



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/06902/2016
HU/06907/2016

THE IMMIGRATION ACTS

Heard at Field House
On 9 January 2018

Decision & Reasons Promulgated
On 5 February 2018

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MRS JAMILA JAMSHAI
MUHAMMAD MOHSHAIM
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER, UKVS

Respondent

Representation:

For the Appellants: Mr J Gajjar, Counsel instructed by Law Lane Solicitors
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal with permission against the decision of First-tier Tribunal Judge Nicholls promulgated on 23 June 2017 dismissing their appeal against the decision of the Entry Clearance Officer to refuse them entry clearance to the United Kingdom and to refuse a human rights claim. The appeal is purely on human rights grounds.
2. It is not in dispute that the first appellant is married to a person present and settled in the United Kingdom nor that they are in a genuine relationship nor that the second appellant who is the child of both the couple is also part of the family unit.

3. The decision to refuse entry clearance was taken as is accepted on relatively narrow grounds that is that the applicant having produced the relevant documents for the purposes of Appendix FM-SE was not genuinely earning the salary claimed which is £22,400 which is just sufficient to meet the financial requirements of Appendix FM of the Immigration Rules. The reasons on which the Entry Clearance Officer reached those conclusions are set out in the reasons for refusal notice and are in summary the result of a suspicion that, given the very sudden rise in the sponsor's income, that he was not in fact earning £22,400 as claimed. There was then a telephone conversation with the employer and as a result of that the Entry Clearance Officer was not satisfied that the sponsor was in fact being paid the salary claimed.
4. The appeal was lodged against that decision and the appeal then came in front of Judge Nicholls who heard evidence from the sponsor. He also heard evidence from the sponsor's employer. The judge dismissed the appeal, having looked at the income for the period up to and including the tax year 5 April 2017 and concluding that the applicant did not take into account that twelve month period up until that date and meet the financial requirements.
5. The appellant sought permission to appeal and permission was granted by First-tier Tribunal Judge Grimmett on 3 November 2017, the judge noting it was arguable that the judge erred in requiring the appellant to show that the income threshold was met for a period of twelve months prior to the hearing rather than the six month period. After submissions between the parties it was agreed that the decision of Judge Nicholls did involve the making of an error of law in that the judge had failed properly to consider the correct period. It is also clear that the judge had failed properly to make findings of fact as to:
 - (i) whether the evidential requirements of Appendix FM-SE were met;
 - (ii) whether there was evidence to show that the letter from the employer met the requirements of Appendix FM-SE;
 - (iii) and perhaps most importantly, whether or not he accepted that the employment was genuine.
6. After further discussion it was agreed that I would proceed to determine the appeal and to make it again without the need to hear further evidence. It is I consider now clear both by comparing the appellants' bundle and the notes of the Entry Clearance Officer staff as read out into the record by Mr Wilding that six wage slips were provided and six relevant bank statements provided, therefore fulfilling the requirements of Appendix FM-SE. It is also I consider clear that the evidential requirements in terms of a letter from the employer were also met and again Mr Wilding took no issue on that.
7. The sole remaining issue would therefore be in terms of the Immigration Rules as to whether the sponsor's employment is genuine. I note that Judge Nicholls heard evidence from the employer. I note also that there was evidence which is now not in

doubt that the sponsor was earning income for which payslips are produced in respect of which a P60 is produced. It is also of note that these match the bank statements which were also produced. In the circumstances and bearing in mind there appears to be no doubt in Judge Nicholls' mind that the employment was continuing and having examined the material provided for myself I am satisfied also that the employment was genuine. Accordingly on that basis I am satisfied that the requirements of the Immigration Rules were met as at the date of decision.

8. That however as it is a human rights appeal is not the end of the matter. I have to consider whether in the circumstances it is disproportionate to refuse entry clearance. Having had due regard to the decision of the House of Lords in **Razgar** and applying the five step process in that I consider that the first four of the questions can be answered in the affirmative. The issue then remains as to whether in these circumstances it is nonetheless proportionate to refuse entry clearance. Given that for the reasons I have given I am satisfied the requirements of the Immigration Rules are met, and absent any submission to the contrary, I do not consider that it could rationally be said that a person who had met the requirements of the Immigration Rule it was nonetheless proportionate to refuse entry clearance. It is difficult to see how that could be proportionate or for that matter necessary or in the interests of immigration control given that the requirements of immigration control as set out in the Immigration Rules have been met and accordingly for these reasons I allow the appeal.
9. In the circumstances, and I leave this only as a comment because I have no power to make a direction to the Entry Clearance Officer, it would be sensible for the Entry Clearance Officer to consider again the findings given that as I have found the Immigration Rules were met the appropriate grant of entry clearance would not be on an Article 8 human rights basis but on the basis that in reality the requirements of the Immigration Rules had in fact been met.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remake the decisions by allowing it on human rights grounds.

Signed

Date 2 February 2018



Upper Tribunal Judge Rintoul