



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-001703
UI-2022-001704

First-tier Tribunal No: HU/08743/2020
HU/08747/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

16th October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MS RABIA IMRAN BUTT
MS ANA BUTT
(NO ANONYMITY ORDER MADE)

Appellants

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Broachwalla, Counsel (via CVP)
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 5 October 2023

DECISION AND REASONS

1. The Appellants are nationals of Pakistan, born on 1 January 1976 and 7 May 2002 respectively who on 22 December 2020 applied for entry clearance as the spouse and child of Imran Butt, the Sponsor.
2. The Respondent refused their applications in decisions sent out on 17 November 2020 because she was not satisfied the Appellants met the

financial requirements of paragraphs E-ECP 3.1 to 3.4 of Appendix FM to the Immigration Rules. The Appellants appealed to the First-tier Tribunal and their appeals were listed before Judge of the First-tier Tribunal Moxon (hereinafter referred to as the FTTJ) on 2 September 2021 and in a decision promulgated on 11 September 2021 their appeals were dismissed.

3. Permission to appeal was initially refused by First-tier Tribunal Judge Frantzis. Permission to appeal was renewed to the Upper Tribunal and permission was granted by Upper Tribunal Judge McWilliam on 26 July 2022 who found the renewed grounds identified an arguable error in the approach by the First-tier Tribunal.
4. Mr Broachwalla relied on the grounds of appeal and submitted there was an error in law on the following grounds:
 - a. The FTTJ erred by refusing to consider evidence that had been submitted pursuant to a direction issued by the First-tier Tribunal. It was incumbent on the FTTJ to consider the evidence and to make findings on whether they could be relied on. The FTTJ erred by stating at paragraph [11] that the Appellants' failure, without good reason, to provide the documents with the applications undermined their credibility and the reliability of the documents.
 - b. The FTTJ found the Appellants only submitted five payslips for the twelve months until October 2019 and the fact substantial documentation had now been adduced did not mean it adequately complied with the Rules. Mr Hussain submitted that the payslips for the twelve-month period to October were included in the bundle at item 12 and the FTTJ erred by failing to take them into account.
 - c. The FTTJ's finding that refusing them entry would not interfere with family life as the interference was proportionate was flawed because the finding failed to have regard to the fact that the second-named Appellant was now an adult and would now not come with Appendix FM of the Immigration Rules.
5. Mr McVeety accepted there had been an error in law. He accepted the FTTJ had to have regard to the evidence in a human rights case especially in circumstances where the Sponsor's employment history and circumstances had not been raised in the decision letter. The original decision letter had not challenged the genuineness of the Sponsor's employment history and he acknowledged the original court bundle contained not only the relevant payslips but also the other required evidence specified in Appendix FM-SE of the Immigration Rules.
6. No anonymity order is made.

DISCUSSION AND FINDINGS

7. Having heard submissions from the two representatives I concluded there had been an error in law.

8. Contained within the evidence that was before the original Tribunal were the relevant twelve-month of wage slips. I was satisfied the FTTJ erred when finding there were only five in the actual bundle.
9. There was also contained in the bundle substantial evidence which complied with Appendix FM-SE to the Immigration Rules. Again, Mr McVeety acknowledged this evidence and conceded that at no time had it been the Respondent's case that the Sponsor's employment was not genuine-something the FTTJ had stated in his/her decision.
10. Given these facts I was satisfied there was a material error in the original decision and as Mr McVeety accepted the Rules were met by the date of hearing I proceeded to allow the appeal under article 8 ECHR.

Notice of Decision

There was an error in law. The First-tier Tribunal's decision is set aside. I remake the decision and allow the appeal.

Deputy Judge of the Upper Tribunal
Alis Immigration and Asylum
Chamber

5 October 2023