



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/04125/2013

THE IMMIGRATION ACTS

Heard at Field House
On 3 October 2013
Prepared 3 October 2013

Determination Sent
On 10 October 2013

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SIDHU BALWINDER SINGH

Respondent

Representation:

For the Appellant: Mr P Deller, Senior Home Office Presenting Officer
For the Respondent: Mr Z Malik, of Counsel instructed by Mayfair Solicitors

DETERMINATION AND REASONS

1. The Secretary of State appeals, with permission, against a decision of Judge for the First-tier Tribunal Hunter who in a determination promulgated 31 July 2013 allowed the appeal of Sidhu Balwinder Singh against a decision of the Secretary of State to refuse to grant indefinite leave to remain under the provisions of paragraphs

245HF(B) and 322(3) of the Immigration Rules HC 395 (as amended) to the limited extent that he referred the appellant's application back to the respondent for consideration under the points-based system.

2. Although the Secretary of State is the appellant in this appeal before me I will for ease of reference refer to her as the respondent as she was the respondent before the First-tier Tribunal. Similarly although Mr Sidhu Balwinder Singh is the respondent before me I will for ease of reference refer to him as the appellant as he was the appellant before the First-tier Tribunal.
3. The appellant had applied for leave to remain as a Tier 2 (Skilled Worker) Minister of Religion. That application followed a number of extensions of stay in that capacity.
4. The respondent refused the application on the basis that there was evidence that the appellant had, contrary to the conditions imposed upon him, taken work other than as a minister of religion and therefore fell for refusal under the provisions of Rule 322(3) as he had not complied with the conditions attached to the grant of leave to enter or remain.
5. Although the judge found that the appellant had taken work in contravention of the conditions imposed upon him the judge, noting that the refusal under the provisions of paragraph 322(3) was not mandatory concluded that the Secretary of State should have exercised his discretion differently and, the Presenting Officer before him having requested that should he so find the appeal should be remitted to the Secretary of State he referred back the application for further consideration under the points-based system.
6. The grounds of appeal argued that the judge should not have taken that course of action in that the Secretary of State's refusal letter had not explicitly shown that discretion had been exercised.
7. At the hearing of the appeal before me Mr Deller stated that having considered the letter of refusal he considered that the grounds were in error in that the Secretary of State had exercised her discretion before making the decision. He therefore accepted that there was no merit in the appeal before me and that it would be appropriate for me to find that the decision of the Immigration Judge should stand.
8. Mr Malik agreed to that course of action.
9. Mr Deller was correct to concede that the appeal did not have merit. I find that there is no error of law in the determination of the judge and therefore that his decision allowing the appeal to the extent that it was referred back to the respondent for consideration under the points-based system shall stand.

Decision

The appeal under the Immigration Rules is allowed to the extent of referring the appellant's application back to the respondent for consideration on the points-based system.

Signed

Date

Upper Tribunal Judge McGeachy