



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number VA/13266/2013
VA/13267/2013
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THE IMMIGRATION ACTS

Heard at Field House
On 4 December 2014

Decision and Reasons promulgated
On 19 June 2015

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

- (1) Abdul Hye
- (2) Amina Khatun
- (3) Sheull Parvin
- (4) Abdullah Al Mamun
(No anonymity orders made)

Appellants

and

Entry Clearance Officer,
Dhaka

Respondent

Representation

For the Appellant: Mr M Mustafa of Kalam Solicitors.
For the Respondent: Mr S Whitwell, Home Office Presenting Officer.

DECISION AND REASONS

1. These are linked appeals against the decisions of First-tier Tribunal Judge O'Garro promulgated on 18 July 2014 dismissing the appeals against the Respondent's decisions dated 21 May 2013 to refuse applications for entry clearance as visitors.

Background

2. The Appellants are nationals of Bangladesh. Their personal details are a matter of record on file. They are all members of the same family: two parents and two adult children. Together they made applications for entry clearance as visitors in order to see three further adult children of the family, who are each present in the UK as British citizens, and their respective families. In their visa applications they indicated that a visit of approximately 4-6 weeks was intended. Of the family members in the UK, Ms Shayla Pervin was advanced as the sponsor.
3. The applications were refused for reasons set out in similarly drafted respective Notices of Immigration Decision dated 21 May 2013, with reference to paragraphs 41(i), (ii), (vi) and (vii) of the Immigration Rules. The First Appellant, the father of the family, was said to support the other Appellants. Essentially the Respondent was not satisfied in respect of the First Appellant's claimed employment and financial circumstances. Moreover the Respondent noted that no documents in respect of the sponsor's circumstances had been received with the applications. In all of the circumstances the Respondent was not satisfied as to the family's circumstances in Bangladesh, and in consequence was not satisfied that they were genuine visitors; nor was the Respondent satisfied that the Appellants would be maintained and accommodated in the UK adequately without recourse to public funds, or that they could meet the cost of the return or onward journey.
4. The Appellants appealed to the IAC.
5. The First-tier Tribunal Judge dismissed the appeals for reasons set out in her Determination.
6. The Respondent sought permission to appeal which was granted by First-tier Tribunal Judge Simpson on 31 October 2014.

Consideration

7. In her determination the First-tier Tribunal Judge set out the background to the appeal and the issues raised by the Respondent (paragraphs 1-4), summarised the Appellants' grounds of appeal (paragraphs 5-6), and summarised the evidence heard from the sponsor (paragraph 7-14). The Judge then directed herself to the applicable Immigration Rules (paragraph 15), and to the burden and standard of proof (paragraph 16, and reiterated at paragraph 32). Thereafter the First-tier Tribunal's Determination sets out the Judge's findings before stating her conclusion (paragraphs 17-34).
8. Essentially, the First-tier Tribunal Judge reached the same conclusions as the Respondent - and indeed did so for similar, though not identical, reasons. With

reference in particular to the sponsor's circumstances the Judge concluded that she was not satisfied that the Appellants would be adequately maintained and accommodated without recourse to public funds (paragraph 25). As regards the Appellants' circumstances the Judge found that the First Appellant had not dealt adequately with the valid concerns raised by the Respondent (paragraphs 27 -28).

9. Whilst it is to be acknowledged that there is no specific threshold requirements in respect of an applicant's income under paragraph 41 of the Immigration Rules, the particular circumstances of an applicant – including economic activity and financial circumstances – may be a relevant consideration in evaluating his intentions within the framework of the requirements of the Immigration Rules. Doubtless, the Judge had this in my in identifying that the matters raised by the Respondent were “*valid concerns*” (paragraph 27).
10. Those concerns were articulated in the Notice of Immigration Decision in the following way:

