



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/10561/2013

THE IMMIGRATION ACTS

Heard at Field House
On 21 July 2013

Determination Promulgated
On 21 July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FROMM

Between

SARFRAZ KHAN
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER, ABU DHABI

Respondent

Representation:

For the Appellant: Mr N Garrod, Counsel
For the Respondent: Mr T Melvin, Presenting Officer

DETERMINATION AND REASONS

1. The appellant was born on 23 July 1981 and is a citizen of Pakistan. He appealed a decision of the respondent refusing him entry clearance to enable him to make a family visit to the UK for six weeks. The date of decision was 14 May 2013. His application was refused by reference to paragraphs 41(i), (ii) and (vii) of the

Immigration Rules, HC395. The respondent did not accept the appellant had provided accurate information about himself.

2. The appellant appealed and his appeal was heard by Judge of the First-tier Tribunal Britton on 28 October 2013. The judge noted the appellant was single with a brother and two sisters in the UK. The judge was not satisfied the appellant was in the financial position he said he was in. He did not accept the appellant intended to leave the UK at the end of his visit because, in a previous application, he used an uncle as sponsor who had never met the appellant and who knew very little about him.
3. The appellant appealed against Judge Britton's decision with the permission of the First-tier Tribunal. After a hearing on 6 February 2014, Judge Britton's decision dismissing the appellant's appeal was set aside by Deputy Upper Tribunal Judge Davey. He found the decision contained a material error of law because the reasons provided by the judge did not show there had been proper consideration of all the evidence. He directed that the decision be re-made by the Upper Tribunal.
4. I re-make the decision allowing the appeal for the following reasons.
5. Paragraph 41 of the rules reads as follows:

"41. The requirements to be met by a person seeking leave to enter the United Kingdom as a general visitor are that he:

(i) is genuinely seeking entry as a general visitor for a limited period as stated by him, not exceeding 6 months; and

(ii) intends to leave the United Kingdom at the end of the period of the visit as stated by him; and

(iii) does not intend to take employment in the United Kingdom; and

(iv) does not intend to produce goods or provide services within the United Kingdom, including the selling of goods or services direct to members of the public; and

(v) does not intend to undertake a course of study; and

(vi) will maintain and accommodate himself and any dependants adequately out of resources available to him without recourse to public funds or taking employment; or will, with any dependants, be maintained and accommodated adequately by relatives or friends; and

(vii) can meet the cost of the return or onward journey. and

(viii) is not a child under the age of 18.

(ix) does not intend to do any of the activities provided for in paragraphs 46G (iii), 46M (iii) or 46S (iii);
and

(x) does not, during his visit, intend to marry or form a civil partnership, or to give notice of marriage or civil partnership; and

(xi) does not intend to receive private medical treatment during his visit; and

(xii) is not in transit to a country outside the common travel area. “

6. The burden of proof is on the appellant and the standard of proof is the ordinary civil standard of a balance of probabilities. I may consider only the circumstances appertaining at the date of the decision.
7. The appellant stated in his visa application form that he intended to make a six-week family visit. He described himself as a self-employed agriculturalist. He said his income was PKR 110,000 per season. He said he would stay with his brother-in-law, Mr Mohammed Imran Mehrban (“the sponsor”), and his sister at their house in Reading.
8. The respondent’s reasons for refusal can be summarised as follows:
 - (1) The ECO was satisfied the sponsor could maintain and accommodate the appellant during his stay in the UK but the ECO needed to be satisfied about the appellant’s own circumstances in Pakistan;
 - (2) When he was refused entry clearance in 2010, the appellant declared he was going to visit an uncle but he did not mention he had a brother-in-law at the time;
 - (3) The appellant had shown documents evidencing ownership of land but the documents did not show he derived any income from it;
 - (4) The appellant’s declared income was not reflected in the bank statements;
 - (5) The appellant had no dependent family members in Pakistan and, given the doubts about his employment, the ECO was not satisfied the appellant had shown significant ties which would be an incentive for him to return to Pakistan after the visit;
 - (6) The appellant had not stated how much money he had available for his trip and his UBL bank statements showed large deposits which exceeded his monthly income; and
 - (7) The appellant provided an affidavit from Noor Hussain stating he had returned money he had borrowed from the appellant but the appellant's statements did not show any outgoing transaction.
9. The appellant submitted a detailed letter from the sponsor with his notice of appeal. This letter responded to the reasons for refusal. It stated that, when the appellant previously applied for entry clearance, he did not intend to visit the sponsor. In fact, the sponsor was due to visit Pakistan. In Pakistan it is common for many transactions to be conducted in cash and the appellant, like many farmers, keeps his money in the form of cash. The appellant had provided evidence of the ownership of land and of a tractor. He works with his brothers, Mr Saqlain Ishaq and Mr Asfane Ishaq, in the family business. Their resources are pooled so it is difficult to provide an accurate figure for income. The appellant’s bank balance was

