



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/13827/2013

THE IMMIGRATION ACTS

Heard at Field House
On 9th July 2014

Determination Promulgated
On 14th July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MASEETHAN THEIVENTHIRAN

Respondent

Representation:

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer
For the Respondent: Mr P Ahmed, instructed by M & K Solicitors

DETERMINATION AND REASONS

1. The Respondent is a citizen of Sri Lanka born on 30th August 1989. His appeal against the refusal of entry clearance was allowed, on Article 8 grounds, by the First-tier Tribunal in a determination dated 28th March 2014. The Secretary of State applied for permission to appeal.
2. Permission to appeal was granted by First-tier Tribunal Judge R A Cox on the grounds that it was arguable that First-tier Tribunal Judge Cockrill had failed to apply Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640 (IAC) and had simply carried out a 'free-wheeling' Article 8 assessment.

3. Mr Duffy relied on the grounds of appeal and submitted that the Judge had failed to apply Gulshan. The Respondent could not satisfy the maintenance requirements and there were no compelling factors in this case. He could not meet the Rules on this occasions and the appeal should have been dismissed. There was nothing preventing the Respondent from making a successful application in the future.
4. Mr Ahmed relied on the Rule 24 response and submitted that the Judge was correct to dismiss the appeal under the Rules. However, this case was exceptional because the Sponsor was a refugee and had travelled to India to marry the Respondent. The Judge did identify compelling circumstances, at paragraphs 45 to 50, for the matter to be allowed outside the Immigration Rules. His finding that the refusal of entry clearance was disproportionate was open to him on the evidence and the failure to refer to Gulshan was not material. It would be disproportionate to make another application because of the delay. The Respondent married in August 2012 and overseas applications were on hold pending the case of MM.

Findings and conclusions

5. In this case the Sponsor had not paid some of her wages into her bank account. She was paid in cash and used the money for everyday expenses. She did not have time to go to the bank because she was doing two jobs. The Judge accepted the Sponsor's explanation, but quite rightly, found that the specific requirements of Appendix FM-SE of the Immigration Rules could not be met.
6. The Judge accepted the Sponsor's explanation for the missing payslip and found that the reality of the situation was that the Sponsor was earning £18,600 and the arrival of the Respondent would not bring about a situation where there was recourse to public funds. The case could not succeed under the Rules because of a deficiency in paperwork, rather than on substantive grounds.
7. The Judge took into account the fact that the Sponsor was a refugee and could not return to Sri Lanka. The Respondent and the Sponsor could not live together elsewhere. Although, the Judge did not refer to Gulshan, he did identify compelling circumstances at paragraphs 45 to 50 of his determination so as to render any error of law immaterial. The Judge's finding that the refusal of entry clearance was disproportionate in the particular circumstances of the case was open to him on the evidence and he gave cogent reasons for his conclusions.
8. The Judge made no error on any point of law which might require the determination to be set aside. The appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal dated 28th March 2014 shall stand.

Deputy Upper Tribunal Judge Frances
11th July 2014