



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

Appeal Number: VA/06738/2013

THE IMMIGRATION ACTS

Heard at : Field House

On : 27 May 2014

**Determination
Promulgated**

On : 28 May 2014

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

TARLOCK SINGH

and

ENTRY CLEARANCE OFFICER

Appellant

Respondent

Representation:

For the Appellant: Mr Fateh Singh (the Sponsor)

For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of India, was born on 20 May 1946. He has been given permission to appeal against the determination of First-tier Tribunal Judge McDade dismissing his appeal against the respondent's decision to refuse entry clearance to the United Kingdom as a family visitor.

2. The appellant applied for entry clearance to the United Kingdom as a family visitor, on 18 February 2013, to visit his daughter and son-in-law, the latter being his sponsor. His application was refused on 7 March 2013 on the grounds that he had failed to show that he had sufficient personal, economic or financial circumstances in India to ensure his return. There was no adequate evidence of the property he claimed to own and neither was there evidence of any family ties in India, since he was a widower. It was noted that he was financially dependent upon his daughter and son-in-law in the United Kingdom and accordingly the respondent did not accept that he intended to leave the United Kingdom at the end of his visit or that he was genuinely seeking entry as a visitor for a limited period.

3. In his Notice of Appeal the appellant stated that he had four children in India and had a property there. He only wished to come to the United Kingdom to see his other children, his son Ujjal and his daughter Varinder, and their children. It was difficult for them to afford to come to India and he wanted to spend some time with them.

4. With his Notice of Appeal the appellant produced the election commission of India identity cards for his two sons, Ram Singh and Sham Singh, and for himself; an undated affidavit; his wife's death certificate; the deed of sale for his property and for property owned by his wife; and valuation reports for the properties.

5. The Entry Clearance Manager, having reviewed the application in the light of the grounds of appeal, maintained the decision, noting that there was no evidence of any income from the appellant's property, that the appellant was entirely financially dependent upon the sponsor and that there was no evidence that the appellant had contact with his children in India.

6. In his determination dismissing the appeal on the papers before him, First-tier Judge McDade concurred with the ECO's reasons for refusing the application and noted that the appellant appeared to have no family ties to India and was financially dependent upon his daughter and son-in-law in the United Kingdom. He considered that it was more likely than not that the appellant would not return to India after his visit.

7. Permission to appeal was sought by the sponsor on behalf of the appellant. On 31 March 2014 permission was granted by First-tier Tribunal Judge Kamara on the grounds that the judge had arguably erred in law by concluding that the appellant had no ties to India when his grounds of appeal referred to four children in India.

Appeal Hearing

8. The appeal came before me on 27 May 2014.

9. Mr Smart was without any papers other than the Notice of Refusal and initially put his case on the basis that the judge had not had any evidence

before him of family ties in India. However when I advised him of the evidence in the respondent's appeal bundle, as mentioned in the ECM Review, he conceded that the judge had made an error of fact amounting to a material error of law and that the decision had to be set aside.

10. Mr Smart was content for me to re-make the decision on the papers before me. He did not have any questions for the sponsor, but I asked some questions myself. Mr Singh assured me that he was a law-abiding citizen who was prepared to guarantee his father-in-law's departure from the United Kingdom. He told me that his father-in-law had two daughters, two sons, grandchildren and property in India. He initially stated that he had four grandchildren, but when prompted by his wife sitting behind him said that there were ten. There were five grandchildren in the United Kingdom.

11. Mr Smart, in his submissions, relied on the refusal decision and the fact that the appellant was dependent upon the sponsor in the United Kingdom and that, whilst there were relatives in India, he was not dependent upon them. Mr Singh had nothing further to add.

Consideration and findings

12. It was Mr Singh's evidence that the appellant, his father-in-law, would return to India after his trip and he assured me that he would guarantee his departure from the United Kingdom. However assurances are not in themselves sufficient to discharge the burden of proof, when there are otherwise reasonable grounds for doubts and concerns and where there is an absence of supporting evidence that could reasonably be expected to have been produced. Indeed it seems that the appellant has already been refused entry clearance on three previous occasions in 2011 and 2012, albeit that the basis for those refusals is not known, but nevertheless he can reasonably be assumed by now to be familiar with the requirements of the immigration rules and the burden upon him to demonstrate an ability to meet those requirements.

13. It is clear from the refusal decision that the respondent's concerns, in refusing the appellant's application, were very much related to the lack of evidence of any ties to India particularly in view of the strong ties to the United Kingdom. The appellant has had plenty of opportunity to address those concerns, having been put on notice on various occasions. Whilst he responded to the ECO's initial concerns by providing further evidence, it was clear from the ECM Review that that evidence was considered to be inadequate. Reasons were given for considering that to be the case, in particular that the ID cards produced as evidence of family ties did not demonstrate that there was any contact between the appellant and those family members or that there was any financial dependency. Indeed I note that the identity cards show no more than that in February 2008 Ram Singh and Sham Singh were registered with the election commission of India at the same address as the appellant. Yet despite the ECM's comments, no further evidence has since been produced and, other than the appellant's statement in his affidavit, that remained the

totality of the evidence before the First-tier Tribunal and now, together with the sponsor's oral evidence, before the Upper Tribunal. Accordingly, aside from the appellant's statement and the sponsor's oral evidence there is nothing to show that the appellant had any children remaining in India or that they had any contact with or provided any support to him.

14. I do not consider that I am able to accept the sponsor's oral evidence at face-value, given that the limited evidence he gave was singularly unhelpful. Whilst stating that the appellant's incentive to return to India lay in his property, his children and his grandchildren, the sponsor was not even able to state how many grandchildren he had, changing his evidence from four to ten when assisted by his wife. I accept that it is his wife who is the direct family member of the appellant, but would nevertheless expect the sponsor to know how many grandchildren his wife's father had, particularly when giving that as a reason for his incentive to return to India.

15. Accordingly it seems to me that there is an absence of satisfactory evidence of ties to India providing incentive for the appellant to return there after his stay in the United Kingdom. Although he may have a property in India, that cannot alone provide sufficient incentive when considering his age, his status as a widower, his reference in the grounds of appeal to being lonely in India, the absence of reliable evidence of family ties in India and the fact that he has no source of income other than that from his United Kingdom sponsor.

16. In all of the circumstances I find that the appellant has failed to discharge the burden of proving a genuine intention to return to India after a limited period and of proving that he was genuinely seeking entry to the United Kingdom only as a visitor. His appeal is therefore dismissed under the immigration rules. Article 8 is not specifically pleaded but in any event plainly could not succeed as a ground of appeal.

DECISION

17. The making of the decision of the First-tier Tribunal involved an error on a point of law. The decision of the First-tier Tribunal is therefore set aside. I re-make the decision by dismissing the appeal on all grounds.

Signed
Date

Upper Tribunal Judge Kebede