



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: VA/07738/2012
VA/07740/2012

THE IMMIGRATION ACTS

Determined On the Papers at Field House
On 1 August 2013

Determination Promulgated
On 14 August 2013

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

SYEDA RUKHSANA NASEER
AHMAD RAZZA

Appellants

and

ENTRY CLEARANCE OFFICER - ABU DHABI

Respondent

Representation:

For the Appellants: None
For the Respondent: None

DETERMINATION AND REASONS

1. The appellants, citizens of Pakistan born on 1 January 1959 and 20 September 1999 respectively, appeal, with permission, against a decision of Judge of the First-tier Tribunal Peter Grant-Hutchinson who, in a determination promulgated on 29 October 2012, dismissed the appellants' appeals against a decision of the Entry

Clearance Officer Abu Dhabi to refuse their applications for visit visas. When I refer to the appellant in this determination I am referring to the principal appellant who is the mother of the second appellant.

2. The notice of decision dated 12 October 2011 states:-

“Guidance on the types of documents that might give a visa applicant the opportunity to show that their circumstances are as they have set out in their application form is available at www.ukba.homeoffice.gov.uk/visas . In assessing your individual application, I have taken into account the supporting documents provided, your passport and travel history, your family circumstances and the financial and employment information as declared by you in your application form and weighed these against the Immigration Rules. In reaching my decision, which has been made on the balance of probabilities, I note in particular the following points:

‘The passport that you have presented with the application does not show any previous travel outside Pakistan or therefore any previous compliance with the Immigration Rules of another country. You have provided documents relating to your sponsor, however the onus is on you to qualify for entry clearance in your own right.

I have considered the letter of support provided by the Member of Parliament, the Right Honourable Eric Joyce. I have considered your application carefully but I am still bound to assess it against the Immigration Rules. I have considered the evidence provided and written statements you have provided, but I am not satisfied that you have met the requirements of the Immigration Rules on this occasion.

On your application you have stated that you own a bungalow and some land and earn 35,000 rupees (£321 if £1 = 140 rupees) per month; however, your stated income is not reflected in the bank statement you have provided, which shows deposits in excess of this income. From 24 May 2011 to 30 August 2011 your balance was below 12,00 rupees (£85) and on 24 September 2011 you deposited 950,000 rupees (£6,785) which is over 21 times your indicated monthly income. You have stated that this is from the sale of your car. However, you have not provided any evidence of this. You have not provided satisfactory evidence to show the origin of these funds or if they are under your exclusive control. I note too that the balance of funds fluctuates. I am not therefore satisfied these bank statements are an accurate reflection of your personal and financial circumstances. You have not provided any satisfactory evidence of adequate accommodation arrangements for you in the United Kingdom. Given all of the above I am not satisfied that your circumstances are as you have indicated, or of your intentions in wishing to visit to travel to the United Kingdom now. I am not satisfied that you are genuinely seeking entry as a visitor or that you intend to leave the United Kingdom at the end of the period of the visit as stated by you. In addition I am not satisfied that you will adequately maintain and accommodate yourself or can meet the cost of the return or onward journey. 41(i) and (ii) and (vi) and (vii).

You have stated that you have been separated from your husband for a year, and you have proposed to travel to the UK with your son. In view of this I consider that you have failed to demonstrate that you have sufficient ties to Pakistan, and given your personal circumstances, I am not satisfied that your intentions are genuine in wishing to travel to the United Kingdom now. I am not satisfied that you are genuinely seeking entry as a visitor or that you intend to leave the United Kingdom at the end of the period of the visit as stated by you 41(i) and (ii).

On your application you have stated that you have made available 140,000 rupees (£2,000) of your own money to spend on your visit. I am aware that this appears to be considerably higher (approximately three times) than the monthly income you have indicated. You have not indicated in your evidence further income that I may consider. I am not satisfied that it is reasonable to make this expense having considered the personal and financial circumstances you declare. I am not satisfied as to your intentions in wishing to travel to the United Kingdom now. I am not satisfied that you are genuinely seeking entry as a visitor or that you intend to leave the United Kingdom at the end of the period of the visit as stated by you 41(i) and (ii).

I therefore refuse your application because I am not satisfied on the balance of probabilities that you meet all the requirements of the above paragraphs of the Immigration Rules.”

3. The grounds of appeal lodged by the appellant stated that the ECO had failed to have proper regard to the documents submitted, had not considered all the documents, and that the concerns raised by the ECO did not go beyond mere suspicion. They claim that discretion should have been exercised differently.
4. It was claimed that sales deeds and transfer documents relating to the sale of the car had been submitted and had been submitted with the application and that the ECO had not attempted to read or look at them. It was claimed that the appellant would be bearing all travelling expenses from her own resources. Reference was made to a letter from Eric Joyce MP and to a letter from the sponsor.
5. It was claimed that the ECO had completely ignored the appellant’s annual income, monthly spending and monthly/annual savings which justified her financial position. It was stated the appellant had strong financial, social and economic ties in Pakistan and was financially secure. It was stated that the appellant’s separation from her husband should not be a reason for refusal.
6. It was argued that the appellant’s son’s education at high school in Pakistan was important and that the appellant had close family there. It was said that she had her husband’s family and their children around her and that she was close to them. Family mediation was underway through the SELSI Council.
7. It was claimed that the appellant had sufficient funds for the visit.

