



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: VA/06624/2013

THE IMMIGRATION ACTS

Heard at: Field House
On: 22 December 2014

Decisions and Reasons Promulgated
On 16 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MR MUHAMMAD YOUSUF YOUSUF
NO ANONYMITY DIRECTION MADE

Appellant

and

ENTRY CLEARANCE OFFICER:

Respondent

Representation

For the Appellant: Sponsor present

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan, born on 1 January 1964. His appeal against the decision of the respondent dated 27 December 2012 to refuse his application for an entry clearance as a family visitor was dismissed by the First-tier Tribunal Judge in a determination promulgated on 31 July 2014. The FTT Judge was not satisfied that the appellant was a genuine visitor for the period stated.

2. On 4 September 2014, First-tier Tribunal Judge Osborne granted the appellant permission to appeal to the Upper Tribunal. It was an arguable error that the Judge had missed the appellant's wife's statement which was in the bundle. The Judge had however stated that there was no written statement from her. There was however a brief statement from her in the bundle which was available for him to consider.
3. Before the Upper tribunal on 27 October 2014, the respondent accepted that the First-tier Tribunal Judge had materially erred [12] when stating that there was no evidence before him as to the state of health of the appellant's mother. That, together with the other arguable grounds meant that the ultimate finding at paragraph 13 of the determination was affected.
4. The Upper Tribunal found that although it was clear that the Judge had given a very detailed and otherwise careful determination, a significant part of his assessment included the finding that there was no written statement from the sponsor's mother. In addition, there was evidence, albeit brief, regarding the state of health of the appellant's mother. There was also a report from a local doctor that the appellant's mother, whom the doctor had treated for a long time, was paralysed. He also referred to his treatment of her "as a case of HTN DM II."
5. The Judge had accordingly not taken into account a potentially significant corroboratory statement from the medical practitioner which affected his ultimate finding that the appellant did not have the necessary intention to leave the UK at the end of his visit.
6. The parties accordingly agreed that the decision should be set aside and re-made. The appellant's sponsor requested that he be given the opportunity to produce further evidence. Mr Walker, who represented the entry clearance officer on the 27 October 2014 had no objection in that regard. Directions were given and the rehearing was accordingly adjourned to 22 December 2014.

Hearing on 22 December 2014

7. Updated statements from the appellant's wife and his son (the sponsor), were produced. There was also further documentation.
8. The appellant's sponsor, Mr Muhammad Farooq Yousuf of 34 Rowan Road, London, attended the hearing and gave evidence. He adopted his witness statement dated 2 December 2014.
9. He lives at the address given together with his mother and two brothers. He came to the UK with his mother on 9 August 2001. He is a student at Kingston University, in his second year. He is also employed, earning about £350 a month.
10. He has visited Pakistan twice with his mother and brother. The first occasion was in 2007 and the second in 2009 for 20 days. He stayed at his father's house on that occasion. He and his brothers enjoyed spending time with the appellant.

11. On the first occasion they went to Pakistan, Mrs Benazir Bhutto was killed. There were riots. The situation was the same on the second occasion that they went.
12. He confirms that the appellant is looking after his mother, who is ill and has suffered a stroke in the past. He is fully responsible in Pakistan for her day to day needs.
13. Mr Melvin cross-examined Mr. Yousuf. His father wishes to visit the UK to see the family and they wish to see him as well. They want to show him the country. He has not visited here before. He has visited his father a couple of times.
14. His father is about 58 years old. He works in Pakistan. He has a 'timber business'. He explained that he is in fact a carpenter. He intends visiting for about two months. During that period, he will sight see.
15. He was asked why his father would return to Pakistan. He has a business there. He is also looking after his mother, who is ill. He has a younger brother who will manage the business while he is away. The business cannot be run from the UK. It is not an 'online business'. Somebody has to be there in order to run it.
16. The appellant is still married to the sponsor's mother. The latter has lived here for 13 years. She has been back to Pakistan on three occasions.
17. His mother was granted asylum on the basis of the treatment she received at the hands of the appellant. Mr Melvin asked whether the asylum claim was fictitious or whether they have in fact become reconciled after that. He said that she had made a genuine claim. They have reconciled "to an extent". He does not know how long it took before they became reconciled.
18. Whilst he is here, the appellant intends to hire someone to look after his mother. His brother has his own family to look after. The appellant has sisters in Pakistan. They have their families there and live quite far from the appellant's mother. One is suffering an illness. There is no family member who can look after his mother for a lengthy period. His father has looked after her for over five years.
19. Mr Yousuf said that he came to the UK as his mother's dependant. He was about six at the time. His mother works in the UK. She has two sisters who help her out. She has a full time job as a carer. He is not aware of any benefits that she is receiving. She has her own property which is mortgaged.
20. The appellant will live with him and his mother whilst he is here. He could also stay in a hotel if he wished. He does not know. His mother will provide his father with accommodation if he needs it.
21. Mr Melvin referred to the respondent's bundle containing a letter from Ms Farida Yousuf in which she confirms that she gives permission to the appellant to live at her house during his visit to the UK. Mr Yousuf said that the grounds of appeal before the First-tier Tribunal contained a detailed statement from his father setting out his case in full.

