



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: VA/18571/2013

THE IMMIGRATION ACTS

Heard at: Field House
On: 3 July 2014
Prepared: 17 July 2014

Determination Promulgated
On: 24 July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

ENTRY CLEARANCE OFFICER: ABU DHABI

Appellant

and

MR HASAN ALGHADBAN
NO ANONIMITY ORDER MADE

Respondent

Representation

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: No appearance

DETERMINATION AND REASONS

1. For the sake of convenience, I refer to the appellant as the Entry Clearance Officer and the respondent as "the claimant."
2. I am satisfied that notice of hearing was given to the claimant on 30th May 2014 in which the date, time and place of the hearing is set out. He was also notified that if his representative did not attend the hearing, the Tribunal may determine the appeal in his absence.

3. The claimant is a national of Syria, who applied to visit his friends in the UK to do some shopping for a period of ten days. His application was refused by the Entry Clearance Officer on 2nd October 2013. He was not satisfied that the claimant is a genuine visitor, or that he would return to the UAE at the end of the visit.
4. The Entry Clearance Officer noted that the claimant had previously travelled to the UK and that he had met the requirements as a Tier 1 Post-Study Migrant visitor. However, each case has to be decided on its own merits. His last UK visa had been issued three years ago. He claimed that he was employed as a legal researcher from January 2012, earning £1,930 a month. His bank statement showed deposits not commensurate with his claimed salary.
5. Accordingly, the Entry Clearance Officer could not ascertain the origin of all the deposits into his account. He also stated that the visit would cost him an amount which was four times his monthly salary. Nor was the ECO satisfied that he received additional income. The Entry Clearance Officer was unable to ascertain the origin of those funds into his account and was not satisfied that his circumstances were as set out or that the bank statement reflected an accurate picture of his financial position. The claimant is single; no one is dependent on him; has no property and has demonstrated only limited ties to the UAE. He had also shown at one time a desire to remain in the UK in a long term category, which led the Entry Clearance Officer to doubt that only a short visit was intended at present. The Entry Clearance Officer was not satisfied that he had accurately presented his circumstances or intentions.
6. The notice of refusal stated that his right of appeal was limited to the grounds referred to in s.84(1)(c) of the Nationality, Immigration and Asylum Act 2002.
7. In his grounds of appeal to the First-tier Tribunal, the claimant joined issue with the ECO's decision on the merits. He also asserted that the decision was unlawful under s.19(b) of the Race Relations Act 1976 and that the decision of the Entry Clearance Officer was taken on "race discrimination grounds" by focusing on the civil war in Syria and considering him an immigration threat regardless of his personal circumstances. There is direct discrimination by the Entry Clearance Officer since he has been treated less favourably on nationality grounds. The situation in Syria "shall not affect the judgement of the Entry Clearance Officer"; each applicant should be assessed separately without "stereotyping."
8. In a determination promulgated on 17th April 2014 First-tier Tribunal Judge Kempton upheld the claimant's appeal under the Race Relations Act. She referred to the grounds of appeal noting that the claimant was previously a student and his parents paid for his studies and maintenance. He has a good job and is working for a well reputed law firm in the UAE. He lives in Dubai and earns £23,000. There was no reason why he could not afford the expenses of a UK visit.

