



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/07552/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 4th February, 2014

Determination Promulgated
On 20th February, 2014

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR SHAHNAWAZ HUSSAIN

Respondent

Representation:

For the Appellant: Mr G Harrison, Home Office Presenting Officer
For the Respondent: Mr Reyaz

DETERMINATION AND REASONS

1. The appellant is the Secretary of State for the Home Department to whom I shall refer as the claimant. The respondent is a citizen of Pakistan who was born on 6th March, 1982 and who made application to the claimant for leave to enter the United Kingdom under the requirements of paragraph 41 under Statement of Changes in Immigration Rules HC 395 as amended.
2. The respondent's application was considered by the Entry Clearance Officer, but refused. The Entry Clearance Officer noted that the respondent had previously travelled to the United Kingdom and took issue with the fact that the respondent stayed on that previous occasion for some four months, nine weeks longer than he had said he would stay on his application form. However, there is no suggestion anywhere that he stayed in breach of his leave, which of course

will have been for six months so he was perfectly entitled to remain in the United Kingdom on the earlier occasion for up to six months.

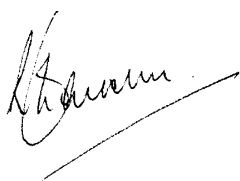
3. The Entry Clearance Officer noted that the respondent claimed to earn the equivalent of £67 a month from his employment plus £733 a year from his land; whether that is rental income or income derived by farming is not clear. The Entry Clearance Officer suggested that the respondent's income was not reflected in the bank statements provided and was not satisfied therefore that the bank statement was an accurate reflection of the respondent's personal and financial circumstances and was not satisfied that the respondent had accurately portrayed his circumstances in Pakistan or his true reasons for wishing to travel to the United Kingdom.
4. The application was refused on the basis that the respondent had failed to discharge the burden on him to show that he met the requirements of paragraph 41(i) and 41(ii).
5. The respondent appealed and his appeal was heard by First-tier Tribunal Judge Mark Davies at a hearing on 22nd October, 2013. In that determination, the judge found, after hearing the respondent's sponsor, that the respondent had satisfied the requirements of the Immigration Rules and allowed the appeal.
6. The Secretary of State was dissatisfied with the judge's decision and in an application for permission to appeal which was granted said:-

“JFTT has not borne in mind that the onus is on the appellant to demonstrate that he satisfies the requirements of the Immigration Rules at [11] the JFTT found that he was satisfied, having received reliable evidence from the sponsor that the respondent was a genuine visitor. However the JFTT failed to give adequate reasons to allow the appellant to discern why he accepted this argument and what the sponsor's evidence was as there is no expression for the finding whatsoever in the determination.”

7. Before me, Mr Harrison relied on the grounds and told me had nothing further to add and I advised Mr Reyaz that I did not need to hear from him.
8. The judge set out the burden and standard of proof at paragraph 3 of his determination, which I fully accept, is a very brief one. In paragraph 11 the judge said:

“I am satisfied, having received credible evidence from the sponsor, that the appellant is a genuine visitor who will leave the United Kingdom at the conclusion of his visit. The evidence shows that the appellant can be maintained and accommodated during the course of his visit to the United Kingdom and that he can pay for his journey to and from Pakistan. I am also satisfied he is intending to visit his brother-in-law in the United Kingdom and therefore has a valid right of appeal.”

9. The judge has made clear findings based on the evidence he heard. He has not set out a summary of that evidence, but nonetheless his findings are clear and in the circumstances I find that there is no error of law in the judge's determination which I uphold.



Upper Tribunal Judge Chalkley