22. He was asked what he would do if the appellant decided that he wished to stay in the UK after his visa expired. He would 'convince him to return'. He would be prepared to give an undertaking to report him to the police as well as the immigration authorities should he ultimately refuse to return voluntarily.
23. Ms Farida Yousuf attended the hearing and gave evidence. She resides at 37 Rowan Road, London. She adopted her witness statement dated 2 December 2014.
24. She arrived in the UK on 9 August 2001. She has continued to remain here. She is a carer, earning £1000 a month. She owns the property, having purchased it in 2010. She has three sons from the marriage and they are her dependants and permanently settled here. They have British nationality. She sought asylum on account of domestic violence at the hands of her husband.
25. She has travelled to Pakistan in 2007, 2009 and finally in 2012. On the first two occasions she took her children with her and on the last occasion she went alone. She assisted her husband in preparing his application. He wished to come to the UK to visit his children whom he has not seen since 2009.
26. She stated that the reaction of her children to the death of Ms Bhutto as well as the riots in Karachi was that it was unsafe for them to visit Pakistan.
27. The appellant is remorseful of his actions. He has become respectful for the sake of the children. They enjoyed their stay with him and became close. The appellant is able to finance his return ticket.
28. Her mother in law suffered a stroke and is paralysed. Her husband is the main carer of his mother and "due to this" he will return after a short visit here.
29. She 'gives an undertaking' that her husband only intends to visit here for a short period. He has a business in Pakistan. He has a home and has relatives, including his mother and other extended family members.
30. He is responsible for the day to day care of his mother, including her expenses and well being.
31. In cross-examination, she confirmed that she is still married to the appellant. He lives with his mother. He wants to come to the UK. His behaviour towards her was bad. He has now totally changed since she went back to Pakistan. He wants to come to the UK because of the children. He wants to see them. She is scared to send the children to Pakistan.
32. When asked whether her husband would wish to settle here because of the problems there, she said that he is committed to look after his mother. He also works there. He has no "intimate" relationship with her. Although they are not divorced, they do not live together as husband and wife. When she came to the UK the child was only one month old. He had not really met his father. He asks about his father.

33. The appellant occasionally sends gifts and clothes via visitors to Pakistan. He does not make regular payments, but only when other family members are able to bring money here.
34. She supports her three children. She works. She receives Child Benefit and Working Tax Credit. She does not have Housing Benefit. She pays the mortgage herself.
35. She was asked why her husband wished to see his children if he is not supporting them. She said he does send money, however it is the children who miss him.
36. The appellant has a brother and three sisters currently in Pakistan. They live in the Karachi area. He is a "wealthy man" by the standards there. He will only come here for a month or maybe three weeks. He will stay with them. They will have a good time. She will continue working while he is here. He does not intend to apply for employment here. He will not be able to work. Nor does he have any intention to work. Whilst he is away, he has employees to continue the business. His brother will also help. His brother works there but not too much as he is not too well.
37. During his visit to the UK, a "lady has been engaged" to look after his mother. He has looked after his mother all the time. The other brothers do not. It has only been the appellant who was looking after her.
38. The appellant has no other relatives here, nor does he have friends. She does not want her sons' record to be ruined. She would "let the immigration people or the police" know if he did not want to return.

Submissions

39. Mr Melvin relied on the reasons for refusal. The fear that the children would have problems in Pakistan is not a sufficient reason for the appellant's trip. The children have visited him in Pakistan before.
40. The appellant is not supporting them to any degree. There was vague evidence of support. Also, when regard is had to the appellant's employment, there do not appear to be sufficient ties in Pakistan. Nor does his mother's problem make it "imperative" that he will return.
41. On behalf of the appellant, Mr Yosouf said that there are documents showing his grandmother's illness. There are also documents relating to the ownership of his father's business. There are "enough reasons" showing that he will return. He could not support himself here in any event. He does not speak English.

Assessment

42. I found the evidence of the sponsor and his mother to be essentially credible. I have also had regard to the documentation, including the financial documentation, provided by the sponsor and his mother.

43. There is a report produced from Professor Wala, a consultant physician in Karachi, dated 26 November 2014. He has set out the medical problems relating to the appellant's mother. She has been under his treatment. This is "a case of high blood pressure, diabetic 2 and paralysis since long time." He has set out the medication that she consumes.
44. I have also had regard to the entry clearance manager's review. It is asserted that the appellant has relied primarily on self supporting affidavits from colleagues to demonstrate his circumstances. They carry little evidential value. Nor does Article 8 confer a right to be admitted for a visit. They can visit each other outside the country.
45. The reasons for refusal challenge the appellant's business. It is accepted that he owns property. However, he does not derive an income from it. The officer was not satisfied that the amounts of money held in his account are under his exclusive control. Nor had he travelled outside Pakistan before and has thus not demonstrated compliance with any restrictions imposed on his stay in another country, which "might offset my other concerns."
46. There was however no reference to the lengthy grounds of appeal, including evidence relating to rental income and letters confirming his "running of the timber market with them." There is also evidence produced relating to his mother, relatives and siblings in Pakistan, as well as his investments there.
47. Having regard to the evidence as a whole, including the evidence of Mrs Yousuf, I have no reason to suppose that the appellant's intentions are anything other than that which he has given. He wishes to visit his children in the UK for a short period. He has strong ties to Pakistan. He has his business there and has been primarily responsible for this mother in Pakistan and will continue to provide her with daily care.
48. I am also satisfied that both his son and Mrs Yousuf will take proper steps, including reporting him to the authorities, in the event that he seeks to overstay. Both are aware of the significance of the undertakings they have given to the Tribunal in that respect.
49. Having regard to the evidence as a whole, I find that the decision of the respondent was not in accordance with the law and the immigration rules applicable.

Notice of Decision

The appeal is allowed under the immigration rules

No anonymity direction is made.

Signed

Date 8/1/2015

Deputy Upper Tribunal Judge Mailer