9. The Judge properly noted that she was limited in the scope of the grounds of appeal as the application had been made after 25th June 2013 when the rules changed in connection with limiting the grounds of appeal in visitor visa applications [11]. He had not applied for a family visitor visa and could not present a claim in relation to Article 8 of the Human Rights Convention.
10. With regard to Race Relations, it was easy to see how the claimant might reach such a conclusion. He had previously been granted visas to the UK and has an extant visa to the USA. He has travelled here in the past and has not overstayed. In the past, he was dependent on his parents. He is now independent and works and looks after himself in the UAE. His situation is now different.
11. She found at paragraph 12 that regarding allegations of discrimination, the claimant does appear to have suffered “indirect discrimination” and apparently has a settled life and work in the UAE, but his nationality as a Syrian has now seemed to become the unspoken focus in this appeal. The only matter which in fact has changed for this claimant is that since his last application for a visa to the UK, the civil war in Syria has erupted. There is no logical reason why his application has been refused and appears to be a clear case of indirect discrimination on the grounds of race.
12. The Entry Clearance Officer applied for permission to appeal against that decision. On 21st May 2014, First-tier Tribunal Judge Omotosho granted the Entry Clearance Officer permission. Firstly, the appeal was determined on the papers and there is no indication on file to show that the Entry Clearance Officer was afforded the opportunity to comment regarding the allegation of race discrimination. There was also no record of any evidence adduced by the claimant to support the assertion made. Crucially, that consideration was limited to one paragraph where it was concluded that the claimant had been indirectly discriminated against without adequate reasons being given for the findings.
13. As noted, the notice of hearing including directions set out in the attached notice, was sent to the claimant at his address in Dubai. There has however been no response to the notice.
14. At the hearing on 3rd July 2014, Mr Tufan submitted that the Judge “has simply surmised” that the refusal was due to the claimant’s Syrian nationality as he had previously been granted leave and had now been refused. However, the Judge failed to adequately reason that assumption. The previous applications were in different long-term categories (student and post student migrant) and almost four years had passed since the last grant of leave in May 2010. Each case is to be determined on its merits. A visit visa cannot be determined on the basis of applications in completely different categories made some years ago.

15. In allowing the appeal on race relations grounds without specifying how he had been discriminated against in accordance with Part 1, s.1 of the Race Relations Act 1976, and without having made any findings on any evidence adduced of the alleged discrimination, amounted to unsubstantiated assertions. There had been no suggestion in the determination that any evidence had been adduced by the appellant apart from assertions.
16. Further, there was no reference to the situation in Syria in the ECO's refusal notice. The Judge's conclusion was not based on evidence. In the absence of adequately reasoned findings "the Judge had no jurisdiction to hear the appeal."
17. Further, the Judge failed to make any adequately reasoned findings in relation to the refusal under the Immigration Rules and in fact accepted that two of the claimed commission payments were not shown on the bank statements.
18. It was also contended that there had been a procedural irregularity. The appeal had been heard on the papers. The Entry Clearance Officer had not had the opportunity to comment on the unsubstantiated findings on race relations grounds.

The claimant's case

19. I have had regard to the claimant's grounds of appeal before the First-tier Tribunal as well as the "memorandum of appeal" submitted to the First-tier Tribunal on 7th November 2013.
20. The claimant stated by way of background that he applied for limited leave to enter the UK as a visitor to spend time with friends, to do shopping and celebrate his birthday.
21. He had no intention of staying in the UK, having regard to the circumstances surrounding his previous travels here. He referred to his current employment.
22. The ECO's assertion that he would not be able to afford the expenses of staying here for ten days was "completely wrong". Proof of savings had already been supplied to the Entry Clearance Officer.
23. The last time he applied for entry clearance to the UK was three years ago. If he had any intention to travel to the UK and not return, he would have done this "earlier before in 2012" as his post-study work visa was still valid. He had also visited the USA about seven months ago and still has a valid US visa.
24. The reasons in the refusal letter are not in accordance with the rules. Accordingly, "it is concluded" that the Entry Clearance Officer took the decision based on race discrimination grounds and has racially discriminated against the claimant and "taken into account the civil war taken (sic) place in Syria by considering the Syrian

applicants to be immigration threat regardless of each applicant's personal circumstances." Accordingly it is 'obvious' that he has been treated less favourably by the Entry Clearance Officer and there is direct discrimination based on nationality grounds compared to other people from different nationalities. The situation in Syria does not affect the judgment of the officer while assessing the documents.

Assessment

25. It is common ground that the claimant was only afforded a limited right of appeal as he had applied as a general visitor. Accordingly the Judge had to consider the appeal with regard to the Human Rights Act as well as the Race Relations Act.
26. The claimant has asserted that he was treated less favourably on nationality grounds and that the situation in Syria has affected the judgment of the Entry Clearance Officer.
27. However, it is evident that the Entry Clearance Officer was well aware of the facts relating to the claimant's previous application and stated that each case must be decided on its individual merits at the date of application.
28. The Entry Clearance Officer considered in particular the evidence of his employment as well as earnings per month. It was noted that his bank statement showed deposits not commensurate with his claimed salary on 16th July 2013 which equated approximately to one month's salary being deposited along with his salary. Although the claimant had stated that he had received additional income the Entry Clearance Officer was not satisfied that that was the case. Accordingly the Entry Clearance Officer was unable to ascertain the origin of those funds into the account. As a result, he was not satisfied that his circumstances were as set out or that the bank statement presented was an accurate reflection of his financial position.
29. In addition, he claimed to spend £1,342 on living expenses each month leaving him with about £587 of disposable income. His visit was stated to cost him personally the amount of £2014, equating to almost four times his monthly disposable income. The Entry Clearance Officer did not find his wish to incur this expenditure to be credible. He had nobody dependent on him. He had no property, and therefore he was considered to have demonstrated only limited ties to the UAE. It was noted that at one time he had shown a desire to remain in the UK in a long term category which led the Entry Clearance Officer to doubt that a short visit was intended at present.
30. That was the background relating to the refusal of his application.
31. Whilst the claimant might have grounds for disagreeing with the merits of the ECO's decision, he has given relevant and proper reasons justifying the assertion

