



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/06482/2012
OA/06478/2012

THE IMMIGRATION ACTS

Heard at Bradford
On 16th August 2013

Determination Promulgated
On 28th August 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

MUSAMMATH JULFA BEGUM
ASAD AHMED

Appellants

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellants: Mr M Hussain, Solicitor instructed by Zahra & Co Solicitors
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellants' appeal made against the decision of Judge Phillips made following a hearing at Bradford on 21st March 2013.

Background

2. The Appellants are nationals of Bangladesh born on 12th July 1995 and 15th January 1994 respectively. They applied to come to the UK as the children of the Sponsor, Mrs Khatun, who has a Certificate of Entitlement to the Right of Abode.
3. Entry clearance was refused on the 27th February 2012 because the Entry Clearance Officer was not satisfied that the Appellants were the children of a Sponsor present and settled in the UK or that there would be adequate accommodation for them or that they could be adequately maintained. DNA testing established that the Appellants are related as claimed to the Sponsor. No issue was taken with respect to the size of the accommodation.
4. The judge found that the Sponsor was employed as claimed but that her income only amounted to a monthly equivalent of £899 per month which was not adequate. He was not satisfied that the Sponsor's husband Rais Ali was working as claimed. If his income had been accepted it would have meant that the requirements of the Rules with respect to maintenance could be met as, on the unchallenged figures, the joint income of the Sponsor and her husband exceeded by some way the amount of money which the family would be entitled to receive on income support.
5. The judge noted that the evidence was that Mr Ali worked for only one or two weeks at Bollywood Lounge in Wakefield, in January 2012 before he commenced his employment as a kitchen assistant at the Rupali Restaurant in Shipley on 27th January 2012.
6. The judge noted that a letter had been supplied by the proprietor of the Rupali Restaurant dated 5th December 2012 claiming that Mr Ali had earned £8,752.64 to date. He supplied payslips from 3rd February 2012 stating that he had been paid £160 per week in February and March 2012 and a P60 for the year ending 5th April 2012 stating that he had earned £1,514.88 from that employment. A bank statement had been supplied in Mr Ali's name indicating sums of £160 credited to his account over six weeks from February to March 2012.
7. The judge noted that the P60 did not indicate that Mr Ali had received payment from any previous employment and Mr Ali stated in oral evidence that he could not explain this state of affairs which called into question the reliability of the information he had supplied in relation to his claimed employment.
8. He then wrote as follows:

“Documentation submitted by or on behalf of Mr Ali prior to the time of the issue of the refusal letters did not state that Mr Ali had ceased working for Bollywood Lounge. In the settlement application forms dated 11th January 2012 the Appellants had stated at section 8.7.11 that Mr Ali's monthly income was approximately £600. That income cannot have been accurate because on the information provided either Mr Ali had been employed for one week or a fortnight only at that time, as disclosed by the payslip and his oral evidence or

he had had no employment, as indicated by the P60 form, and he did not claim to have started employment at Rupali Restaurant until February.”

9. The judge then referred to the case of KA & Others (adequacy of maintenance) Pakistan [2006] UKAIT 00065 and wrote:

“I find that in the present case there is in factual terms no basis for concluding that as at the date of decision Mr Ali’s alleged income could appropriately be described as in a genuine sense available on an indefinite sense as part of the household income. There was and remains no contract of employment that has been produced. A letter dated 5th December 2012 purports to state that in December 2012 more than nine months after the date of decision Mr Ali is in employment. The letter states that he is currently employed on a permanent contract. There is no information from the alleged employer as to the basis of any employment in February 2012 or whether or not any such employment was enforceable as a permanent contract. The payslips provided do not resolve those uncertainties.

The position therefore of the Sponsor’s income is distinguishable from that of Mr Ali. The Sponsor was in a position to demonstrate continuity and foreseeability of permanent employment as at the date of decision whereas Mr Ali was not. In these circumstances I do not find that the Appellants are able to demonstrate through the Sponsor that there would be adequate funds to accommodate and maintain them without recourse to public funds as at the date of decision.”

The Grounds of Application

10. The Appellants sought permission to appeal, in summary, on the grounds that the judge’s reasoning was not intelligible.
11. Permission to appeal was granted by Judge Poole on 21st Jun 2013.
12. On 2nd July 2013 the Respondent served a reply defending the determination.

Submissions

13. Mr Hussain submitted that there was no rational basis for the judge to distinguish between the evidence adduced in support of the claim that the Appellants’ mother was working from that of her husband since it was almost identical.
14. It was not clear what points the judge was trying to make in paragraph 32 of the determination when he was recording his assessment of the evidence of employment. The bank statements were corroborative and the figure given for Mr Ali’s earnings in the settlement application form was wholly consistent with the payslips.
15. Mrs Pettersen submitted that it was open to the judge to observe that the P60 was not a true reflection of what Mr Ali’s income had been but she accepted that it seems that

the judge may have conflated the two employments in his mind and accepted that he may have focused on the earlier employment.

Consideration of whether there is a material error of law

16. It was open to the judge to observe that the P60 did not make any reference to the previous employment at Bollywood Lounge. However there was consistent and substantive evidence to show that Mr Ali was working as claimed at Rupali Restaurant.
17. The determination does not demonstrate that the judge focused his mind on whether Mr Ali was employed as at the date of decision. It seems that the judge was distracted by the fact that Mr Ali had worked for one or two weeks at a previous restaurant. Furthermore, by directing himself to the question of whether Mr Ali's income was available "on an indefinite sense" he was arguably not addressing himself to the right issue, namely, as at the date of decision, were the Appellants in a position to be adequately maintained?
18. Paragraph 32 consists of a recitation of the evidence both in favour of the Appellants and the P60 point which is taken against them. It is not clear why the judge rejects the letter from the employer, the payslips, the bank statements, the consistent evidence as between the settlement application and the payslip and why he considered the omission of the earnings of one or two weeks at the previous employment on the P60 outweighed all of the other evidence before him.
19. The judge erred in law in failing to give adequate reasons for his decision.

Re-making the Decision

20. Mr Hussain sought permission to adduce further evidence from HM Revenue and Customs giving Mr Ali's tax details and employment history and a further P60 showing that he earned £8,674.01 in the tax year to April 2013. It gave his employers' name as Rupali Restaurant.
21. Mrs Pettersen noted that the letter from the Rupali Restaurant dated 5th December 2012 gave the company's tax reference as 072/VZ0589 whereas the HM Revenue and Customs gave the employers' tax reference as 072/VZ05289. The letter from the employer therefore omitted the figure 2 from the reference. She submitted that the Tribunal should continue to have doubts over Mr Ali's employment.
22. Mr Hussain said that he was mystified by that submission since the missing digit was clearly a typographical error and he had produced original documentation from HM Revenue and Customs stating that Mr Ali was employed as he claimed. The Sponsor was working at the Rupali Restaurant at the date of decision and continues to do so.

Findings and Conclusions

23. I am satisfied that the evidence from HM Revenue and Customs does establish that Mr Ali was working at the date of the Entry Clearance Officer's decision and he continues in his employment with the Rupali Restaurant and, that, on the balance of probabilities, the letter of 5th December 2012 contains a mistake in that a digit is missing from the company tax reference. Since the Sponsor's income has already been accepted that is determinative of the appeal.

Decision

24. The original judge erred in law and the decision is set aside. It is re-made as follows. The Appellants' appeals are allowed.

Signed

Date

Upper Tribunal Judge Taylor