



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: VA/13233/2013

THE IMMIGRATION ACTS

Heard at: Field House
On: 13 January 2015

Decision and Reasons Promulgated
On: 29 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MR DELWAR HOSSIN
NO ANONYMITY DIRECTION MADE

Appellant

and

ENTRY CLEARANCE OFFICER: DHAKA

Respondent

Representation

For the Appellant: Sponsor: Mr Nazmul Haque

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Bangladesh, born on 22 January 1991. His appeal against the entry clearance officer's refusal of his application for an entry clearance to enter the UK for a period of four to six weeks was dismissed by the First-tier Tribunal in a decision promulgated on 2 October 2014.
2. The Tribunal was not satisfied that he had addressed specific credibility issues in the appeal that cast doubt on the genuineness of the visit.

3. On 1 December 2014, First-tier Tribunal Judge Levin granted the appellant permission to appeal. He noted that the Tribunal incorrectly applied the conversion rate in assessing the appellant's income in Bangladesh; further, the finding that the appellant had provided no evidence of earnings from his poultry farm ignored sale receipts that had been provided by the appellant; they took into account the fact that the appellant's wife was pregnant in making adverse credibility findings [13] when in fact the pregnancy arose only after the date of the decision.

Hearing on 13 January 2015

4. Mr Nazmul Haque, the sponsor, relied on the "grounds for reconsideration." He is the appellant's brother in law. He submitted that at the time that the application was refused, namely on 18 June 2013, the appellant's wife was not pregnant. She only found out she was pregnant in September 2013 and the child was born on 25 June 2014. At paragraph 13, the Tribunal noted, when considering the credibility issues, that the appellant stated that he was travelling alone without his family, even though his wife was pregnant. That was incorrectly taken into account, as the appellant's wife was not pregnant at the application date.
5. He further submitted that the Tribunal erred with regard to the appellant's income. The latter had provided evidence of earnings in respect of his poultry farm. That was in fact already stated in the 'cover letter' that was submitted along with the application.
6. Moreover, he stated that there was a fully paginated bundle provided to the Tribunal which included sales receipts, income tax certificates, income tax receipts and trade licences. He contended that the income tax receipts - set out from pages 23 and following of the appellant's bundle - clearly showed how much tax 'contributions' he had made.
7. Further, the Tribunal incorrectly stated that the claimed income was £118 a month [9], whereas in fact it was the rate of exchange that was pointed out to be BDT 118 to £1. That was the rate at the time of refusal. It had never been stated in the application form or in any of the documents provided that the appellant earns £118 a month.
8. He referred to paragraph 9 of the determination, where the Tribunal stated that the appellant has been employed 'since 2001'. That was not correct. He was employed since June 2011.
9. The Tribunal also stated [9] that the appellant submitted his daughter's letter from school confirming her attendance. However, no such letter was submitted from the school. The appellant does not have a daughter. He has a son, who is not at school.
10. He referred to paragraph 12 of the determination where the Tribunal considered the withdrawal of BDT 180,000. The conclusion that he had inflated his account to facilitate his application was incorrect. The concerns of the ECO had been addressed and were explained in the covering letter at the time of the application and at the appeal. Further, the appellant had provided a cheque copy as well as a deposit slip which was not taken into consideration.
11. All that happened was the money was drawn from the appellant's own Agrani Bank account and deposited into his Pubali Bank account. He simply withdrew money

from one account to another. He had maintained the Agrani Bank for a long period and therefore had savings in the latter account. He has been in employment since 2011 and had also received additional income from land. That amount had accumulated over the years. This evidence was also before the Tribunal.

12. Mr Haque repeated that the relevant documentation was 'all available'. He, as sponsor gave evidence about these matters, all of which had been set out in his witness statement. That included the explanation relating to the large deposits into the appellant's Pubali Bank account.
13. Moreover, the appellant had produced his monthly salary sheet describing "pay and allowances" of the appellant as a manager of Pinne Electric. This identified his salary, showing a consistent amount being received between January 2013 and December 2013. There was also a similar salary sheet for the year 2012. The documents relating to the Agrani Bank Ltd have been translated and confirm the transfer of the money from that account "to self". The cheque evidencing that transaction was also provided, showing the payment on 13 May 2013 from the appellant's Agrani Bank account to his other account.
14. The subsequent deposit into the Pubali Bank account has been confirmed by the document at page 17 of the bundle which has also been translated. The translator's signature has been attested by a notary public. There are tax receipts issued to the appellant for the year 2013/14 as confirmed in a document translated at page 20. Finally there was documentation relating to the renewal of the poultry farm licence at page 26. The appellant is also a member of the Sylhet Chamber of Commerce and Industry which is certified in a certificate.
15. At paragraph 13, the Tribunal found that the appellant did not explain why he was not travelling with his family and who would look after his wife in her condition. Apart from the fact that she was not pregnant at the time, the sponsor had stated at the hearing that the appellant's wife has her in-laws to take care of her. His whole family is in Bangladesh to look after her for the four to six weeks that the appellant intended visiting the UK.
16. Mr Bramble accepted that there had been an error with regard to the findings relating to the appellant's wife's pregnancy. However, he submitted that the Tribunal was entitled to dismiss the appeal on the basis of the genuineness of the proposed visit as there had been no proper clarification of the appellant's earnings.