that the claimant was not genuinely seeking entry as a visitor or that he intended to leave the UK on completion of his visit.

32. The Judge had stated at paragraph 10 that the Entry Clearance Manager's review made it clear that the decision maker was not satisfied that the appellant had ties to the UAE where he currently resides. She also noted that the claimant had not directly addressed the point made by the Entry Clearance Officer in relation to commission. It is evident that the Judge therefore noted that the Entry Clearance Officer had raised legitimate questions regarding his financial circumstances in the UAE which had not been addressed in the grounds of appeal.
33. As noted by First-tier Tribunal Judge Omotosho in granting permission to the Entry Clearance Officer to appeal, there was no record of any evidence being adduced by the claimant to support the assertion made and in particular the consideration of that contention in the determination had been limited by the First-tier Tribunal Judge to one paragraph in which it was concluded that the claimant had been indirectly discriminated against without adequate reasons for such findings.
34. It has been alleged that in taking the particular immigration decision the Entry Clearance Officer has racially discriminated against him. The claimant has asserted that he has been treated less favourably by the Entry Clearance Officer based on his nationality compared to other people from different nationalities.
35. In coming to her overall conclusion, the Judge has not given adequate or appropriate reasons to sustain that assumption. The earlier applications had been in different categories, both student and post study migrant categories. Further, approximately four years had passed since the last grant of leave in May 2010.
36. The Judge has not specified upon what basis, and in accordance with what evidence adduced by the claimant, he had been discriminated against in accordance with the Race Relations Act 1976. There was no evidence adduced by the claimant in support of that assertion, which accordingly remained unsubstantiated.
37. It did not necessarily follow that the visa fell to be determined on the basis of applications regarding different categories made some years ago. The Entry Clearance Officer noted that each case is to be determined on its merits. Part of the merits was, as noted, the raising of questions not deemed to be inappropriate or improper regarding the appellant's financial circumstances in the UAE.
38. I find that there was not a proper foundation established for the inference drawn by the Judge.
39. For these reasons, I find that there have been errors in law and that the determination of the First-tier Tribunal Judge falls to be set aside and remade.

40. I have found that there was insufficient evidence adduced by the claimant to support the assertion that he had been unlawfully discriminated against in accordance with the Race Relations Act.
41. I am satisfied that the decision of the Entry Clearance Officer was based on proper considerations, particularly regarding the claimant's circumstances in the UAE. The Entry Clearance Officer took into account that he had been issued visas some three years ago under different categories, including as a Tier 1 (Post-Study) Migrant. However, the Entry Clearance Officer was not satisfied that the origin of funds said to be additional income had been shown. Accordingly, his bank statement did not present an accurate reflection of his financial position. In addition, he had limited ties to the UAE and had at one time shown a desire to remain in the UK in a long term category.
42. Even though the appellant might have a legitimate disagreement with the reasons for refusal, and the findings on the merits of his application, I do not find that the reasons given by the Entry Clearance Officer justify the assertion, inference or assumption that the decision reached constituted direct or indirect discrimination under the Race Relations Act.
43. I accordingly find that the decision of the Entry Clearance Officer was in accordance with the law and the immigration rule applicable.

Decision

Having found that the decision of the First-tier Tribunal Judge involved the making of an error on a point of law, I set aside that decision and re-make it, dismissing the claimant's appeal.

No anonymity order made.

Signed

Date: 17/7/2014

C R Mailer

Deputy Upper Tribunal Judge