



IAC-FH-NL-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/01662/2015
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THE IMMIGRATION ACTS

**Heard at Field House
On 8 February 2016**

**Decision & Reasons Promulgated
1 March 2016**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**SANEESH JOSE MADASSERIPARAMBIL
ANGELINA THOTTATHIL PARAMBATH
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr S Bellara, Counsel instructed by Legend Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. Mr Saneesh Jose Madasseriparambil (hereinafter “the appellant”) is a citizen of India and his date of birth is 20 May 1983. He made an application on 30 October 2014 to vary his leave to remain as a Tier 2 (Minister of Religion) Migrant. His wife, Mrs Parambath is dependent on his application. She is also a citizen of India and her date of birth is 14 November 1988. Their applications were refused on 18 December 2014. The reason for this was the appellant was not able to satisfy the

requirement that the certificate of sponsorship must show the period the role was advertised for which must include at least 28 days during the six month period immediately before the date the sponsor assigned the certificate of sponsorship (in this case 27 October 2014). The sponsor had confirmed by email on 10 December 2014 that the appellant's job was advertised from 6 October 2014 to 6 November 2014 and thus the appellant could not satisfy the 28 day requirement.

2. The appellant appealed and his appeal came before Judge of the First-tier Tribunal A J M Baldwin on 21 July 2015. In a decision promulgated on 5 August 2015 Judge Baldwin dismissed the appeal. The judge properly identified the limited issue, namely whether the first appellant's role had to be advertised for a period of 14 days (as asserted by the appellant and in which case his appeal should be allowed) or 28 days (as asserted by the respondent and in which case his appeal fell to be dismissed). The judge took into account a code of practice which was submitted by Ms Qureshi who represented the appellants before the First-tier Tribunal. It was produced on the day of the hearing and Ms Qureshi submitted that it applied to applications that were made prior to 10 November 2014. Paragraph 15 of the code reads as follows:

"Sponsors may only recruit a migrant if no suitable resident workers respond to the advertisement. Sponsors must allow the advertisement to run for a minimum of two weeks from the date of the publication before recruiting a migrant."

3. After the hearing Judge Baldwin observed that the code of practice which had been submitted did not contain a date. Judge Baldwin consulted the 9th edition of Phelan and concluded that the appellants could not meet the requirements of paragraph 92 A (d) (iii) of the Rules which stipulates a period of advertising of 28 days. She noted that it was accepted by the appellant that the period had changed from 14 to 28 days, but the issue is when this change took place. The judge concluded that the change took place no later than 16 October 2014 which was ten days after the advertising in this case started to run and therefore it follows that by the time the certificate was issued and by the time the application was submitted the relevant period had changed to 28 days and the judge concluded that it was clear that 28 days had not passed by the time that the certificate was issued.
4. At the hearing before me I heard representations from both representatives. Mr Tufan submitted the archived Rules which make it clear that the Rules at both the date of the application and the date of the decision required the role to be advertised for at least 28 days during the six month period immediately before the date the sponsor assigned the certificate of sponsorship to the applicant. Mr Bellara conceded this issue but submitted that the position in relation to the guidance was less clear and he referred me to the document that had been submitted on the appellants' behalf.

5. There was no further clarification of the code of practice before me that would assist the appellant's case. Mr Bellara made an application for an adjournment to enable his solicitors to obtain further evidence about this. He argued that there are different types of Tier 2 migrants and that the code of practice refers specifically to religious workers whereas the Rules relied upon by Mr Tufan are more general.
6. On the face of it the code of practice is not entirely consistent with the relevant Immigration Rule. However, Mr Bellara was unable to develop the argument any further in the light of the lack of clarification in relation to the undated code of practice. I considered Mr Bellara's application for a further adjournment to enable the appellant effectively to prepare his case. However, I note that permission was granted on 4 December 2015 (over two months ago) and the appellant's solicitors have had ample opportunity to prepare for today's hearing. A further adjournment was not in the interests of justice. It is clear to me that the Rules at the date of the decision on 18 December 2014 required the role to be advertised for at least 28 days before the sponsor assigned the certificate of sponsorship (this point is conceded by the appellant) and therefore, by any account, the appeal cannot succeed.
7. The appellant has not established that the 28 day period did not apply in his case. The conclusion the judge reached was inevitable because the appellant could not meet the requirement of the Rules. There was no arguable unfairness. It was not necessary for the judge to give the appellant the opportunity to comment any further on the unsatisfactory evidence that the appellant himself had submitted on the day of the hearing. It was incumbent on the appellant to establish that he met the requirements of the Immigration Rules at the relevant time. Should he wish to rely on a policy document/guidance or code of practice it was incumbent on him and his solicitors to establish that this applied to him, but they failed to do so. In any event, the Rules take precedence over guidance of policy and if there is an error of law for the reasons asserted by the appellant, it is not material.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed Joanna McWilliam

Date 25.02.16

Upper Tribunal Judge McWilliam