



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17344/2016

THE IMMIGRATION ACTS

Heard at Field House
On 31 July 2018

Decision & Reasons Promulgated
On 12 October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

JASDEEP SINGH
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Shah (for 786 Law Associates)
For the Respondent: Mr S Kandola (Home Office Senior Presenting Officer)

DECISION AND REASONS

1. This is the appeal of Jasdeep Singh, a citizen of India born 29 May 1989 against the decision of the First-tier Tribunal of 24 August 2017 dismissing his appeal on human rights grounds, itself brought against the refusal of a visit visa, of 6 April 2016, treated by the Respondent as the refusal of a human rights claim.
2. The Appellant applied for a visitor visa to attend the funeral of his maternal uncle, the application form explaining that his uncle was

childless and had treated him as his son. Accordingly it would be appropriate for him to participate in the appropriate rituals and traditions.

3. The application was refused because at question 28 of the application form Mr Singh had stated he had not made any application to remain in the UK in the last 10 years; however checks conducted by the decision maker revealed his full immigration history. He had entered the country as a student and remained here for a significant period. He had made an application to remain in the UK on 25 October 2011, and apparently had his student leave curtailed. He had subsequently applied for leave to remain as the spouse of Rupinder Kaur and remained for a significant period after the refusal of that application on 31 December 2012, until 11 April 2013. He had previously been refused an entry clearance on 2 September 2015, and three applications to visit the USA had been refused. His failure to reveal these events in his past in the course of his application represented dishonesty conduct justifying a mandatory refusal of the application.
4. There were also concerns as to the application's ability to meet the Rules given that there was a discrepancy between the earnings he claimed to receive compared to his salary; receipts in his personal bank account bore no relation to his asserted earnings.
5. Overall the Entry Clearance Officer ("ECO") was not satisfied that the Appellant would leave the UK at the end of his visit.
6. The First-tier Tribunal directed itself that this was an appeal on the human rights grounds, where the fact that a right of appeal had been recognised effectively accepted the establishment of family life. However the live question for determination was the proportionality of the decision.
7. The First-tier Tribunal noted the evidence from the Appellant that he had provided his immigration history to an agent in writing who then completed the application form for him, though no copy of that document had ever been supplied. This was a different answer to that given by the Appellant's father, who said that his son had made a mistake because he was upset about his uncle's death, and that they had found the application form confusing; they had not understood that his son had "been required to leave the UK" given he had pursued an appeal.
8. Furthermore, the Appellant had written to the ECO on 18 April 2016 stating that a covering letter giving his full immigration history had been supplied on the application. No copy of this letter was before the Tribunal, and nor was it referenced in submissions, but given that the ECO had not acknowledged the assertion that such a letter had been written, the First-tier Tribunal concluded that the Respondent had not supplied cogent

evidence such as to discharge the burden of proof to demonstrate the Appellant had been dishonest.

9. There were other factual flaws in the Secretary of State's case. Contrary to the indication in the refusal letter, his leave had not been curtailed before the spouse application was made; his immigration history as supplied by the Secretary of State showed that he had in fact enjoyed leave throughout his time in the UK, as he had applied to vary leave to that of spouse before his previous leave expired. His earnings were not only based on his salary, as he received additional rental income from property.
10. Nevertheless, the First-tier Tribunal noted that the Appellant's immigration history might give cause for concern as to his intention to leave the country at the end of a visit. The Appellant had studied for several years without obtaining a qualification and it was unclear whether a letter subsequently explaining his history had been provided on the application; thus the fact of his previous applications and voluntary departure from the UK had gone unmentioned and overall the ECO "was far from unjustified" in concluding that he did not meet the requirements of the Rules.
11. Assessing the Appellant's connections in the UK and abroad, his mother was relatively young and in good health and travelled frequently to India, so could always see him there. His step father had visited him there and there was no evidence he could not do so again notwithstanding that he had recently suffered from heart problems. He had relatives living in India such as his grandmother, uncle and cousins, so could enjoy some degree of family life in his country of origin.
12. The First-tier Tribunal concluded that the decision was disproportionate in so far as it relied on a general refusal reason, but proportionate given the failings in the application form to adequately explain the Appellant's history such that he could affirmatively meet the requirements of Rules V4.1-V4.10.
13. Discursive grounds of appeal citing a large volume of irrelevant authority essentially contended that the reasoning of the First-tier Tribunal was unclear. The First-tier Tribunal refused permission to appeal on 14 March 2018; on 29 May 2018 permission to appeal was granted by Judge Kebede for the Upper Tribunal on the basis that the First-tier Tribunal appeared to have expressed conflicting decisions in its conclusions.
14. Before me Mr Kandola explained that he had discussed matters with Mr Shah before the hearing and offered the possibility of an agreed remittal for re-hearing, given that it was highly arguable that the decision was too internally inconsistent to stand. However, Mr Shah on instructions declined to accept that possibility. It was Mr Shah's submission that the

First-tier Tribunal decision was perfectly lawful save for the final lines where the appeal was allowed only in part. That aspect of the decision could be severed from the reasoning overall and corrected, in the light of the irresistible inference that the Judge had intended to allow the appeal.

15. Mr Kandola replied that if the Upper Tribunal found a material error of law by way of inconsistent reasoning, there would remain a need to hear oral evidence in the context of a wholesale re-determination of the case.

Findings and reasons

16. It will be appreciated that the appeal raised two issues. There was the allegation of dishonesty under the General Refusal reasons, because of the decision maker's belief that the Appellant's failure to disclose his true immigration history was deceitful. And there was the further question as to whether the Immigration Rules were satisfied. These issues were both to be determined in the context of the proportionality of the immigration decision with the right to private and family life of the Appellant and his family in the UK.
17. Unfortunately, the findings of the First-tier Tribunal in this appeal are rather confused. The decision reads more like a commentary on the evidence than as an authoritative determinative of the relevant issues.
18. The statement at §33 that the Entry Clearance Officer "was far from unjustified" in concluding that the Appellant had not shown that he met the requirements of the Visitor Rules indicates that the Judge believed that he was reviewing the decision below on a rationality basis rather than conducting an appeal on the merits.
19. The Judge identifies flaws in a number of points taken by the Secretary of State, but appears to come to no clear conclusion for himself as to whether or not the substance of the Rules were satisfied. Whilst a balanced approach to the evidence is of course appropriate, there is rather too much circumspection without clear conclusions here: there are several passages where the reasoning appears to travel in one direction before a conclusion that runs contrary to that thinking is stated.
20. Given these features of the decision, I cannot uphold Mr Shah's submission that it can be rectified by the simple step of altering a few words in the concluding *Decision* itself. The overall findings and reasons are too unclear for that path to be taken.
21. Accordingly I find that there is a material error of law in the decision below. The matter will have to be re-heard.

Decision:

The appeal to the Upper Tribunal is allowed.

The appeal is remitted for re-hearing in the First-tier Tribunal afresh to a Judge other than Judge Bell.

I draw the attention of the First-tier Tribunal to the desirability of a speedy determination of this appeal given the length of time which has passed since the Appellant was first refused a visit visa.

Signed:

Date: 31 July 2018

A handwritten signature in black ink, appearing to read 'M.A.S. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes