



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/06817/2015
HU/06819/2015
HU/06825/2015

THE IMMIGRATION ACTS

Heard at Field House
On 8th August 2017

Decision & Reasons Promulgated
15th August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MRS SHAHANARA BEGUM
MR AMIR HUSSAIN
MISS MORIOM SIDDIKA
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellants: Ms S Sher, Counsel instructed by Blakewells Solicitors
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants, citizens of Bangladesh, are the wife and two children of the Sponsor Mr Mohammed Shamsul Hoque, also a national of Bangladesh. The Appellants appealed to the First-tier Tribunal against decisions of the Entry Clearance Officer (ECO) dated 19th August 2015 to refuse their applications for entry clearance as the partner and children of the Sponsor under Appendix FM of the Immigration Rules. First-tier Tribunal Judge R G Walters dismissed the appeals on the basis that he was not satisfied that it had been demonstrated that the Sponsor was genuinely earning

£24,800 per annum at the required time, the amount required to meet the financial requirements of Appendix FM of the Immigration Rules. The Appellants now appeal with permission to this Tribunal.

2. The Entry Clearance Officer considered the evidence of the Sponsor's earnings noting that the Sponsor had been employed with the same employer for the previous three years. It was noted that the bank statements show deposits to match the claimed income but within a week the full amount is withdrawn in cash. The ECO was not satisfied that the Sponsor's employment and earnings were as claimed.
3. The First-tier Tribunal Judge considered the appeal under Article 8 of the European Convention on Human Rights. The judge considered the documentary and oral evidence in relation to the Sponsor's earnings. He did not accept the Sponsor's oral evidence as to his claimed promotion within the company which it was claimed accounted for the increase in pay. The judge did not accept the Sponsor's claim that he pays his rent and council tax in cash in light of the lack of documentary evidence to support that claim. The judge did not believe the Sponsor's evidence that he had to withdraw his wages in cash shortly after being paid each month for the purposes he claimed. In conclusion the judge did not believe that the Sponsor is in genuine employment earning £24,800 per annum.

Error of Law

4. In the Grounds of Appeal the Appellants put forward three grounds. It is contended in the first ground that the Appellant had met the mandatory requirements of Appendix FM-SE in terms of the documents submitted and that it was not open to the judge to take account of other evidence to disprove the level of the Sponsor's income or genuineness of employment. This ground was not developed or pursued by Ms Sher at the hearing.
5. At the hearing Ms Sher submitted that the judge's decision records at paragraph 30 that the Home Office Presenting Officer accepted that the Sponsor had put forward a plausible explanation for taking his wages out in cash to pay bills. She further submitted that her note indicated that at the hearing the Presenting Officer accepted that the letter from HMRC demonstrated that the Sponsor does work as claimed and that he met the financial requirements.
6. However, no evidence of Ms Sher's note of the hearing was put forward in the grounds. It is clear from the decision that the judge noted the Presenting Officer accepted that it appeared a plausible explanation that the Sponsor had taken his wages out in cash to pay bills but, when the judge queried the Presenting Officer's position on this issue as noted at paragraph 31, the Presenting Officer replied that he was not conceding the appeal and was leaving it up to the court to decide whether this was a reasonable explanation [32]. In the absence of evidence from Ms Sher in the form of her notes from the hearing and in the absence of this issue being raised in the Grounds of Appeal I do not accept that the Presenting Officer conceded the whole issue under appeal. As submitted by Mr Nath it may be that the Presenting

Officer accepted that it was plausible that the Sponsor took his wages out in cash to pay bills but this did not deal with the other issues raised by the Entry Clearance Officer including the significant jump in the Sponsor's claimed earnings over the years since 2012 when he begun working for the same employer. The Entry Clearance Officer pointed to an increase of 381% in earnings from 2012/2013.

7. First-tier Tribunal Judge Page granted permission on the basis that all grounds were arguable noting that the Grounds of Appeal raise issues with the calculations made about the Sponsor's total income to meet the requirements of the Immigration Rules. At the hearing before me Ms Sher accepted that the Grounds of Appeal did not raise issue with the judge's calculations.
8. The judge considered the Sponsor's oral evidence in relation to his positions within the employer's company, his promotions and his claimed increases in earnings but noted at paragraph 20 that the Sponsor had failed to clarify whether he took up the position of director and, if so, on what date. The judge also noted at paragraph 26 that the Sponsor said that his job title was 'tandoori chef' but noted at paragraph 27 that he did not believe that the skills of tandoori chefs could be learned in under a year given that it is a highly skilled job and that up until recently there was a special Immigration Rule allowing admission of tandoori chefs from the sub-continent. The judge also took into account that the Sponsor did not have any certificates of his competence as a tandoori chef [28]. It is clear from these paragraphs that the judge did not accept the Sponsor's evidence about his claimed promotion within the company and increase in earnings. These conclusions were open to the judge on the evidence before him and I note that there has been no specific challenge to the judge's findings in relation to this issue.
9. The second Ground of Appeal contends that the judge erred in making adverse credibility findings against the Sponsor on matters that were not put to him at the oral hearing by the Presenting Officer or by the judge. It is contended that, had the judge raised the issue of the payment of council tax in cash, the Sponsor would have been able to show evidence of those payments in cash. It is contended that the judge drew an adverse inference from the fact that the Sponsor had not set up a direct debit on his bank account to pay for his council tax but the Sponsor was not asked this question at the hearing and had he been asked he would have been able to provide the judge with evidence as to why he prefers to pay his council tax by cash rather than direct debit. It is contended that the judge made a further error in the example cited at paragraph 33 of the decision where he noted that the Sponsor sent £1,092.44 to his wife in Bangladesh on 25th November 2014 in circumstances where he only had £58.49 in his account on that date and his next salary of £1,674.03 was not credited to his account until 1st December 2014. The judge concluded that it was a mystery where the £1,092.44 came from. It is argued that the judge failed to have regard to the previous page of the bank statement which showed that the Sponsor had withdrawn £1,400 in cash on 10th November 2014. It is further contended that the judge overlooked evidence of other remittances to his wife in Bangladesh. It is argued that, while the Home Office Presenting Officer at the hearing in the First-tier Tribunal stated that he could not concede the appeal [32], this is a strong indication