more than sufficient to cover his air fare. The loan made to Mr Noor Hussain was made in cash. The sponsor explained that he and his wife were keen to return the favour shown to them by the appellant when they visited Pakistan and he had gone out of his way to show them around. A less detailed statement was made by the appellant which broadly makes similar points to that of the sponsor's.

10. The decision was reviewed by the entry clearance manager on receipt of the notice of appeal and maintained because no new evidence had been submitted to address the reasons for refusal.
11. In addition to the respondent's bundle, I have received the appellant's revised bundle running to 104 pages. The sponsor attended the hearing and gave evidence in English. I shall set out the evidence only as necessary to give reasons for my findings of fact and conclusions.
12. Having considered the oral and documentary evidence in the round I find as follows. The appellant has described his circumstances accurately in his application form and in the grounds of appeal with the consequence that the respondent's concerns largely fall away. The sponsor was the subject of cross-examination by Mr Melvin. His evidence was consistent with his statement and the various letters he has written in support of the appellant's application. His evidence was also consistent with the appellant's account. The sponsor's evidence was not materially undermined by cross-examination. I found the sponsor to be an entirely straightforward and reliable witness and I accept his oral evidence.
13. As a result of hearing the sponsor's evidence, I find as fact that the appellant is a farmer, working with his two brothers in a joint family business. He is primarily concerned with the production of wheat and millet, whilst his brothers concentrate on the meat and dairy arms of the business. I was shown crop receipts for the wheat and millet harvests in 2012 and the wheat harvest in 2013. I find the appellant has numerous close relatives in Pakistan, including his mother, grandparents, two brothers and three sisters, as well as uncles and aunts. The appellant is single but, as Mr Garrod said, that does not exclude him from being a genuine family visitor. In the UK the appellant has two sisters and a brother. I give some weight to the fact the appellant's elder brother has twice visited the UK and complied with the terms of his visa, although I was told that brother is married with children. I regard the fact the appellant is a landowner, with a share in the family business, with close relatives in Pakistan to be considerable incentives to return after his visit.
14. As for the deposit in the bank account, I assume this refers to the PKR 134,000 deposited on 10 April 2013. An explanation for this has been provided in the form of Mr Hussain's affidavit. However, more significantly, I note that the appellant has provided his statements up to the date of decision and beyond, showing that he maintains a healthy balance. There has not been an unexplained withdrawal of PKR 134,000 and there is no evidential reason to believe the appellant has artificially inflated his balance in order to create a misleading impression.

15. I clarified the sponsor's evidence about the previous sponsorship by Mr Tai. He told me that, notwithstanding the fact he spent the best part of four weeks in his company, the appellant did not mention the fact he had applied for a UK visa in order to visit Mr Tai. This seems curious, particularly given the sponsor's evidence that the reason for the current visit was to return the favour. The sponsor thought the appellant had wanted it to be a surprise when he came to the UK. Whilst curious, I find there is no evidential reason to disbelieve the evidence. To put it another way, the fact the appellant did not tell the sponsor about his plans is not sufficient reason to disbelieve him regarding his intentions on this occasion. Equally, the change of sponsor has been adequately explained by the sponsor in terms of the appellant's family and Mr Tai falling into dispute over an issue of inheritance.

16. I find the requirements of paragraph 41 of the rules were met as at the date of decision and I allow the appeal.

DECISION

The Judge of the First-tier Tribunal made an error of law and I re-make the decision in the following terms:

The appeal is allowed.

Signed

Date 21 July 2014

Neil Froom, sitting as a Deputy Judge of the Upper Tribunal

Fee Award

Note: this is **not** part of the determination.

In the light of my decision to re-make the decision in the appeal by allowing it, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make a fee award of £140.

Reasons: The appeal has been allowed.

Signed

Date 21 July 2014

Neil Froom, sitting as a Deputy Judge of the Upper Tribunal