



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/15132/2013
OA/15143/2013

THE IMMIGRATION ACTS

Heard at: Columbus House, Newport
On: 14 September 2015

Decision & Reasons Promulgated
On: 15 September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

PRATIMA SHRESTHA
SUJAN AMATYA
(anonymity direction not made)

Appellants

and

ENTRY CLEARANCE OFFICER - NEW DELHI

Respondent

Representation

For the Appellant: Ms J Hassan, Counsel instructed by Silk Route Legal

For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Rastogi in which she dismissed the appeal of the Appellants, citizens of Nepal, against the Respondent's decision to refuse to grant leave to enter as the dependent spouse and child of the Sponsor Sijan Amatya.
2. The applications under appeal were made on 10 April 2013 and refused by reference to Appendix FM of the Immigration Rules (HC395) on 1 July 2013. The Appellants

exercised their right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Rastogi on 5 September 2014 and was dismissed. The Appellants applied for permission to appeal to the Upper Tribunal. The application was refused by First-tier Tribunal Judge Chambers on 6 January 2015 but on renewal to the Upper Tribunal was granted by Deputy Upper Tribunal Judge Archer on 11 May 2015 in the following terms

“The judge stated at paragraphs 39-41 of the decision that the respondent gave no substantive consideration to the documents which were provided. I find that it is arguable that those findings were sufficient to allow the appeals. That is an arguable material error of law. The judge embarked upon an analysis of the financial documents at paragraphs 42-53 and concluded that the earnings were insufficient to meet the requirements of the Rules. I find it arguable that the judge miscalculated the relevant gross earnings of the sponsor and therefore there is a further arguable material error of law.

The Article 8 findings at paragraphs 59-62 are both brief and wholly contingent upon the previous findings in relation to earnings.”

Background

3. The background to the appeal is detailed above. The facts, not challenged, are that the Appellants are Nepalese nationals born respectively on 22 September 1977 and 4 May 1996. They are the wife and daughter of the Sponsor. Their application to join him in the United Kingdom was refused on relationship, English language test and maintenance grounds. The First-tier Tribunal found in favour of the Appellants in respect of the first two grounds and so the only matter that concerns this appeal is maintenance. In this respect the First-tier Tribunal Judge found (at paragraph 53 of her decision) that during the relevant period the Sponsor earned a gross income of £14,238.35 substantially below the sum of £22,400.00 required and dismissed the appeal.

Submissions

4. At the hearing before me Mr Richards represented the Respondent and Ms Hassan represented the Appellants. Neither submitted a skeleton argument or any further documents. The Respondent submitted a rule 24 response opposing the appeal.
5. Before hearing submissions I asked both representatives for assistance in reconciling the figures contained in the First-tier Tribunal determination. I will refer to these figures further below. Neither was able to begin to explain how the figures could be reconciled.
6. I said that the very fact that neither I nor either representative could understand how the decision of the First-tier Tribunal had been reached must of itself demonstrate that it contained a clear error of law and that the decision must be set aside and remade. I reserved my written reasons.

Error of law

7. The only live issue in this appeal is whether the Appellants can be maintained in the United Kingdom in accordance with the requirements of the Immigration Rules. The

maintenance requirement is an income of £22,400 per annum. The determination of the First-tier Tribunal shows that the Judge heard oral evidence from the Sponsor and considered a quantity of documentary evidence including that contained in the Respondent's bundle, the Appellant's bundle and further documents handed in on the Appellant's behalf at the hearing (see paragraph 16). The Judge heard submissions from both parties' representatives.

8. The Judge's finding of fact concerning the financial requirement start at paragraph 32. The Judge finds that the Sponsor has had employment with three businesses during the relevant period (paragraph 42) and records his earnings from those employments at paragraphs 47, 48 and 52. However in combining those earnings there are confusing and indeed irreconcilable findings. At paragraph 49 the Judge says that he is satisfied that, at the date of the application, the Sponsor was earning £23,647 per annum. At paragraph 53 the Judge finds that combining the total sums earned from the three employments the Sponsor earned £14,238.35 in the twelve month prior to the date of application. There is no breakdown of how either figure is calculated or indeed any explanation for these two apparently contradictory findings. The situation becomes even more confused as when the earnings from the three employments (recorded at paragraphs 47, 48 and 52 and which the Judge did not total) are added together the total reached is £25,338.35.
9. It is a fundamental requirement for the parties to an appeal to be able to understand why the appeal was won or lost. In this case neither representative was able to shed any light upon how the decision of the First-tier Tribunal was reached. As I have said above that of itself demonstrates a manifest error of law. The error is an inadequacy of reasoning.
10. Both representatives agreed that in accordance with the President's direction the only satisfactory course with an error of law of such a fundamental nature being found and where the evidence of the Sponsor's income at the time of the decision would need to be assessed afresh was to remit for hearing de novo by the First-tier Tribunal.

Summary

11. The decision of the First-tier Tribunal involved the making of a material error of law. I allow the Appellant's appeal and I set aside the decision of the First-tier Tribunal.
12. In accordance with the President's direction this appeal is remitted to the First-tier Tribunal for hearing de novo.

Signed:

Date:

**J F W Phillips
Deputy Judge of the Upper Tribunal**