



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/19664/2013

THE IMMIGRATION ACTS

Heard at Field House
On 29 July 2014

Determination Promulgated
On 1 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PLIMMER

Between

ASIM MALIK

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Cantor (Counsel)

For the Respondent: Mr S Whitwell (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan. He has appealed against a decision dated 2 October 2013 to refuse to issue him an EEA residence card. He claims to be the nephew of Mr Malik Asim (the sponsor), an EEA citizen.

Procedural history

2. In a determination promulgated on 8 May 2014 First-tier Tribunal Judge Sangha dismissed the appellant's appeal, having considered it on the papers.
3. The appellant sought permission to appeal on 27 May 2014. Although the grounds of appeal are unnecessarily complex, the essence of the grounds can be simply stated. The Judge erred in law in failing to consider evidence that post dated the relevant date of decision but appertaining to facts at the time. This was the basis upon which Judge JFW Phillips granted permission to appeal on 16 June 2014.
4. The matter now comes before me to decide whether the determination contains an error of law, and if so to re-make the decision.

Error of law

5. Judge Sangha focused his attention on the evidence submitted with the application and that which was contained in the respondent's bundle (para 11). The Judge was not satisfied that there was sufficient evidence to demonstrate that: (i) the appellant is related as claimed to the sponsor; (ii) the necessary element of dependency; (iii) the sponsor was a qualified person. The Judge went on to indicate that he had taken into account further evidence in the appellant's bundle but appears to have disregarded this evidence on the basis that it is post-decision and was not placed before the respondent (para 12). I indicated to Mr Whitwell that my provisional view was that the Judge had erred in law in discounting potentially relevant evidence from his assessment of the three disputed issues and that I should remake the decision. Mr Whitwell agreed with this approach.

Re-making the decision

Hearing

6. There were a number of bundles submitted on behalf of the appellant at various stages in the Tribunal's file. It is regrettable that there was no attempt to comply with the Tribunal's directions by providing an updated index of relevant documents. Ms Cantor collated the relevant documents into a bundle of 36 pages. After taking time to consider these documents Mr Whitwell indicated he was content to proceed.
7. The parties agreed that there was no need for further oral evidence and I could re-make the decision on the basis of submissions only. However, it soon became clear that it was

necessary for the sponsor to clarify aspects of the evidence. Ms Cantor therefore asked the sponsor to confirm that his witness statements were true. He was asked questions by Ms Cantor and Mr Whitewell. I then heard submissions before reserving my decision, which I now provide with reasons.

Findings

8. I do not accept the evidence before me to support the sponsor's claim that he is the appellant's uncle or that the appellant has been dependent upon him. I also do not accept that the sponsor was a qualified person at the relevant time. The sponsor's oral evidence was wholly unreliable. He was unable to provide clear answers to straightforward questions. I do not accept his claim that this was because he had to travel from Scotland on the day of the hearing or he had difficulties speaking English. These excuses only emerged when the sponsor did not know which answer to provide. I am satisfied that the sponsor understood the questions that were being put to him. I ensured that these were put in simple terms and repeated. Ms Cantor did not raise any issues regarding the need for an interpreter during the hearing, and one had not been requested by the solicitors.
9. For the avoidance of doubt I have considered the sponsor's evidence alongside the detailed documentation in this case, in particular the documents set out in the 36 page bundle prepared by Ms Cantor. I am satisfied that the sponsor has provided wholly unreliable evidence and sought to rely upon documentation that little weight can be placed upon.
10. The sponsor was wholly unclear on the appellant's date of birth or the names and ages of his three brothers. The sponsor's vague knowledge of the most basic of details relating to his four nephews is inconsistent with his claim to have lived with them from 1999 to 2006.
11. The sponsor was simply unable to explain why the family tree submitted on behalf of the appellant excluded the appellant's siblings. He indicated that English is difficult in Pakistan and that might be an explanation. Ms Cantor submitted that the focus was upon the appellant in this appeal and the family tree had been constructed with this in mind. I am not prepared to attach weight to a family tree that is patently inaccurate. Further, it was prepared at the appellant's request and on his instructions and by

a friend of the sponsor's. Ms Cantor submitted that the evidence on the family relationships should be considered in the round. I have done that and considered copies of a number of birth certificates together with statements from various members of the family. The birth certificate for the appellant in the bundle does not link him to the sponsor. Ms Cantor had not been provided with a copy of the birth certificate of the appellant's father or sponsor. I note that reference has been made to these certificates in various submissions. I find on the evidence before me that the appellant is not related as claimed to the sponsor. The sponsor's evidence was wholly incredible in this regard.

12. The witness statements prepared for this appeal omit any reference to the appellant's three siblings. The appellant's uncle in Pakistan, Mr Malik Anwar states that he provided financial assistance to the appellant's father and the sponsor took financial responsibility for the appellant. No reference is made to the appellant's three brothers and who has taken financial responsibility for them in light of their father's claimed inability to work. The sponsor's witness statement also fails to mention the appellant's three brothers. I have not been provided for any explanation why the sponsor took financial responsibility for this particular appellant and not his brothers. The appellant's witness statement also fails to mention his brothers, who takes financial responsibility for them and why it is that the sponsor has chosen only him to take financial responsibility for since 2005. The sponsor said at the hearing that his brother living in Glasgow, Mr Jhangir Khan supports his other nephews. Mr Khan makes no reference to this in his very short letter dated 20 October 2013.
13. The sponsor's oral evidence concerning his employment history was wholly unreliable. He indicated that he had an online business selling clothes but was utterly unable to explain what website he used and how he conducted his business. He has provided 'Profit and Loss Accounts' from accountants for his claimed business. He was unable to explain why this does not make any allowance for stock, when he claimed that he provided his accountant with receipts. I do not accept that the accounts provided are genuine or refer to a genuine business. The sponsor has provided photocopied documents relevant to claimed job offers and previous employment. I have not been provided with any original documents. I am not prepared to accept photocopies when I have found the sponsor to have provided completely unreliable evidence as to his claimed employment.
14. Having considered all the relevant evidence in the round I find that the appellant is not related as claimed to the sponsor and has

not been financially dependent upon him. I also find that the sponsor has not been employed or self employed as claimed and is not a qualified person.

Decision

15. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
16. I set aside the decision.
17. I re-make the decision by dismissing the appellant's appeal.

Signed:

Ms M. Plimmer
Deputy Judge of the Upper Tribunal

Date:
30 July 2014