



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/01293/2015
HU/01294/2015

THE IMMIGRATION ACTS

Heard at Manchester
On 11 May 2017

Decision & Reasons Promulgated
On 3 August 2017

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

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ANONYMITY DIRECTION MADE

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Unrepresented, but sponsor attended
For the respondent: Mr A McVeety (Senior Home Office Presenting Officer)

DECISION AND DIRECTIONS

(as amended pursuant to rule 42 of the Tribunal Procedure (Upper Tribunal) Rules 2008;
amendments are in **bold and underlined**)

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any

proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. I have anonymised the appellants' names because this decision refers to the circumstances of the first appellant's two minor children: the second appellant and a son, in relation to whom, an appeal against the refusal of entry clearance was allowed in a First-tier Tribunal decision dated 7 July 2013 (OA/17849/2013). The sponsor is the husband of the first appellant and father of the second appellant.

Summary of entry clearance process

2. The appellants are citizens of Nigeria. The sponsor is settled in the UK. The remaining members of his family reside in Nigeria. In an application dated 30 March 2015 the appellants applied to join their husband / father in the UK pursuant to the Immigration Rules. The relevant application form relies upon the sponsor's salaried employment in the UK. It is claimed that he is the CEO of two companies ([] Ltd and [] Limited) and earns a total of £44,000 on a PAYE basis, albeit he also has self-employment.
3. In a decision dated 15 June 2015 the entry clearance officer refused the application on financial grounds only. In so doing it was assumed that the application was made on the basis of the sponsor's self-employment. It was therefore considered as such and refused because of a failure to provide the specified evidence in support of self-employment.
4. In the appeal grounds submitted on behalf of the appellants (form IAFT-2), three important points were made: (i) the sponsor is not self-employed but a director and employee of a company; (ii) detailed evidence in support of the sponsor's salaried employment was attached and listed within form IAFT-2 itself; (iii) the First-tier Tribunal had allowed the son's appeal in 2014 and made a clear finding of fact that the sponsor was at the time of the decision in receipt of a salary from [] Ltd [14]. The First-tier Tribunal regarded the claim that the sponsor was in salaried employment to be consistent with the documentary evidence available, including bank statements.

Procedural history

5. In a decision dated **1 August** 2016 First-tier Tribunal Judge **Wellesley-Cole** dismissed the appellant's appeal in a short decision. The First-tier Tribunal was not assisted by the sponsor's non-attendance at the appeal and the absence of any explanation for this. Unfortunately, it does not appear that the First-tier Tribunal was particularly assisted by the respondent's representative either. The First-tier Tribunal summarised her submissions at [4] as follows: "*Nothing was submitted in relation to the finances, nor were any documents provided*".

6. The First-tier Tribunal dismissed the appeal on the basis that there was insufficient documentary evidence to support the claim that the sponsor was self-employed [5].
7. In a decision dated 16 February 2017 **Upper** Tribunal Judge Deans granted permission to appeal observing that it was arguable that additional documentary evidence may not have been taken into account.
8. The SSHD submitted a rule 24 notice dated 22 February 2017 in which she submitted that there was no further documentary evidence to consider.

Hearing

9. At the beginning of the hearing Mr McVeety accepted that the appeal was unopposed and the decision needs to be remade in its entirety. He was entirely correct to do so for the reasons set out below.
10. Mr McVeety also agreed that the error of law is such that the decision needs to be remade completely - the hearing has been infected by procedural unfairness. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal.

Error of law discussion

11. I can state my reasons briefly given the respondent's concession. The First-tier Tribunal failed to take into account crucial information available to it as follows:
 - (i) the appellants relied upon the sponsor's salaried employment, not his self-employment - this was made clear in the entry clearance application form and form IAFT-2;
 - (ii) documentary evidence in support of the sponsor's salaried employment attached to form IAFT-2;
 - (iii) the First-tier Tribunal decision dated 2 July 2014 allowing the son's appeal and finding that the sponsor was at the time of the decision in receipt of a salary from [] Ltd.
12. None of these matters seems to have been drawn to the attention of the First-tier Tribunal by the respondent's representative. It is difficult to see why not. Whatever the reason for it, the First-tier Tribunal determined the appeal without considering available crucial information, relevant to the issues in dispute.

Final points

13. Mr McVeety acknowledged that the entry clearance officer appears to have decided the claim on the basis of self-employment and not salaried employment, and this has not been corrected at the entry clearance manager review stage. In those circumstances, he wished to take instructions regarding withdrawing the decision so that it could be reconsidered on the correct basis, but that because it is an entry clearance case he needed further time to do so. I have therefore included a direction to address this eventuality below.
14. The sponsor asked me to note that he now lives and works in London. I have updated the file to this effect. In these circumstances, it was agreed that the hearing should be transferred to Taylor House, London.

Decision

15. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
16. The appeal shall be remade by the First-tier Tribunal *de novo*.

Directions

- (1) The respondent shall file and serve within 14 days of the date this decision is sent a position statement outlining an updated position regarding the matters set out above, particularly at [13];
- (2) The appeal is transferred to Taylor House, London.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:

2 August 2017