



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: VA/03267/2013

THE IMMIGRATION ACTS

Heard at Bradford  
on 5<sup>th</sup> November 2013

Determination Promulgated  
On 11<sup>th</sup> November 2013

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ASIF HUSSAIN  
(Anonymity direction not made)

Appellant

and

ENTRY CLEARANCE OFFICER - ABU DHABI

Respondent

Representation:

For the Appellant: Mr A Bilal – Legal Representative.

For the Respondent: Mrs Pettersen – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Sarsfield promulgated on 29<sup>th</sup> August 2013 in which he dismissed the Appellant's appeal against a decision of an Entry Clearance Officer (ECO), made on 23<sup>rd</sup> December 2012, refused entry clearance to the United Kingdom for the purposes of a family visit.
2. The Appellant was born on 22<sup>nd</sup> January 1989 and is a national of Pakistan. He visited the United Kingdom previously although, for reasons explained in the documents, overstayed beyond the period stated to the ECO that he was to remain in this country on that occasion.

3. The refusal expresses concern that the Appellant had not provided sufficient evidence to prove he was employed as claimed or that his financial circumstances generally were as claimed. This led to a refusal by reference to 41 (i) and (ii) as the ECO was not satisfied that he was genuinely seeking entry for a family visit or that he intended to leave the United Kingdom at the end of the period of the visit as stated by him.
4. Judge Sarsfield sets out his conclusions in paragraph 6 of the determination.

### Discussion

5. The grounds on which permission to appeal was sought raise a number of issues. One of the reasons advanced is that Judge Sarsfield failed to make any findings with regard to the evidence of the sponsor and failed to take into account a previous determination by a different judge promulgated on 13<sup>th</sup> September 2010 in which the Appellant was found to be credible and that appeal allowed.
6. Judge Sarsfield was clearly aware of the fact an appeal was allowed in 2010 but this does not mean the appeal should automatically have been allowed in 2013. It is incumbent upon an applicant to prove they meet the requirements of the relevant immigration rule whenever an application is made. Whilst the previous determination was evidence of the fact the appeal was allowed and the appellant granted leave to enter as a visitor, the findings made in 2010 cannot be of a determinative of the issues in this appeal in law. The reference to the Devaseelan principles in the skeleton argument are noted but the issue was whether the Appellant had proved that his circumstances had not changed, as he was put to proof of in the refusal.
7. I find no material legal error proved in relation to the Judges failure to find as he was invited, based upon on the previous determination of Judge Caswell.
8. In paragraph 6 (c) Judge Sarsfield refers to accounts held by the Appellant and his father. In relation to the Appellant's account there is reference to a letter from the bank, but without supporting bank statements. I accept there was before the Judge a letter from HBL in the following terms:

To whom it may concern

It is to certify that Mr Asif Hussain S/O Fazal Hussain having NIC# 34203-74036580-3 is maintaining his account #2222-71001060-03 with us under the title of Asif Hussain and his balance is PKR 306,832.50.

It is certified the above named party is financially sound. This certificate is issued solely on the request of client without accepting any liabilities on bank or its official whatsoever.

9. The letter is purportedly signed by a manager of the bank but is not dated. Judge Sarsfield found that the statement of the bank account produced did not accord with the letter, so far as the balance was concerned, as that statement only showed a balance of 249,867.50 rupees. Although the Appellant has now provided a further statement showing the balance of the account at 6<sup>th</sup> December 2012, the appeal was heard on 20<sup>th</sup> August 2013 and no satisfactory explanation has been provided for why such evidence was not obtained earlier as it must have existed - Ladd v Marshall [1954] 1WLR 1489 refers.
10. Judge Sarsfield did not accept that he could put weight on the documentary evidence relating to the availability of funds in the Appellant's bank account, especially as a key document is undated and it is accepted there is a discrepancy between this document and the bank statement relied upon in relation to the available funds. Weight is, of course, a matter for the Judge provided he considered the evidence with the degree of care required and has given adequate reasons for his findings. In relation to this element of the evidence I find he did. No legal error is proved.
11. I accept the Judge erred in paragraph 6 (f) in disregarding an affidavit from Mr Mohammed Afzal. Although the affidavit was post decision it relates to the alleged repayment of a sum of 200,000 rupees which appears in the Appellant's bank statements pre decision. The Judge was wrong to disregard this evidence and should have considered it as part of his overall assessment. The issue is whether this omission is material.
12. The ECO was not satisfied the Appellant had proved he was employed as claimed or that his circumstances are as he alleges. The Judge found in paragraph 6 (a) that he is employed but that there was no supporting evidence of his income or taxes other than a letter and in paragraph 6 (i) that the Appellant had not answered the ECO's concerns.
13. The grounds challenge the fact the Judge did not make specific findings on the sponsor's evidence but there is no legal obligation upon him to do so. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) Blake J) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

- 14. In paragraph 6 (g) it was found that the claim by the Appellants father that he will pay the travel costs was post decision evidence. This is correct and therefore inadmissible. It is alleged the Judge failed to make a finding whether the Appellant had sufficient funds in his own account and the finding in paragraph 6 (e) that there was no evidence the provenance of PKR500,000 is also challenged. In relation to this larger sum the Judge notes the evidence that it came from the sale of property but that there was no supportive evidence to corroborate this claim. The grounds seeking permission to appeal allege that as they were deposited in December 2011, a year before the date of refusal, and Judge Caswell accepted that the family as a whole dealt with land Judge Sarsfield should have taken this into account. I have dealt with the situation in relation to the previous determination above and the fact the funds may have been in an account for over a year does not necessarily mean they belong to the account holder.
- 15. The core finding of Judge Sarsfield is that on the evidence made available, which was afforded the weight the Judge considered it could be given, the Appellant had failed to discharge the burden of proof upon him to the required standard to prove he was a genuine visitor. Although the grounds take issue in reality they are in part mere disagreement with the findings made. I accept, as stated above, the Judge made an error with regard to one element of the appeal but having considered the appeal with the degree of care required, I do not find that it has been proved that this error is material to the findings made by the Judge that the Appellant failed to prove that his circumstances are as he claimed. This is a finding within the range of those properly open to the Judge on the evidence.

**Decision**

- 16. **There is no material error of law in the First-tier Tribunal Judge’s decision. The determination shall stand.**

Anonymity.

- 17. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 8<sup>th</sup> November 2013