



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/14178/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 15 June 2018

Decision & Reasons Promulgated
On 19 June 2018

Before

Deputy Upper Tribunal Judge Pickup

Between

Sabtain Ali Khan
[No anonymity direction made]

Appellant

and

The Entry Clearance Officer

Respondent

Representation:

For the appellant: Mr M Moksud, instructed by IAS (Levenshulme)

For the respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan with date of birth recorded at 25.6.85.
2. This is his appeal against the decision of First-tier Tribunal Judge Malik promulgated 4.10.17, dismissing on all grounds his appeal against the decision of the Entry Clearance Officer, dated 19.5.16, to refuse his application for entry clearance as the

partner of a person present and settled in the UK pursuant to E-ECP 1.1 of Appendix FM of the Immigration Rules.

3. First-tier Tribunal Judge Frankish granted permission to appeal on 3.4.18.

Error of Law

4. For the reasons summarised below and having considered the submissions of the respective representatives at the hearing before me, I found no material error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside.
5. The application was refused because the Entry Clearance Officer was not satisfied that the sponsor worked for the employer claimed, so that she failed the suitability requirement of S-EC 2.2. In consequence, the Entry Clearance Officer also concluded that whilst the appellant was exempt from the financial threshold requirements under E-ECP 3.1 because the sponsor was in receipt of specified state benefits, he failed to demonstrate that there would be adequate income to maintain themselves without (additional) recourse to public funds. The refusal decision was upheld in the Entry Clearance Manager review of 17.10.16.
6. Judge Malik considered the evidence as to the claimed employment, including the evidence adduced on behalf of the appellant and the findings of the Enrichment Report on 14.5.18. However, for the reasons amply set out in the decision, concluded at [19] that the appellant had failed to demonstrate on the balance of probabilities that the sponsor was employed as claimed. The Entry Clearance Officer in fact concluded that the employment had been fabricated for the purpose of the application.
7. In essence, the grounds assert that the judge applied too high a standard of proof and argue that discrepancies as to what days the sponsor worked did not override the evidence that she did at least work part-time.
8. In granting permission to appeal, Judge Frankish considered that there was an arguable error of law stating, "Arguably Inland Revenue records to demonstrate the appellant's job, the fact that she satisfied FM E-ECP3.3.(a)(v) (carer's allowance), which was all she needed, override discrepancies over the days of work as between the letter from and the telephone call to the employer."
9. In relation to the financial requirements, although the sponsor was in receipt of carer's allowance, the appellant still had to demonstrate adequate maintenance. To do that required the additional income of the sponsor's claimed part-time employment; without that additional income they would be below the income support level. It is clear from the decision that Judge Malik carefully considered all of the available evidence placed before the tribunal.
10. The grounds point to evidence that the appellant was working part-time in the form of her bank statement and the P45. These were matters all considered by the tribunal. The judge also considered the Enrichment Report and the sponsor's oral explanation and supporting documentation about the claimed employment. The judge was

particularly concerned that the monies being paid into the account were identical each month when it was being claimed that the employment hours were flexible and varied. The evidence was unsatisfactory and entirely suspect. The weight to be accorded to the evidence is a matter entirely for the judge. On the evidence the judge was not satisfied that there was any genuine employment and upheld the Entry Clearance Officer's decision on suitability. It follows that without the employment income the appellant cannot meet the adequate maintenance requirements.

11. I should also point out that contrary to the impression created in the grant of permission, and in Mr Moksud's submissions the P45 is not a document issued by the HMRC but is compiled by the employer for the purpose of submission to HMRC. Whether it was so submitted is not clear. However, if the other employment documents relied on by the appellant are either unreliable or alternatively suspected of being contrived to support employment which is not genuine, then so is the P45, as they are all issued by the same employer. It was entirely open to the judge to find, taking all of the evidence into account in the round, that appellant had not demonstrated that the employment was genuine and it would follow that any supporting documents from the same source are inevitably going to be unreliable.
12. Having carefully considered the decision as a whole, I am satisfied that the findings and conclusions made were ones fully open to the judge on the evidence and for which clear and cogent reasoning has been provided within the decision. It cannot be said that the findings were contrary to the overwhelming weight of the evidence and perverse or irrational as claimed by Mr Moksud. The grounds are in effect in large measure a disagreement with the decision and an attempt to reargue the appeal.
13. However, the grounds as amplified by Mr Moksud also complain that the judge failed to take into account the more recent income from the sponsor's employment as a student ambassador. This was dealt with at [18] of the decision, with the judge pointing out that the evidence post-dates the decision of the Secretary of State. Whilst this was a human rights appeal and s85 restricting evidence in out of country cases to circumstances prevailing at the date of decision no longer applies, it remains the case that Appendix FM requires the evidence to be submitted with the application and Appendix FM-SE sets out the limited evidential flexibility in acceptance by the respondent of evidence submitted after the application. It follows that the judge was right to exclude consideration of this evidence as far as assessing whether the Rules could be met.
14. However, it was evidence potentially relevant to consideration of the application outside the Rules on article 8 ECHR grounds. Nevertheless, it remains the case that for clear and cogent reasons the judge agreed with the submissions on behalf of the Secretary of State that the appellant could not meet the requirements of the Rules, either under the suitability requirement or the adequate maintenance requirement. That failure was relevant to any article 8 proportionality assessment.
15. The judge went on to consider article 8 proportionality and I accept that the decision does not show that she took the later income or prospective enrichment earnings into

account. However, having carefully considered the matter I am satisfied that in the circumstances where the finding that the suitability requirements are not met and that the Rules generally could not be met, even if the additional income were to be taken into account, the outcome of the appeal would be the same.

16. I find that it was entirely proportionate for the respondent to refuse the application on the evidence presented. Given that it remains open to the appellant to make a further application on her present financial circumstances with evidence that demonstrates the adequate maintenance requirement can now be met, I do not see how the decision could be disproportionate. On the evidence before the tribunal there were no compelling circumstances to justify, exceptionally, allowing entry clearance where the appellant failed to meet the Rules. In the circumstances, even if I had set the decision aside and remade it, taking into account the more recent income, I would have reached the same conclusion, dismissing the appeal on human rights grounds. It follows that if there was an error of law with regard to the later income, it was not one material to the outcome of the appeal.
17. The skeleton argument prepared by the appellant's representatives seeks to rely on the grant of permission as being authoritative and makes criticism of the Home Office in not making a Rule 24 reply, incorrectly suggesting that this was mandatory and that failure to do so indicates that the respondent is not interested in the outcome of the appeal. That is a misreading of the law and the directions. Further, it is for this tribunal and not the permission judge to determine whether in fact there is any material error of law sufficient to require the decision to be set aside. For the reasons summarised above, I do not find any such error of law.

Conclusions & Decision

18. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

As the appeal has been dismissed, I make no fee award.

A handwritten signature in black ink, appearing to read 'Pickup', written in a cursive style.

Signed

Deputy Upper Tribunal Judge Pickup

Dated