



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/21546/2012

THE IMMIGRATION ACTS

Heard at Bradford
on 6th August 2013

Determination Sent
on 23rd September 2013

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MUHAMMAD DAWOOD
(Anonymity order not made)

Appellant

and

ENTRY CLEARANCE OFFICER - ABU DHABI

Respondent

Representation:

For the Appellant: Mr Saleem of RKS Solicitors.

For the Respondent: Ms R Pettersen – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Law promulgated on 8th March 2013 following a hearing at Manchester Piccadilly. Permission to appeal was granted and it was conceded before me that the Judge had made a material error of law for the reasons set out in the application for permission to appeal and the grant of permission, such that the determination must be set aside. The parties were in a position to proceed to a substantive hearing to allow me to substitute a decision to either allow or dismiss the appeal.

Background

2. The appellant was born on 11th November 1981 and is a citizen of Pakistan. He applied for leave to enter the United Kingdom for the purposes of a family visit

which was refused by the respondent on 21st May 2012 as the Entry Clearance Officer (ECO) was not satisfied that he had shown that only a short visit was intended or that he intended to leave the United Kingdom at the end of the period stated - paragraph 41 (i) and (ii) of the Immigration Rules. The decision was upheld by the Entry Clearance Manager (ECM) on review.

3. The basis for this finding was that the appellant had claimed he was self-employed running a fruit and vegetable stall from which he received a monthly income equivalent to £138. Two trade association letters were found to carry little evidential value as they can be easily prepared on request with no requirement for there to be any supporting documents. Bank statements provided covering the period 1st November 2011 to 20th April 2012 showed deposits equating to a total of £484 being paid into the account. This demonstrated a sum equal to three and a half months income being paid into the account during a six-month period. The last credit was noted to be on 15th February 2012 and it was not, therefore, accepted as adequate evidence confirming his stated income.
4. The appellant claimed in the application form that his father was to cover the cost of travel to the UK and any other costs during the six-week visit and evidence of this was provided in the form of a copy of his father's bank statement, although the closing balance was only said to be equivalent to £259 which was not found to be enough to cover the cost of flights to the United Kingdom and other costs associated with the visit.
5. The appellant is married with four children and it was not found credible he would go to the UK for six weeks leaving the family in Pakistan with no evidence of how they will cover their own living costs. The ECO was not satisfied that the evidence provided with the application confirmed that his financial circumstances were as he claimed them to be or that he is settled with established ties to Pakistan.

The evidence

6. A bundle of documents has been provided in addition to which the Tribunal heard oral evidence from the appellant's brother Mr Zaboar. All the documentary evidence has been considered in detail.
7. In his oral evidence Mr Zaboar confirmed the content of his witness statement is true. In relation to the payment of tax in Pakistan he claims the appellant pays no tax on his income as he does not earn enough income to pay tax. He alleged the tax office told the appellant he did not have to pay tax.
8. He confirmed that his father had previously come to the United Kingdom and returned as had another brother. He stated there is no reason why this brother

would remain as all his family are in Pakistan and he did not want to spoil his own record by sponsoring somebody who would not return.

9. I shall refer to elements arising out of cross examination further below.

Discussion

10. In Mohamed Ali (TH/13048/86) the Tribunal said that simple suspicion, itself, is not enough to undermine the credibility of an application but the cumulative effect of a series of matters, each only suspicious, may give rise to more than "mere suspicion". In this appeal the ECO has raised a number of issues giving rise to such concerns.
11. In the appellant's application form he stated at part five, relating to employment and finances, that he sells fruit and vegetables in a shop which he started on 1st January 2005. He claims to earn a net income of between 15,000 to 20,000 Rupees a month. In his oral evidence the appellant's brother claimed that the shop has been open since 2009, not 2005. When this discrepancy was pointed out to him he claimed there has been a misunderstanding by the person who completed form. I note that an agent or representative is named in the form but the declaration on the application form has been signed confirming that the content of the same is true. In addition a further document headed "To whom it may concern" written by a Pervaiz Iqbal, identifies that named individual as the person who completed the online visa application form. He states: "Mistakenly I have written his jobs start date 2005 instead of 2008. I apologies for this mistake made by me". The difficulty with this statement is that a third date is being provided for when the appellant allegedly started his fruit and vegetable business. We now have 2005, 2008 and 2009.
12. The application form states that the appellant's father is to pay the cost of travelling to the United Kingdom and also for other parts of the visit. The ECO was concerned that insufficient evidence was provided to show that the father could meet such costs. This element of the claim has not been substantiated on the evidence either. I note the sponsor stated he will assist but at the date of decision the situation is as noted above.
13. In relation to the appellant's income, the issue arose during the hearing as to whether he was paying any tax on his income and, if so, why there was no evidence from the tax authorities to corroborate tax paid or a calculation showing the income declared to the tax authorities. The sponsor's reply to a question asking why there was no evidence regarding the claim his brother did not pay tax was that he did not know much about this. Matters relating to claims arising regarding income tax were of concern to Judge Thornton who heard an earlier appeal in 2007 with case number VA/30006/2006. In paragraph 10 of the determination the Judge notes:

11. I note that the letterhead is not printed but has simply been typed on A4 paper and that it reads 'OFFICE OF THE DEPUTY COMMISSIONER INCOME TAXBUSINESS (*sic*) CIRCLE MIRPUR'. As Mr McBurnie pointed out, there is no spacing between the words 'tax' and 'business'. In addition, not only is there no contact number but, although there is a signature, it is illegible and there is no name. I also note that the letter does not state the appellant's income or even what tax he pays.
14. Although it was submitted on the appellant's behalf that agricultural income is not taxed, there is no document corroborating the sponsor's claim that other income does not attract any tax liability. In light of the production of what is clearly a document on which no weight may be placed in previous proceedings, statements made in relation to this appellant need to be treated with appropriate care when considering what weight should be given to them.
15. The ECO was concerned that the evidence did not confirm to the required standard that the level of income claimed by the sponsor was available to him. This still remains the position. There is also the additional aspect raised by Ms Pettersen in submissions that in the previous determination in which Judge Thornton dismissed the earlier appeal against refusal of entry clearance made on a similar basis to this one, it was found the appellant had not provided evidence in relation to his complete business such as profit and loss trading bank accounts or bank statements. The current refusal appears to be very similar to the earlier one and so the appellant was fully aware of the nature of the evidence he was required to produce yet again failed to do so.
16. Notwithstanding what had been said by the sponsor there is inadequate proof of the business income and insufficient evidence to allay the concerns of the ECO. The bank statements do not corroborate the alleged level of income and there are, again, insufficient accounts or other financial documents which may have been of assistance. There was no plausible explanation for the lack of evidence or any reason why it could not be produced, if it existed.
17. I note Mr Saleem's submission that payments are made in cash in the business and not placed into the bank account and that the sponsor's evidence and the photographs show the business existed. There are originals of receipts and letters from the trade association and if intention is in issue, the civil standard applies. It was submitted there was enough evidence in the bundle to show that the appellant's circumstances are as claimed.
18. Mr Saleem is correct to state that the standard is the civil standard, namely on the balance of probabilities, but that same standard applies to the appellant. Although the sponsor did his best to assist his brother, both in 2007 and in relation to this application, similar issues have arisen - namely the lack of

evidence to prove that what the appellant states with regard to his financial and personal circumstances is true.

19. It is not disputed that the appellant is married with children but what is not proved is that he is telling the truth in relation to other material issues. The lack of evidence regarding his father's resources is also another factor and it is clear that inaccurate information has been provided in the application form relating to the date when the business was started.
20. The stock purchase invoices and translated documents together with photographs of the appellant sitting and standing in a shop are of little probative value as the evidence provided does not support what he stated with regard to the income from the business.
21. I am not satisfied, having considered all elements of the claim carefully, that I can put the weight upon the evidence I am being invited to by Mr Saleem. I find, therefore, that the appellant has failed to discharge the burden of proof upon him to the required standard to show that his circumstances are as he claims them to be and accordingly the appeal must be dismissed. It is for the appellant to establish that the source of funds in his account is as he claims and to provide sufficient evidence regarding the income position of his father to establish the source of funds in his account and their availability to fund the appellant on the visit as alleged.
22. The appeal under the Immigration Rules is dismissed. Article 8 ECHR was not raised but if it was my finding would be that the decision was proportionate to the legitimate aim relied upon by the Secretary of State on the basis of the facts as found.

Decision

23. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is dismissed.**

Anonymity.

24. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order.

Signed.....

Upper Tribunal Judge Hanson

Dated the 20th September 2013