“You stated that you are self-employed with M/S Abdul Hye Fish Farm since 2005 earning BDT 100,000 (approximately £826...) per month. However you do not provide satisfactory evidence of your income, or your personal, economic and financial circumstances in Bangladesh. You have submitted a Trade Licence as evidence of your business. Trade Licences are obtained upon payment of a registration fee without the need to demonstrate that the business exists or that it is a genuinely financially viable business. Whilst you have submitted land deeds, these do not show that you receive any income from this land. You have also submitted money receipts but these are self-serving and in isolation do not confirm that your income is as claim. In addition, whilst you have submitted an income tax certificate, this does not state what tax you have actually paid to demonstrate that your income is truly as claimed by you. It is not clear why you would provide an income tax certificate stating that you have paid taxes, yet not stating how much actual tax has been paid and on what annual income, and this leads me to doubt that your income is as claimed. You claim to have run your business for 8 years therefore I would expect to see evidence of actual income tax payments for the last year at the very least, and I would expect to see a lot more documentation for a genuinely operating business. I am not satisfied therefore that you are employed as claim, or that you receive the income as claimed.”

And:

“You have submitted a letter from Bangladesh Krishi Bank stating that you have an account with them and you have submitted a Deposit Receipt dated 24/03/13 which states that you have deposited funds of BDT 10 lakh (approximately £8264). As these funds have been deposited in the month leading to your entry clearance application, I cannot discount the possibility that they have been deposited to inaccurately inflate your financial circumstances to aid this application. In any case, you have not provided any evidence or statements as to the origins or history of these funds and as such, I am not satisfied that they are genuinely available to you for your exclusive use, or that they represent an accurate reflection of your current financial circumstances and commitments.”

11. As noted above the Judge found that “*the first appellant has not dealt adequately or at all, in his grounds of appeal and in the documentary evidence he has submitted regarding the*

concerns raised by the ECO” (paragraph 28). In respect of the “*large deposit recently credited to the first appellant’s bank account*” the Judge noted the First Appellant explanation that the money represented a loan that he had made to a relative which had been repaid (and also had regard to the supporting evidence submitted by the Appellants in this regard – paragraph 30), but observed “*it is of note that no up to date bank statement has been submitted with the appeal documents or for the appeal hearing which would have shown that this money has remained in the first appellant’s bank account since it has been credited to the bank account*”.

12. It is pleaded on behalf of the Appellants that the Judge erred in having regard to the absence of post-decision bank statements, as this ran contrary to the requirement that the Judge should only consider the appeal on the basis of the facts that pertain at the date of the Respondent’s decisions.
13. I do not accept that any such error is made out. Whilst of course, this being an entry clearance appeal, it is to be acknowledged that pursuant to section 85A of the Nationality, Immigration and Asylum Act 2002 the Tribunal may consider only the circumstances appertaining at the time of the decision, post-decision evidence is nonetheless admissible in so far as it relates to the circumstances at the date of decision. Accordingly evidence that the First Appellant continued to retain the funds that had been deposited in his bank account that gave rise to the Respondent’s concerns, would have been admissible to support the claim that the money said to be available to the First Appellant at the date of the Respondent’s decisions was genuinely his own funds. It follows that the Judge did not contravene the jurisdiction imposed pursuant to section 85A by making reference to materials post-dating the decision that might have assisted the Appellants in establishing that circumstances were as they claimed at the date of decision.
14. I have also given consideration to the criticisms that have been made of the Judge’s rejection of the affidavit evidence of the relative to whom it was claimed that monies had been loaned. It is plainly the case that the Judge did not disregard this affidavit evidence: rather she took it into account in her overall assessment of the circumstances of the “*large deposit*”. I accept that there is something unsatisfactory in the use of the phrase “*self serving*” in the context of an affidavit. Nonetheless I am not satisfied that the mere use of this phrase, on the particular facts of this case, renders the Judge’s decision in some way in error of law. In this context I bear in mind that the unsatisfactory nature of the deposit in the bank account was but one aspect of the unsatisfactory nature of the presentation of the First Appellant’s general financial circumstances. Looking at the matter ‘in the round’, I am not persuaded that there was any material error in the evaluation of the deposit in the bank account bearing in mind not just the failure to provide any independent supporting evidence (e.g. by way of further bank statements) but also the Judge’s conclusions in respect of the First Appellant’s failure otherwise adequately or at all to address the concerns of the Respondent.
15. As regards the Judge’s finding that the First Appellant had not dealt adequately, or at all, with the other concerns raised by the Respondent I find that there is nothing