by the Respondent that the Sponsor's earnings and employment were genuine and therefore it was materially unfair for the Immigration Judge to go behind the position taken by the Respondent at the hearing. It is contended that the judge made unfair adverse credibility findings without hearing oral evidence from the Sponsor and without giving the Sponsor an opportunity to respond to those matters. It is contended that this resulted in unfairness from a procedural irregularity.

10. Ms Sher submitted that the Sponsor provided an explanation at the hearing as to why he paid bills in cash and about sending money to his wife and children in Bangladesh including the provision of remittance receipts. Ms Sher referred to the evidence in the Appellants' bundle showing various remittances to the Appellant in Bangladesh. She submitted that this significant evidence of remittances would explain why the Sponsor was sending money to the Appellant from money withdrawn after he was being paid.
11. The judge addressed the issue of the Sponsor paying for his rent and council tax in cash. At paragraphs 29 and 34 the judge noted that the Appellant produced two council tax bills but neither of these was a receipt and was not therefore evidence that the bills were paid in cash. Although Ms Sher submitted that the backs of these forms showed that the Sponsor paid for his council tax in cash, the Appellants' First-tier Tribunal bundle before me shows only the front of those council tax bills and does not provide evidence that these bills were paid for in cash. The judge also noted that the Sponsor had produced no evidence such as a rent book to show that he pays his rent in cash. There is no challenge to this conclusion. The judge noted that there was no reason given why the Sponsor had not set up a direct debit in his bank account to pay for his council tax bills. The grounds complain that these issues should have been put to the Sponsor, however it is very clear from reading the decision of the Entry Clearance Officer that it was not believed that the Sponsor genuinely earned the amount claimed and his claim to withdraw his earnings in cash was questioned in the Entry Clearance Officer's decision. Therefore, these issues were very much in issue before the First-tier Tribunal Judge and I do not accept that the judge has to put every point based on the evidence to the Sponsor when the Sponsor was aware of all of these issues.
12. At paragraph 33 the judge said: "I did not believe the Sponsor's evidence that he had to withdraw his wages in cash shortly after being paid each month for the purposes previously mentioned". The judge said that the Sponsor produced various remittance advices and gave an example of one dated 25th November 2014 showing a remittance to his wife and notes that on that date the Sponsor only had £58.49 in his account and his salary was not credited to his account until 1st December 2014. In the Grounds of Appeal the Appellants complain that the judge failed to take account of the fact that the Sponsor withdrew £1,400 in cash on 10th November 2014. However that was two weeks before the transfer on 25th November 2014 and it is not immediately apparent that there is any link between the withdrawal on 10th November and the transfer on 25th November. Whilst it is contended that the judge overlooked evidence of other remittances to the Sponsor's wife it is clear from paragraph 33 that the judge gave that as an example only. Although Ms Sher pointed

to a number of remittances it is not clear that there is any direct link in terms of amount and timing between the amounts withdrawn by the Sponsor from his account and the sums remitted to Bangladesh.

13. The Appellants' third ground contends that the Immigration Judge failed to take into consideration or make reference to the letter from HMRC at page 6-7 of the Appellants' bundle. It is argued that this letter was material in that it demonstrates that the Sponsor is in employment as stated, that his earnings satisfy the requirements of Appendix FM and that he was paying income tax in his lawful employment. At the hearing Ms Sher submitted that the letter from HMRC shows that the Sponsor earned the required amount in the financial year up to 2016. However it is clear from the decision that the judge was aware that the Sponsor was apparently being paid the wages claimed but did not believe that he is genuinely earning the amount claimed because he did not believe the Sponsor's explanations for the significant jump in his earnings between 2013 and 2015/16 nor did he believe the Sponsor's explanations for withdrawing his earnings in cash as soon as they are paid into his account. These conclusions were open to the judge on the evidence before him.
14. The judge concluded at paragraph 35 that he did not believe that the Sponsor is in genuine employment earning £24,800 per annum. In my view, in light of the credibility findings in relation to the Sponsor's oral evidence and the findings made in relation to the documentary evidence, this conclusion was open to the judge on the basis of the findings on the evidence before him.

Notice of Decision

15. The decision of the First-tier Tribunal does not contain a material error of law.
16. The decision of the First-tier Tribunal shall stand.
17. No anonymity direction is made.

Signed

Date: 14th August 2017

Deputy Upper Tribunal Judge Grimes

To the Respondent **Fee Award**

As the appeal has been dismissed there can be no fee award.

Signed

Date: 14th August 2017

Deputy Upper Tribunal Judge Grimes