



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: 0A/04469/2013

THE IMMIGRATION ACTS

Heard at Field House
On 12 February 2014

Determination Promulgated
On 27 February 2014
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Before

UPPER TRIBUNAL JUDGE ESHUN

Between

ENTRY CLEARANCE OFFICER - ISLAMABAD

and

MRS AQSA UMAIR

Appellant

Respondent

Representation:

For the Appellant: Mr T Wilding, Home Office Presenting Officer
For the Respondent: No appearance by or on behalf of the respondent

DETERMINATION AND REASONS

1. There was no appearance on behalf of the respondent. I was satisfied that the notice of hearing had been sent to the claimant in Pakistan, Sky Solicitors Limited in London and her sponsor in Newport. As there was no explanation for the non-appearance, I proceeded with the hearing in the absence of any representation on her behalf.

2. The appellant, (the ECO) has been granted permission to appeal the determination of First-tier Tribunal Judge Rowlands allowing the respondent's appeal against refusal to grant her entry clearance to the UK as the spouse of a Tier 1 (Post-Study Work) Migrant under the Points-Based System as being not in accordance with the law and also allowing the appeal on human rights grounds. The judge dismissed the respondent's appeal on immigration grounds.
3. The respondent, who will now be referred to as the claimant, is a citizen of Pakistan born on 4 July 1991. Her application was refused because she had not supplied acceptable specified evidence to establish the required funds of £600 for 90 days prior to the application, which she had made on 7 December 2012. The claimant had submitted Barclays Bank statements from her husband to demonstrate funds available as maintenance for her. However the statements were a mixture of originals, photocopies and scanned copies which the ECO said did not conform to the specified documents required as evidence. He was therefore not able to take them into account in considering her application. In light of this, the ECO was not satisfied that there was a sufficient level of funds available to the claimant, as specified in Appendix E of the Immigration Rules, 319C(g).
4. The judge found that copy statements were supplied with the application relating to a Barclays Bank account in the sponsor's name, for the period 23 August to 21 December 2012. At the hearing the sponsor produced specified copies of those statements, meeting the requirements of Appendix C of the Rules and bearing the official stamp of the bank on every page. He found that those statements established that the said account was in credit for a sum in excess of £2,000 for the continuous period from 23 August 2012 to 21 December 2012, a sum well in excess of the required amount.
5. Nevertheless the judge considered that the ECO's decision was in accordance with the Immigration Rules because the documents supplied with the application did not meet the specified criteria. He dismissed the appeal on immigration grounds.
6. The judge said that between the date of the application on 7 December 2012 and the date of the ECO's decision on 31 December 2012, the provisions of paragraph 245AA had changed with the deletion of "will" to be replaced by "may". He found that the circumstances of this case equated to the circumstances in paragraph 245AA where the respondent "may" (prior to 13 December 2012 - will) contact the applicant or his representative and request the correct documents. The sole basis for refusal was that the bank statements supplied were in the wrong format, all were copies and not an original document. He found that this was a case in which no contact was made with the claimant or her representative. The decision not to contact the claimant was not justified by any reason that would have led to the grant being refused in any event.

7. The judge relied on the decision in Thakur and found that the failure to afford the claimant the opportunity of correcting the omission amounted to an unfairness. Consequently, he found that the ECO's decision was not in accordance with the law and allowed the appeal on this basis.
8. The judge also found that the claimant and her sponsor enjoyed family life together. He found that the ECO's decision did not meet the UK's responsibilities to facilitate family reunion. Having found that the ECO's decision was not in accordance with the law, and served no legitimate purpose in enforcing consistent and fair immigration control, he found that the decision under Article 8 was disproportionate. The claimant had sufficient funds to meet the requirements of the Rules. The ECO could and should have contacted the claimant in order that correct documents could be supplied and if such contact had been made, that the correct documents would have been supplied. To refuse the opportunity of reunion against that background was disproportionate.
9. Mr Wilding submitted and I agreed with him that paragraph 245AA does not apply to this case at all. The evidential flexibility policy in 245AA only applies to an application under part 6A of the Immigration Rules in relation to the Points-Based System. The claimant's application was made under part 8 of the Immigration Rules, which is in respect of an entry clearance application made by an applicant who wants leave to enter as a partner of a relevant Points-Based System migrant. The relevant Rule is paragraph 319C(g). This is the Rule applicable to the claimant. This rule requires the claimant to establish that she had a sufficient level of funds available to her as set out in Appendix E. Sub-paragraph (j) of Appendix E requires the claimant to provide specified documents, and these are specified at Appendix C (1B)(a). They are personal bank or building society statements which cover a consecutive 90 day period of time, the most recent statement must be dated no earlier than 31 days before the date of application, and the statements must be either printed on the bank's or building society's letterhead; electronic bank or building society statements from an online account, bearing the official stamp of the bank or building society on every page.
10. It can be seen from the above that the bank statements supplied by the claimant did not satisfy any of these requirements. As paragraph 245AA did not apply in this case, the judge materially erred in law in placing reliance on Thakur to allow the claimant's appeal.
11. I set it aside and re-make it.
12. The claimant did not submit original documents as required in the Appendices to the Immigration Rules. The ECO's decision refusing the claimant entry clearance was in accordance with the law.
13. I find that the judge also erred in allowing the claimant's appeal under Article 8 of the ECHR. I agree with the submission in the grounds on behalf of the ECO that the

claimant and her husband do not currently enjoy family life together. As the judge's decision was partly based on his erroneous finding that the ECO's decision was not in accordance with the law, I find that his decision on Article 8 cannot also stand. I set that decision aside.

14. The claimant's appeal against the ECO's decision is dismissed.

Signed

Date

Upper Tribunal Judge Eshun