8. Attached to the grounds of appeal was a letter from the appellant's husband, as well as the transfer deed relating to the car.
9. There is a valuation certificate of the appellant's home and evidence from the sponsor that he would sponsor the appellant and details of his personal circumstances here.
10. At the hearing of the appeal the First-tier Judge heard evidence from the sponsor Mr Azmat Saeed who is the brother of the appellant. The evidence related to the sale of the sponsor's car and the sponsor stated that the appellant had a four bedroomed house with gas and electricity and that the first appellant had rental income from a bungalow in Lahore. She had sisters and ten nieces and nephews in Pakistan and had never worked. Her husband was a textile engineer.
11. The judge set out his decision in paragraphs 11 onwards of the determination. He found that although the claim was being put forward that the appellant and her husband were reconciled, there was no evidence that that was the case. There was no evidence of the amount deposited in the appellant's account and he said there was a substantial question about whether the first appellant owned property which would generate income such as that indicated in her bank account. He considered that the sponsor knew very little about the appellant's circumstances.
12. He concluded by stating that the appellant had not discharged the burden of proof upon her.
13. The grounds of appeal claimed the appellant had discharged the burden of proof, that there were mistakes in the determination, and there was evidence showing that the appellant would be able to fund her visit to Britain.
14. A large number of further documents were submitted.
15. Designated Judge of the First-tier Tribunal Appleyard granted permission on 10 January 2013.
16. Further documents have been submitted. They contained a copy of the determination over which many comments had been written. There is also a list of documentary evidence produced. There was also a detailed statement by the appellant which argued that she was still undertaking counselling with her husband although they were separated, and that her first priority was "referring to my husband" rather than leaving Pakistan permanently. She asserted that she and her husband had been happily reconciled and had started living together. She referred to the letter from her husband stating he supported the application for a family visit. The appellant submitted that she owned two properties and that she had two accounts, one with the Al-Fallah Bank Limited and the other with Habib Bank Limited, the first holding the rupee equivalent of £3,380 and the second with the rupee equivalent of £2,356. Moreover, the appellant stated that she owned a

bungalow in Lahore which had been given to her by her brother-in-law in 1995 and she asserted that her husband had been a high income earner.

17. The reality is that it was incumbent upon the Judge of the First-tier Tribunal to consider the facts as they stood at the date of the decision by the Entry Clearance Officer Abu Dhabi. Much of the financial evidence now in place postdates that decision. Relevant information, however, does relate to the sale of the appellant's car - that money was in the account and there is now evidence that the car was sold.
18. There appeared also to be evidence that the appellant owned property in Lahore. There was not before the judge evidence of the Habib Bank Limited account.
19. The evidence placed before me is certainly not entirely clear and I have had to endeavour to sort out what evidence was submitted with the application and therefore was before the Entry Clearance Officer when the decision was made, and what evidence was subsequently produced. Having said that I consider that the most relevant piece of financial evidence - the large sum in the appellant's account which she has stated was from the sale of the car - was evidence before the judge. Moreover, it appears that the bungalow which the appellant claimed she owned in Lahore was a gift not from her brother, as thought by the Judge who commented adversely on the appellant's brother evidence in that regard, but from her brother-in-law. I consider that on those two points the judge made findings of fact which did not take into account the evidence before him. To that extent I consider that he made material errors of law in the determination and I now set aside his decision.
20. I have gone on to reconsider the appeal. I would again emphasise that I have to consider the facts as they were at the date of decision. In particular, at that date, the appellant was separated from her husband and was planning to visit Britain with their son. The fact that she may now be reconciled with her husband is not a factor which I can take into account. Given that she has a brother here I consider that the Entry Clearance Officer was correct to question her intention to return to Pakistan after the visit. I also consider that the Entry Clearance Officer was correct to take into account that she had not travelled out of Pakistan (apart, it appears, from a visit to India) before.
21. I have endeavoured to consider the evidence in relation to the appellant's income.
22. The appellant claims at paragraph 5.10 of the application to have a monthly income of 45,000 rupees, being 35,000 from the house rent and 10,000 from agricultural land. Her monthly living costs are 25,000 to 30,000 rupees. Those figures do not appear to be cross referenced in the bank accounts before me. They do not appear to show regular deposits amounting to 45,000 rupees per month. While I can accept the large amount deposited from the sale of the car, I do not consider that that, of itself, can be taken into account as the appellant, if she were returning to Pakistan, would, presumably, need to buy a new car to replace the car which she had sold.

23. While the financial evidence is unclear I consider that there is just sufficient to show that, all other factors being equal, the appellant would meet the financial requirements of the visitor Rules for a short family visit. I am, however, concerned about the issue of the appellant's intention to return to Pakistan. The reality is that, as at the date of decision, her marriage appeared to be ending – she had separated from her husband – she had no work in Pakistan and her principal relative, her brother, was here. I consider that taking those factors into account the Entry Clearance Officer was correct not to be satisfied that she intended to return to Pakistan at the end of the visit. I find that she has not discharged the burden of proof upon her.
25. I therefore conclude that although I have set aside the determination of the Judge of the First-tier, it is appropriate that I remake the decision dismissing these visit appeals.

Decision.

These visit appeals are dismissed.

Signed

Date

Upper Tribunal Judge McGeachy