



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/08664/2015

THE IMMIGRATION ACTS

Heard at Field House
On 25 July 2018

Decision & Reasons Promulgated
On 5 September 2018

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

ENTRY CLEARANCE OFFICER - CHENNAI

Appellant

and

MR PREVEEN VEJANDLA
(No anonymity order made)

Respondent

Representation:

For the Appellant: Mr Kotas
For the Respondent: Mr Bellara (Counsel)

DECISION AND REASONS

1. For convenience I retain the designations as they were before the First-tier Tribunal, thus, Mr Vejandla is the appellant and the Entry Clearance Officer, the respondent.
2. The appellant is a citizen of India born in 1989. He appealed against a decision of the respondent made on 23 April 2015 to refuse him entry clearance as a Tier 2 (Minister of Religion) Partner. The application was refused under paragraphs 319C(f) and 320(11) of the Immigration Rules.

3. The reasons for refusal were that having entered the UK in 2009 as a student he submitted an in time application for leave to remain which was refused in November 2011 because he had submitted false documents in support of his application.
4. However, he did not leave after the application was refused. Despite stating twice that he wished to return home he failed to maintain contact with the Home Office only leaving in August 2013, nineteen months after the refusal.
5. In a covering letter (30 March 2015) to the current application he confirmed that he had used false documents.
6. He appealed.

First tier proceedings

7. Following a hearing at Hatton Cross on 19 August 2016 Judge of the First-tier Fletcher-Hill allowed the appeal. In a brief decision she centred on the appellant's wife as an honest and credible witness and concluded that they would comply by departing at the conclusion of her period of leave.
8. The respondent sought permission to appeal which was granted on 27 January 2017. Following an error of law hearing at Field House on 13 March 2017 a judge stated that the First tier Tribunal did "... not get to grips with the basis of the earlier refusal and the decision on deception", nor did she explain "even allowing for an exercise of discretion, how she balances that issue with the positive finding she makes about the claimant's wife." It was ultimately a "lack of adequate and sufficient reasons to address the ECO's basis of concern".
9. The decision was set aside and remitted to the First-tier Tribunal.
10. It then came before Judge of the First-tier LK Gibbs. She, following a hearing at Hatton Cross on 17 November 2017, also allowed the appeal.
11. The crux of her brief decision is at paragraph 10. She states:-
"In asserting that the appellant has submitted false documents in an application the burden of proof is on the ECO. I am satisfied that the ECO has failed to provide any evidence or detail regarding the alleged forged documents and that he has therefore failed to discharge the burden. Equally I find that the ECO has failed to provide any evidence that the appellant contacted the Home Office on two occasions claiming that he intended to make a voluntary departure prior to leaving the UK on 29 August 2013."
She was therefore not satisfied that paragraph 320(11) was engaged [11].
12. The respondent again sought permission to appeal which was granted on 30 May 2018.

Error of law hearing

13. At the error of law hearing before me both parties agreed that the decision showed material error of law.
14. Paragraph 320(11), which is discretionary, requires it to be shown that *“the applicant has previously contrived in a significant way to frustrate the intentions of the Rules by:
“... (iv) using deception in an application for entry clearance, leave to enter or remain ...; and
There are other aggravating circumstances ...”*
15. The problem is that the judge in her finding that the respondent failed to provide evidence to support the assertion that the appellant had submitted false documents, and thereby failed to discharge the burden of proof, neglected to consider the letter (30 March 2015) by the appellant in which he apparently conceded his earlier deception.
16. In failing to do so and then, if appropriate, go on to consider aggravating factors, the judge erred. There is simply a lack of reasons to address the respondent’s basis of concern, the alleged deception. As a result, by consent, the decision was set aside to be remade.
17. We were not able to conclude the case on the day. Evidence would be sought to be led. The statements were old. It was agreed that it was appropriate under section 12 of the 2002 Act and Practice Statement 7.2 to again remit to the First-tier Tribunal for a fresh hearing. The member(s) of the First-tier Tribunal to consider the case are not to include Judge Fletcher-Hill or Judge LK Gibbs.

No anonymity order made.

Signed

Date

Upper Tribunal Judge Conway