



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08310/2018

THE IMMIGRATION ACTS

Heard at Field House
On 1 March 2019

Decision & Reasons Promulgated
On 19 March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR MAIRAJ UDDIN AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Chohan, counsel instructed by SBM Solicitors
For the Respondent: Mr N Bramble, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Pakistan, date of birth 1 January 1987, appealed against the Respondent's decision, dated 20 March 2018, to refuse application for leave to remain based on him being a spouse. His appeal came before First-tier Tribunal Judge Miles whose decision [D], on 15 October 2018, dismissed the appeal on human rights grounds.

2. The Appellant's application under the Immigration Rules, and particularly Appendix FM, had failed, so the judge found, because the Appellant had failed to provide the necessary evidence that he met the financial requirements. Those requirements under the Rules fell to be considered in the usual way at the date submitted with the application, but in this case because this matter had been through the process of judicial review, the matter was remade and effectively the Secretary of State remade the decision as of March 2018.
3. The issue before this Tribunal turned to a great extent upon whether or not, at the time the matter was looked at by the Secretary of State, the Secretary of State had been presented with evidence from the Meezan Bank and from UBL, which set out the financial circumstances of the Appellant. Mr Bramble correctly accepts that if that information was before the Secretary of State, then the Appellant would have met the requirements of the Immigration Rules and the application would, on a remaking, have succeeded.
4. Mr Bramble made the point that the Judge in dealing with this matter seemed, without saying so, but by implications, to have taken the view that the UBL certificate and information was not before the Secretary of State and had only been produced as at the hearing. Accordingly, whilst it was not excluded *per se*, nevertheless, the Presenting Officer's argument had been that little weight should be attached to the documentation because it was produced after the Respondent's decision and was never before the Respondent.
5. The Judge was to some extent, and this was not to be seen as a criticism, somewhat uncertain about the ultimate position, *vis-à-vis* the documents, i.e. whether they had been presented. The Appellant's case was that it had been provided, accompanying a letter from his solicitors, SZ Solicitors, which had been sent on 1 February 2018. The actual difficulty for the Judge arose because the letter does not particularise the bank documents being provided but identify a document which is called a 'bank reconciliation document'. The documents within the Appellant's bundle, before the Judge, simply seemed to relate to the Meezan Bank and not the UBL account (see

Appellant's bundle, pages 108 to 111). The covering letter from SZ Solicitors did not specify what bank statements were being sent, from which bank, if any other than the Meezan Bank. Nor was there copied within the Appellant's bundle, the 'bank reconciliation statement'. The Meezan Bank letter (AB111) was simply relating to two accounts held by the Appellant at the Meezan Bank and were not referencing or relevant to the UBL account.

6. The Judge did not actually address the Appellant's evidence about this matter as recited through the decision letter, for the Judge [D35] was less than clear whether or not he was recording the Appellant's evidence as being that the Appellant had provided the UBL letter. The Judge said:-

"35. ... At the hearing itself appellant (sic) also produced a balance confirmation certificate issued by the United bank (sic) Ltd of Karachi dated 29 January 2018 certifying that the appellant was maintaining Rs.6,700,000 with the bank since 1 January 2015, which is the equivocal of £43,872."

7. The Judge continued D36:-

"36. As I have noted above the appeal bundle itself was not received by the tribunal or the respondent until 24 September 2018 which was the day before the appeal hearing, and the additional financial documents were submitted in copy rather than original form, when it must be the case that those originals could have been provided and they would clearly constitute the best evidence of these claimed savings. As it is, these documents were produced, effectively without notice, when their importance is such that there is no reason why they should not have been produced at early (sic) stage so that any pending enquiries could have been undertaken prior to the appeal hearing. The evidential requirements of appendix FM-SE required the requisite financial information for a six-month period to be provided with the application which is clearly not the

case on the appellant's own evidence. Even allowing for those documents to have been provided subsequently given the success of his judicial review application of the original refusal decision, then the consent order was clear in identifying a three-month period from the date of that order which was on 10 January 2018. In my judgement the Meezan Bank letter was not produced within that period given the date that it bears, when there was no reason why it could not have been provided. The UBL certificate, although dated within that period was only produced on the morning of the appeal hearing and in copy form. Given the lateness of its production the original should have been submitted. In those circumstances I give no weight to this additional evidence; therefore I am not satisfied that this application does satisfy the financial requirement under appendix FM of the immigration rules on the balance of probabilities standard."

