



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/15204/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 3rd September 2018

Decision & Reasons Promulgated
On 17th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

MUHAMMAD [S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Medley-Daley of the Immigration Legal Advice Centre
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Hands made following a hearing at North Shields on 8th September 2017.

Background

2. The appellant is a citizen of Pakistan born on 26th March 1980. He applied for entry clearance as the partner of a person present and settled in the UK but was refused on 16th May 2016 as the respondent considered that the appellant had not provided satisfactory evidence to demonstrate that he met the requirements of Appendix FM under paragraph EC-P.1.1(c) since the information about his sponsor's employment, provided from his sponsor and her employer, was not consistent. The respondent was therefore not satisfied that the sponsor was employed as claimed.
3. The judge recorded the oral evidence and concluded that the information that the sponsor had given about her employment was not wholly credible. She referred to differences in the evidence concerning her rates of pay. She said that the wage slips presented to her were copies and therefore it was not possible to tell if they had been tampered with in any way.
4. The judge recorded that the appellant has a British citizen child but the family do not have the right to choose where they enjoy their family life and Pakistan is an alternative option should they choose to live there together. Taking all of the circumstances into account she concluded that the balance of the argument lay with the respondent and dismissed the appeal.

The Grounds of Application

5. The appellant sought permission to appeal on the grounds that the judge had given inadequate reasons for not accepting that the maintenance requirements were not met. She suggested that the wage slips could have been tampered with but all of the original documentation was submitted to the Entry Clearance Officer and there was absolutely no suggestion in the refusal letter that any of the documents were fake. All of the specified evidence had been produced.
6. Second the judge had erred in her consideration of Section 117B(6), failing to carry out an adequate proportionality assessment and ignoring the body of case law which finds that in general terms it is unreasonable for British children to relocate.
7. Permission to appeal was granted by Judge Mailer on 5th February 2018 for the reasons stated in the grounds.
8. Mr Medley-Daley submitted that the judge had acted unfairly. The original payslips were with the solicitor at the hearing and could have been provided to the judge had the appellant been aware that this was an issue. Furthermore she had wrongly held it against the appellant that the sponsor's hourly rate had changed when it was **Robinson** obvious that she was on a minimum wage which had changed at the start of the tax year.
9. Mrs Pettersen defended the determination and submitted that even if the judge had fallen into error it was not material because both the Judge and the Entry Clearance Officer had given proper reasons for doubting that the employment was genuine.

Consideration of Whether there is a Material Error of Law

10. I am satisfied that the judge did err in her consideration of the evidence. It is quite clear from reading the determination that she was concerned that she had only been given copies of the wage slips and this affected her consideration of the evidence as a whole. However she did not ask the appellant's representatives whether the original wage slips were available. Had she done so, her concerns would have been allayed. Moreover, they had been provided to the Entry Clearance Officer and no point had been taken with them.

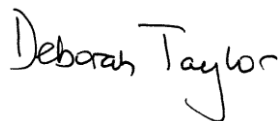
The Resumed Hearing

11. Since the sponsor was present it was possible to continue with the resumed hearing. She was cross-examined by Mrs Pettersen about the payments into her bank account. At the conclusion of the evidence Mrs Pettersen said that whilst the Entry Clearance Officer and the Immigration Judge had doubts about whether the employment was genuine it was in fact clear that the sponsor had answered all of the outstanding questions in relation to the wage slips. The issue of whether the sponsor earned a sufficient income and indeed the question of the employment itself had now been resolved. If the appellant met the requirements of the Immigration Rules there was no reason not to allow the appeal on human rights grounds.
12. I am satisfied on the basis of the evidence today, and now conceded by the respondent, that the sponsor is employed as she claims and effectively, that is the sole issue in this appeal. Since the appellant meets the requirements of the Immigration Rules it would be disproportionate to refuse him entry clearance and Mrs Pettersen did not seek to argue otherwise.

Notice of Decision

The original judge erred in law. Her decision is set aside. It is remade as follows. The appellant's appeal is allowed.

No anonymity direction is made.



Signed

Date 14 September 2018

Deputy Upper Tribunal Judge Taylor