objectionable to the Judge's observations in respect of the Grounds of Appeal: there is nothing in those Grounds that advances the Appellants' cases any further or otherwise makes any proper attempt to engage with the Respondent's concerns. Essentially the Grounds before the First-tier Tribunal assert that the documents submitted with the application were adequate: necessarily that is not to address the particular concerns which, in my judgement, it was open to the Judge to characterise as being "*valid concerns*". Nor is it apparent that any new or different materials were submitted to the First-tier Tribunal to address those concerns: the documents that appear at pages 4-25 of the Appellants' bundle on the face of it are the same documents that were submitted with the application. Mr Mustafa acknowledged that he was not able to suggest that they were in any way different, or otherwise advanced the Appellants' cases any further.

16. In respect of the sponsor's circumstances Mr Whitwell acknowledged that the Judge appears to have disregarded the fact that the sponsor submitted a personal bank statement at the appeal hearing covering the period 25 January 2013 to 19 March 2013. To that extent the Judge was in error at paragraph 24 in stating "*I have seen no bank statement*".
17. However, in my judgement, such a mistake does not invalidate the Judge's observations at paragraph 23 as to the dearth of documentary evidence relating to income and savings in circumstances where it was clear to the Appellants, the sponsor, and the representatives that there was an issue in respect of the sponsor's ability to maintain and accommodate the Appellants, and that such issue had arisen because of the absence of supporting evidence with the application - in particular "*payslips, employment letter, P60*" (as well as bank statements), which had not been seen by the Respondent.
18. In this context it is to be noted that the bank statement only covers a two month period some two months prior to the Respondent's decision. Further, for the main part, the credits to the account are from public funds, be that by way of carer's allowance, disability living allowance, child tax credits, or housing benefit. Moreover, a single bank statement is not in and of itself inevitably complete evidence of the financial circumstances of a household. For example: it was said at the hearing before the First-tier Tribunal that the sponsor's husband works as a chef in Northern Ireland; whilst there are some deposits paid in Newtonabbey, there is no supporting evidence of the husband's employment or income level. There was not otherwise any attempt before the First-tier Tribunal to set out household income and expenditure by way of a suitable table or chart, and no supporting evidence beyond the bank statement identifying relevant income and outgoings. Moreover, when I enquired as to whether or not the sponsor was in receipt of Child Benefit I was told that this was paid into a different bank account: this in itself demonstrates that the bank account presented to the First-tier Tribunal was in no way reliable as a reflecting all of the circumstances of the household's finances.
19. Accordingly, I find that the Judge was essentially correct in identifying that inadequate materials had been provided to answer the concerns in respect of the

sponsor's financial circumstances raised by the Respondent. The Judge's oversight in respect of the bank statement was not, in my judgement, ultimately material to this outcome.

20. Although it is pleaded in the Grounds in support of the application for permission to appeal that the Judge was in error in failing to give individual consideration to whether each of the Second, Third, and Fourth Appellants had sufficient ties to Bangladesh such that they would be more likely than not to leave the UK at the end of their visit, such matters cannot avail the Appellants in circumstances where the First-tier Tribunal Judge unimpugnably concluded that the maintenance and accommodation requirements of the Rules were not met, and nor was the requirement in respect of meeting the costs of the onward or return journey.
21. Accordingly in the circumstances I find no material error in the First-tier Tribunal Judge's assessment that the Appellants had not addressed pertinent legitimate concerns of the Respondent. Accordingly the decisions of the First-tier Tribunal stand.

Notice of Decision

22. The decisions of the First-tier Tribunal Judge contained no material errors of law and stand.
23. The appeals are each dismissed.

Deputy Judge of the Upper Tribunal I. A. Lewis

18 June 2015