8. I find [D36] slightly unclear because it was difficult to see why no weight could be given to a document absent of some good reason, as opposed to some weight, but the matter addressed by way of a judgment and balance of the considerations. (my emphasis). To that extent I disagree with the way the Judge has expressed it, but I am still seized of the point that the Judge's remarks are equivocal as to whether or not the UBL letter was sent, in January 2018, and was before the Secretary of State. The Appellant's balance in the UBL account, on the face of the evidence, before the Judge had been in the account for a significant period of time, there was no obvious reason, short of error, why the certificate from UBL would not have been put forward in order to substantiate the financial requirements under the Rules.
9. I look at this on the basis of the balance of probabilities. I conclude that it was reasonably likely that the UBL letter was sent to the Secretary of State in January 2018. The difficulties that the Secretary of State faced time and time again, was the weight of documentation that comes into the Home Office, which must be a practical administrative nightmare. I concluded that there was no obvious reason why the UBL letter would not have been submitted, it may well have been overlooked by the Respondent or its significance not appreciated which is understandable. It may not

have been appreciated that it represented a different account from the Meezan Bank material. I do not know and I do not speculate, but I conclude that on a balance of probabilities the evidence which showed that at the date the Judge was looking at this matter weight should be given to the UBL certificate. Absent of the Judge finding that the document had never been provided to the Secretary of State, which at least on one construction may be what the Judge intended to say, the absence of clarity showed that there is an absence of sufficient, adequate reasons which amounts to a material error of law.

10. In those circumstances I find that the Original Tribunal's decision should not stand. It should be remade on the basis, as I see it, that the UBL material was provided and it showed the right level of required finances. The judge's finding the Appellant he did not comply with the Rules it would not be proportionate to hold that against him in considering the Article 8 claim. I was invited to remake the appeal decision.
11. In terms of the decision I find that as a fact the information of the UBL certificate and the relevant material from the Meezan Bank was before the Judge. Had it been considered by the Secretary of State the appeal would have succeeded under the Rules. There was no other basis for refusal. However, this was an Article 8 ECHR based claim on human rights grounds The issue was whether or not the Respondent's decision was proportionate. In reaching a view on that I find that the basis of the application was to maintain private and family life within the UK and that the Respondent's decision was necessarily an interference in Article 8(1) ECHR rights. I find, the Respondent's decision was lawful and properly served the maintenance of immigration controls within Article 8(2) ECHR.
12. I therefore, in considering the Article 8 claim, pay particular regard to Sections 117A and 117B (1)-(5) of the NIAA 2002 and the public interest question. The extent of its importance was, to a degree, as acknowledged in the case of Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC) It was material to the weight to be given to the public interest, particularly when someone had met the requirements of the

Immigration Rules. I am not dealing with an appeal under the Rules, but the extent of compliance will weigh on the outcome of the proportionality issue.

13. I also take into account that the evidence showed that the Appellant has no English language problems, given the findings made by the Judge about the TOEIC test. There was nothing to suggest he could not be and would not be a productive member of and integrate into UK society, which may have occurred already. I therefore find that whilst of course his immigration history did not stand against him, he has no history of criminality or conduct which might militate against his suitability. The only matter was the issue of the proxy test taking allegation. The Judge accepted the Appellant had given an “innocent” explanation of the involvement in the testing. I express no view whatsoever about the findings. The findings made by the Judge stand in this respect and were not challenged by the Respondent.
14. In those circumstances, looking at this matter in the round, I find Article 8(1) ECHR family life rights were engaged. The Respondent’s decision was a significant interference in the exercise of those rights. I find the decision of the Respondent was lawful and served Article 8(2) ECHR purposes. However, in my judgment I find the Respondent’s decision was disproportionate: The public interest, in the circumstances of this appeal did not, as they would otherwise normally do, justify the adverse decision. For those reasons I substitute the following decision.

NOTICE OF DECISION

15. The appeal is allowed on Article 8 ECHR grounds.

ANONYMITY

16. No anonymity direction is made.

TO THE RESPONDENT

FEE AWARD

As I have allowed the appeal I have considered making a fee award. This appeal has succeeded with the clarification of the evidential issues. In the circumstances I do not find a fee award is appropriate.

Signed

Date 13 March 2019

Deputy Upper Tribunal Judge Davey