



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05278/2016

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 24 November 2017

Decision & Reasons Promulgated
On 4 December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

AFIFA SUFI

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Sponsor attends.

For the Respondent: Mr A Mc Vitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Appellant was born on 14 June 1993 and is a national of Pakistan.
3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Thomas promulgated on 7 December 2016 which dismissed the Appellant's appeal against the decision of the Respondent dated 25 June 2016 to refuse her application for entry clearance as the spouse of a UK citizen.
5. The refusal letter gave a number of reasons which were in essence that the payslips produced by the Appellant to establish that the Sponsors earnings met the financial requirements of Appendix FM as there were discrepancies between the figures in the payslips and the bank credits and the employment letters did not contain the required information. There was an ECM review dated 15.9.2016 which conceded that clerical errors had been made with salary slips so accepted that there was no deception and also conceded that the employment letters contained the mandatorily required information but noted that a payslip for 22.10.2015 for £249.96 was not reflected in the Natwest bank statement.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Thomas ("the Judge") dismissed the appeal against the Respondent's decision finding that the salary of £249.96 shown on a payslip dated 22.10.2015 was not shown on the Natwest bank statement for 22.10.2015 having accepted the other concessions made. Given that the Appellant did not meet the requirements of the Rules the financial requirements not being met there was no basis for a grant of leave outside the Rules.
7. Grounds of appeal were lodged arguing: that the Judge had overlooked that two statements were sent in respect of the Natwest: a saver account and a current account and the payment in issue had been credited to the saver account.
8. On 5.9.2017 Upper Tribunal Judge Reeds gave permission to appeal.

Discussion

9. At the hearing I indicated to Mr Mc Vitie that the Appellant had argued that the ECO did not raise the issue that was held against him because he had been examined both bank statements that had been submitted by the Appellant and was satisfied that all deposits were shown. I therefore re examined the original Respondents bundle and I found in it two bank statements one of which related to

a current account but the other was a saver account. On 8.10.2015 the saver account was credited with the salary of £249.96. Ms Mc Vitie accepted that this second account had been overlooked by the Judge and therefore there was an error of law such that the decision should be set aside and remade.

10. I set aside the decision.

11. Mr Mc Vitie made no further submissions.

Remaking the decision

13. The Appellant appeals the decision of the Respondent on the basis that the decision is unlawful under section 6 of the Human Rights Act 1998.

14. I have determined the issue on the basis of the questions posed by Lord Bingham in Razgar [2004] UKHL 27

Does the refusal amount to an interference by a public authority with the exercise of the applicant's right to respect for his private (or as the case may be) family life?

15. I am satisfied that the Appellant and his wife have a family life together and the refusal of entry clearance is an interference with their right to family life.

If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?

16. I am satisfied that refusal would have consequences of such gravity as potentially to engage the operation of Article 8.

If so, is such interference in accordance with the law?

17. I am satisfied that there is in place the legislative framework for the decision giving rise to the interference with Article 8 rights which is precise and accessible enough for the Appellant to regulate her conduct by reference to it.

If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others?

18. The interference does have legitimate aims since it is in pursuit of one of the legitimate aims set out in Article 8 (2) necessary in pursuit of the economic well

being of the country through the maintenance of the requirements of a policy of immigration control. The state has the right to control the entry of non nationals into its territory and Article 8 does not mean that an individual can choose where she wishes to enjoy their private and family life.

If so, is such interference proportionate to the legitimate public end sought to be achieved?

19. Consideration of the issue of proportionality is ‘consideration of “the public interest question” as defined by section 117A(3) of the 2002 Act. I am therefore required by section 117A(2)(a) to have regard to the considerations listed in section 117B.
20. I take into account that the maintenance of effective immigration controls is in the public interest. I note in this context that while this is not an appeal against the refusal under the Immigration Rules that if in fact the Appellant met the requirements of the Rules at the time of the application then it was difficult to argue that the refusal was proportionate the Rules were intended to promote consistency, predictability and transparency in decision-making where issues under article 8 arose, and to clarify the policy framework. The Rules are said to reflect the Government’s and Parliament’s view of how, as a matter of public policy, the balance should be struck between the right to respect for private and family life and therefore I am satisfied that the issue of proportionality must be looked at ‘through the lens of the Immigration Rules’.
21. I am satisfied that the Appellant met the requirements of the Rules and that at the very least this should have been conceded at the time of the ECM review when the ECO overlooked that the Appellant had submitted two bank statements which showed all of the relevant salary payments.
22. I note that no other issue was taken with the application made by the Appellant all other requirements of Appendix FM were met.
23. In determining whether the removal would be proportionate to the legitimate aim of immigration control I find that given that the Appellant met the requirements of immigration control in meeting the requirements of the Rules that underpin that system refusal of entry clearance is not proportionate.

24. I have considered the issue of anonymity in the present instance. Neither party has sought a direction. The Appellant is an adult and not a vulnerable person. I see no reason to make any direction in this regard.

Conclusion

25. On the facts as established in this appeal, there are substantial grounds for believing that the Appellant's removal would result in treatment in breach of ECHR.

Decision

12. The appeal is allowed on human rights grounds

Signed

Date 2.12.2017

Deputy Upper Tribunal Judge Birrell