



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/02591/2015
EA/02596/2015

THE IMMIGRATION ACTS

Heard at Field House
On 28 November 2018

Decision & Reasons Promulgated
On 3 December 2018

Before

UPPER TRIBUNAL JUDGE BLUM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

GURPREET SINGH KALSI
PARAMJEET MALKIT SEMBHI
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:

For the appellant: Mr S Kandola, Senior Home Office Presenting Officer
For the respondents: Mr P Richardson, Counsel, instructed by Magna Solicitors

DECISION AND REASONS

1. The Secretary of State for the Home Department (SSHD) appeals against the decision of Judge of the First-tier Tribunal B Lloyd (the judge), promulgated on 10 August 2016, allowing the appeals of Mr Kalsi and Mrs Sembhi (hereafter the claimants) against the SSHD's decision dated 4 November 2015 refusing to issue

them residence cards pursuant to the Immigration (European Economic Area) Regulations 2006.

2. This appeal initially came before Deputy Upper Tribunal Judge Macdonald on 19 April 2017. In a decision promulgated by the Deputy Judge on 4 May 2017 he concluded, in reliance on the Upper Tribunal decision of **Sala** [2016] UKUT 0411, that he had no jurisdiction to entertain the appeal. **Sala** was overturned by the Court of Appeal in **Khan v Secretary of State for the Home Department** [2017] EWCA Civ 1755. In a decision promulgated on 23 October 2018 Upper Tribunal Judge Jackson satisfied herself that the Deputy Judge's decision should be set aside pursuant to rule 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The matter was listed for hearing to determine whether the First-tier Tribunal's decision disclosed a legal error such as to require it to be set aside.

Factual Background

3. The claimants, a husband and wife, are Indian nationals. They entered the UK on 8 March 2011, the wife with entry clearance as a student, her husband as her dependent. Although they were both granted further leave this was later curtailed and subsequent applications for further leave to remain in the same capacity were refused. The claimants made a human rights claim based on their private and family life on 8 December 2014 but this was made void on 22 June 2015. On 19 May 2015 they both applied for residence cards as the extended family members of the 1st appellant's brother, Sarbjit Singh, a German national (sponsor). The sponsor entered the UK on 16 January 2015.
4. The SSHD did not accept that the claimants had been either financially dependent or a part of the sponsor's household when they lived in India or when they entered the UK until they were joined by the sponsor in January 2015.

The decision of the First-tier Tribunal

5. At [7] of his decision the judge stated, "the principal issue for this appeal has been whether the [claimants] have provided sufficient evidence to discharge their burden of proof to show that they are extended family members as claimed; and that they have been and continue to be dependent upon the Sponsor." At [11] the judge stated, "the principal issue is one of credibility of the [claimants], their Sponsor and the application as a whole."
6. At [13] to [22] the judge set out the evidence from the claimants, the sponsor and from Balbir Singh, the 1st appellant's maternal uncle. The judge additionally indicated that he took into account the supporting documents in the bundles provided by the parties. In setting out the evidence it appears that the judge, at the same time, recorded the submissions made by the parties. It was the SSHD's case that the applications were contrived purely to secure the right of residence, and that there was insufficient evidence to demonstrate previous financial dependency when the claimants lived in India.

7. After accurately setting out the relevant provisions of the 2006 Regulations the judge sets out his 'Findings and Conclusions.' The judge found that, while there was "... a degree of ambiguity in the evidence presented to this appeal", and while accepting that, on one level, the SSHD's assertions were logical, the SSHD's submissions were nevertheless unsustainable on the evidence and his concerns were essentially speculative (at [26]).
8. At [28] the judge stated,

"Having regard to the totality of the evidence, I believe on the balance of probabilities that Mr Sarbjit Singh had provided funds for the [1st claimant's] education in India from the time of his emigration to Germany in 1999. Further, however overly philanthropic it may seem, I accept that he probably did finance the [2nd claimant's] wish to study in London. The [claimants] were making the best of an opportunity provided to them. I do not consider that it was necessarily a contrived plan to remain in the United Kingdom indefinitely."
9. Having then found that the claimants and the sponsor established a joint household in the UK from the beginning of 2015, the judge was satisfied that the claimants were, at all material times, dependent upon the sponsor and that they met the definition of extended family members in Reg 8(2) of the 2006 Regulations.

