stores as claimed. I accept the concession of Mr Richards that it is more likely than not there is an entirely innocent explanation for the concerns of the Entry Clearance Officer. I conclude that the Claimant meets the requirements of the Immigration Rules and did so at the date of application and the date of decision.
10. In light of the above, in remaking the decision, I allow the appeal of the Claimant against the decision of the Entry Clearance Officer of 12 June 2014 refusing to grant him entry clearance to come to the UK.

Conclusions

The decision of the First-tier Tribunal has been set aside.

I remake the decision and allow the Claimant's appeal.

Anonymity

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no anonymity order.

Signed

Date

Upper Tribunal Judge Hemingway

TO THE RESPONDENT

FEE AWARD

I make a whole fee award in the sum of £140. This is because, in my view, the Entry Clearance Officer could have undertaken further back up checks before reaching the adverse decision he did reach and it would have been reasonable to have expected him to do so.

Signed

Date

Upper Tribunal Judge Hemingway