



IAC-FH-CK-V2

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/18122/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 21 May 2014**

**Determination Promulgated
On 13 November 2014**

Before

**MR JUSTICE GREEN
SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE CHALKLEY**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHEIKH BASITH

Respondent

For the Appellant: Ms D Qureshi, Counsel instructed by Lincoln's Chambers
Solicitors
For the Respondent: Mr P Deller, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal brought against the decision of the First-tier Tribunal dated 26 June 2013. That decision rejected the appellant's appeal against the decision of the Secretary of State dated 23 August 2012. The Secretary of State's decision rejected the appellant's application for entry clearance to the United Kingdom to join his spouse with a view to settlement.

2. The basic facts can be briefly summarised. The appellant was granted a visa as a visitor for 30 March 2004 valid for six months. However, the appellant overstayed the limits in the visa. On an undisclosed date the appellant sought to leave the United Kingdom at his own expense and voluntarily. He was encountered at London Heathrow Airport by the United Kingdom Borders Agency and was issued with a form notifying him that he was a person liable to detention and removal from the United Kingdom.
3. The decision of the Secretary of State refused the application upon a number of bases. First, that the submission made by the appellant that he was leaving to return to Bangladesh to regularise his status was doubted. Secondly, that his submission that he intended to marry in the United Kingdom was also doubted. Thirdly, the Secretary of State further doubted that the spouse he said he was to marry in the United Kingdom had continuous employment of a genuine nature. Fourthly, that the alleged spouse was in receipt of public funds of £189.12 per week and that the appellant's addition would place a further burden on public funds. As to this the Secretary of State was not satisfied that the appellant could be maintained by the spouse as a sponsor without further recourse to public funds. Fifthly, that the submission made by the applicant that he had been offered employment was lacking in evidential support and was not treated as genuine. Sixthly and finally, the decision rejected the appellant's Article 8 private life claim.
4. The appellant's appeal to the First-tier Tribunal was dismissed. The Tribunal stated at the outset of the determination that it had heard no oral evidence from the sponsor who had been present throughout the hearing. An interpreter had been requested for the hearing but none was available at the time the appeal was called on but the appellant's solicitor had indicated that he would not be calling the sponsor and was content to proceed upon the basis of submissions only and without an interpreter.
5. The Tribunal set out the background in some detail at paragraphs 12 and 13 and then proceeded to make specific findings which may be summarised as follows. First, that the appellant and his wife were properly married in a genuine relationship. Secondly, that the effect of the appellant living with his spouse would have consequences for rent and council tax and the appellant had not shown that this increase in costs could be met. Thirdly, that the alleged job offer made to the appellant was not genuine. In these circumstances the judge found that on what he described as the twin bases of maintenance and accommodation the requirements in the Immigration Rules were not satisfied.
6. The appellant appeals with leave of the Upper Tribunal on essentially three points as set out in the grounds of appeal which we would summarise as follows. First, the judge erred in ignoring the appellant's job offer and in failing to take judicial notice of the fact that the United Kingdom catering and food manufacturing sector had a sustained and acute labour shortage and that even if the job offer were ignored the appellant could obtain work. It was also submitted that the judge erred in concluding that the job offer was not genuine. Secondly, the grounds submit that the judge erred in failing to find that the income of the sponsor and that of the appellant

when combined failed to meet the maintenance requirements in the Rules. Thirdly, the judge erred in paragraph 22 in failing to find that accommodation requirements were met given that the sponsor was a secure tenant of the London Borough of Tower Hamlets.

7. We turn now to consider the merits of these grounds. We start with the question of the job offer which we can deal with briefly. The judge set out fully his reasons why he rejected the genuineness of the offer at paragraphs 18 to 21. We consider that this fact-finding was within his margin of discretion to find facts. We do not accept that the judge was bound to have regard to the general circumstances of the market in the absence of evidence about that and the specific skills of the appellant and how or why he could find work in that wider market. He had to deal with the evidence before him. He did not err.
8. We turn to the second issue concerning income. Two points arise here. First, concerning savings and secondly concerning rent and council tax. As to savings the sponsor put evidence to the Tribunal that she had savings in excess of £7,000 and that this was relevant to her ability to maintain the appellant. At paragraph 17 of the determination the Judge stated as follows:

“I have also noted that the Tower Hamlets calculations submitted by the sponsor indicate total assessed capital £0. The sponsor now says she has savings in excess of £7,000. She does not indicate that these were obtained after the council’s assessment was made or if her level of savings were such that they fell properly to be disregarded or, if they should have been taken into account, what their effect on the calculation Mr Kalam provided would have been.”

The reference to the calculation provided by Mr Kalam is to a schedule set out in paragraph 15 of the determination which identifies relevant income and expenditure. On the income side of the calculation is a reference to savings in a sum of £5,647.59 divided by 104 weekly payments amounting to a weekly figure of £54.30. In essence the Tribunal considered that the statement of savings alone was insufficient and that other evidence and proof was required to enable it to be taken into account. We can detect no error in his conclusion which was, at base one, of the sufficiency of evidence. He was simply unsatisfied that this was a sufficiently secure figure to be taken into account in the light of the evidence before him. That is why at the end of paragraph 17 he states that he was uncertain what the effect of that figure would have been on Mr Kalam’s calculation had it in effect been taken out of account.

9. The second matter concerns rent and council tax. As to this the Tribunal stated in paragraph 16 as follows:

“In his submission Mr Lowton pointed out that the effect of the appellant residing with the sponsor on the amount of rent and council tax which would then be payable has not been taken into account in Mr Kalam’s calculation. I accept that submission as the statement of reason by which is at page 35 of the appellant’s bundle shows the calculation made by Tower Hamlets Council is

based on a 'lone parent 18 to pension age'. The appellant has not shown that the amount of rent and council tax payable would remain the same if he lived with the sponsor or that if those sums were increased the family's expenditure would be such that the maintenance requirement would still be met."

10. We do not accept that in arriving at this particular conclusion the judge in any way erred. There is no dispute that if the appellant were to join his spouse that rent and council tax might increase. In the final account the Tribunal was not satisfied that with these uncertainties the sponsor would be able to maintain the appellant.
11. We turn now to consider the alternative issue of accommodation. As to this the first point to note is that the Secretary of State's decision is based upon maintenance only and not accommodation. We read the reference to accommodation in the Tribunal's judgment at paragraph 22 as referring to the council tax and rent issue that we have already referred to. It is not therefore a separate point which needs to be addressed.
12. Finally, although the matter is raised only indirectly in the grounds of appeal we will address the question of Article 8. Again, as to this we can detect no error in the judge's assessment. The judge applied the correct test and took account of all relevant matters including the period of time in which the appellant was present in the United Kingdom without authorisation and the fact that he had not lost ties with Bangladesh.
13. Finally, the Tribunal concluded that the appellant entered into the spousal relationship in full knowledge that he had no right to be present in the United Kingdom and she took account of the absence of evidence establishing that the wife and stepson could not join him in Bangladesh. These were findings which she was entitled to make and we can detect no error in them and for these reasons this appeal is dismissed.

Signed

Date: **21 May 2014**

Mr Justice Green