The grounds of appeal and the error of law hearing

10. The grounds essentially contend that the judge failed to give adequate reasons for his findings. In particular, while referring to the presence of 'ambiguity' in the evidence, the judge failed to give adequate reasons for believing that the sponsor funded the claimants' education in both India and the UK. There was said to be a failure to engage in a rigorous examination of the evidence. It was additionally contended that the judge was not entitled to allow the appeal outright.
11. Mr Kandola expanded upon the grounds, focusing on the inadequacy of the judge's reasons for finding the claimants' account credible, for failing to identify the particular evidence upon which he relied for his findings, and for allowing the appeals outright without remitting it to the Secretary of State to enable him to exercise his discretion.
12. Mr Richardson accepted that the Judge had erred in allowing the appeals outright without remitting the applications back to the respondent to enable him to exercise his discretion. Mr Richardson nevertheless invited me to consider the decision holistically and with reference to the evidence previously identified by the judge. I was referred to, in particular, the judge's recording of the evidence of the payments made by the sponsor to the claimants following their entry to the UK, and to the evidence of money remitted to the general family in India contained at pages 84 to 111 the claimant's bundle.

13. Having carefully considered the evidence available to the judge, and the reasoning given by the judge for his conclusions, I indicated to the parties that I was satisfied the judge materially erred in law, both by failing to give adequate reasons and by allowing the appeal outright. By agreement with the parties I indicated that I would remit the matter back to the First-tier Tribunal for a fresh hearing.

Discussion

14. It is a trite proposition of law that a Tribunal must disclose clearly the reasons for its decision (see, for example, **MK (duty to give reasons) Pakistan** [2013] UKUT 00641 (IAC)). The reasons do not necessarily need to be detailed or extensive, but they must adequately explain to both parties why a particular conclusion was reached. The adequacy of any reasons provided must also be assessed by reference to the particular issues raised in an appeal and by reference to the specific concerns identified by the initial decision maker.
15. Although the judge properly indicated that the principal issue was one of credibility of the claimants and their sponsor, the judge failed to provide adequate reasons for finding the claimants and the sponsor credible. At [28] the judge found that the sponsor had provided funds for the 1st claimant's education in India from the time of his emigration to Germany in 1999, but the judge only supported this conclusion by reference to his "having regard to the totality of the evidence." The judge does not identify what particular evidence supported his conclusion. While there was evidence of the remittal of money by the sponsor to his family in India, this was to the family unit as a whole and without any particular reference to either of the claimants. The judge does not explain why he was apparently satisfied with the explanation proffered by the claimants. While the judge does offer slightly more explanation for concluding that the sponsor did finance the 2nd claimant's studies in the UK, he once again fails to identify what particular aspects of the evidence before him persuaded him that this was the case. One is left wondering why the judge reached the conclusions he did. While the judge may have ultimately been entitled to reach his conclusions, his decision does not disclose that it was reached by a lawful path.
16. Nor am I satisfied that the judge has given adequate reasons for finding that the claimants were financially dependent on the sponsor from their entry in 2011 until they were joined by the sponsor in January 2015. The judge fails to identify the evidence upon which he relies in support of this conclusion in the section of his decision headed 'Findings and Conclusions'. Although there appears to have been oral evidence, recorded at [14], that the sponsor made a payment of £5000 to the claimants in respect of the 2nd claimant's course fees, and a sum of £2000 was allegedly made available for their living expenses when they arrived in the UK, it is not apparent that there was any documentary evidence supporting these assertions. The judge additionally recorded, at [18], that the 1st appellant's maternal uncle often acted as a courier transferring money to the

claimants, but, once again, these assertions were without documentary support, and there was no explanation why the maternal uncle would visit the UK so frequently. The judge does not, in any event, adequately explain why he believed these assertions were true. Although the judge may have been entitled to accept the oral evidence from the claimants and their witnesses, in circumstances where their credibility had been clearly rejected by the SSHD, and in the absence of supportive documentary evidence, he had to explain, in coherent and logical terms, why he found their account credible. He failed to do so. I'm consequently satisfied the decision contains an error on a point of law sufficient to require it to be set aside.

Notice of Decision

The decision of the First-tier Tribunal contains material legal errors and is set aside.

The case is remitted to the First-tier Tribunal to be considered afresh by a judge other than judge of the First-tier Tribunal B Lloyd



Signed

28 November 2018

Date

Upper Tribunal Judge Blum