Assessment

17. Having considered the competing submissions, I find that the Tribunal has made material errors of law. It is common ground that the Tribunal had wrongly stated that the appellant was travelling alone even though his wife was pregnant. At the date of refusal - 18 June 2013 - his wife was not even pregnant. She became pregnant in September 2013 and the child was born on 25 June 2014, well before the date of the hearing.
18. That finding cast doubt on the genuineness of the visit. They found that he did not adequately explain why he was not travelling with his family, and who would look after his wife 'in her condition'. There was no such 'condition' at the date of

application or at the date of the hearing. There was evidence before the Tribunal from the sponsor himself stating that the appellant would be leaving behind his wife, with whom he has a strong bond as well as his parents. He had strong ties in Bangladesh.

19. Further, the Tribunal stated that the appellant provided no evidence to support his earned income as he had not provided any documentary evidence to support all of his earnings, and in particular poultry earnings. However, the documentation provided in that respect included evidence of regular payments into the appellant's bank account, including the transfer of 180,000 taka to his other account on 3 May 2013 (page 22).
20. More significantly, there was evidence produced in the bundle relating to the appellant's poultry farm including his income tax certificates. The documentation included the appellant's tax identification as well as his business identification numbers. He has completed assessments for the years 2011-12 and 2012-13. It is certified that he has paid all income tax and advance tax up to the assessment year 2013 (page 23). Moreover, there was an updated income tax certificate with regard to the assessment of 2013-14 (page 24).
21. Pages 21-22 of the bundle contained documentation that showed evidence of regular payments into his account by way of cash deposits referable to sales from his business. The amount of tax paid in respect of the 2012-13 tax year is set out at page 18 containing a tax receipt confirming that 18,800 taka was received from the appellant under the various Tax Acts for that period. That equates to about £150. Similarly, in 2013-14, it is shown that he paid 36,000 taka for the year 2013-14.
22. I have had regard to the entry clearance manager's report. The manager was concerned that no evidence as to the source of funds had been provided in respect of the balance of about £2,152. It is asserted that the balance was thus not a true reflection of his financial circumstances and had been inflated to facilitate the application. That contention was upheld by the Tribunal.
23. However, the sponsor had produced a statement with regard to the large deposit into the Pubali Bank. This was simply a transfer from the appellant's other account. That had been stated in the covering letter submitted by Immigration Aid when the application was presented. The appellant also submitted handwritten bank statements from Agrani Bank Ltd. Moreover, a copy of his cheque showing the deposit into the account was produced.
24. Having found that there were material errors of law involved in the making of the first-tier Tribunal's decision, I set it aside and re-make it.
25. The sponsor is a British citizen, settled with his family. He has given a detailed witness statement. The appellant is his brother in law. The appellant intends to stay with him and visit his family in the UK. He will maintain him for the period he is here. There is no suggestion that the sponsor is not financially able to maintain or accommodate him for the short period.
26. The appellant has his own business in Bangladesh and is also a manager at Tinne Electric. He receives an income from both his employment and from his business.

This is not a fixed amount and varies each month depending on sales. He has savings in his bank account.

27. I find that the appellant has produced evidence of his earnings from his poultry farm. The income tax certificates before the Tribunal reflect income from that source. The appellant has set out his total monthly income from all sources, including from his poultry farm, at page 4 of his application. That is consistent with the tax receipts he has produced. He has produced sale receipts, income tax certificates as well as tax receipts. The evidence adduced shows he earns BDT 12,000 per month from his employment, which is about £101. The balance is earned from sales from his farm.
28. He has moreover explained the large deposit of BDT 180,000 into his Pubali Bank account. This was transferred from his other account.
29. I thus find that the appellant is in full time employment in Bangladesh. His family lives in Bangladesh; this includes his wife and young child.
30. I have also had regard to the witness statement from Mr Haque, whose evidence I accept. He has previously invited family members to the UK. They subsequently visited the UK and all returned timeously and have never breached the applicable conditions. He maintained that he is a credible sponsor and would not ruin his reputation as such. He has a positive track record in that respect.
31. He stated for example that he was the main sponsor in unrelated appeals that came before the Tribunal. Both appeals were allowed and one of his cousins who had already visited the UK returned within his time limit. He also provided accommodation for another appellant, whose appeal was also allowed.
32. I have no reason to suppose that the intentions of the appellant are anything other than those which he has given. He is financially stable in Bangladesh. His wife, child and the rest of his family live together in Bangladesh. From his and his sponsor's evidence I am satisfied that he will return after his trip.
33. I accordingly find that the decision of the respondent was not in accordance with the law and the immigration rules applicable.

Notice of Decision

Having set aside the decision of the First-tier Tribunal, I re-make it and substitute a decision allowing the appellant's appeal.

No anonymity direction is made.

Signed

Dated: 27/1/2015

Judge C R Mailer
Deputy Upper Tribunal Judge