



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: VA/13549/2013
VA/13692/2013

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court
On 15th August 2014

Determination Promulgated
On 9th September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) MR AJAYKUMAR SHAH
(2) MRS URVI SHAH
(NO ANONYMITY DIRECTION MADE)

Appellants

and

ENTRY CLEARANCE OFFICER, BOMBAY

Respondent

Representation:

For the Appellants: No appearance
For the Respondent: Mr N Smart (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Bircher, promulgated on 25th February 2014, following a hearing on 11th February 2014. In the determination, the judge dismissed the appeals of Mr Ajaykumar Shah and Mrs Urvi

Shah. The Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are husband and wife. They are citizens of India. They were born on 8th August 1971 and 3rd July 1967 respectively. They applied for entry clearance to visit their brother and brother-in-law respectively, but on 5th July 2013, their application was dismissed by the Entry Clearance Officer on applying paragraph 41 of HC 395.

The Appellants' Claim

3. The Appellants' claim is that the husband is a self-employed trader and earns approximately £444 per month and that the couple have two children, and that they are likely to return back to India at the end of their visit.

The Judge's Findings

4. The judge was satisfied that the Appellants had strong ties to India. They had submitted affidavits from the Appellants. There was an affidavit from their son. However, the ECO had raised a legitimate enquiry in relation to their financial circumstances, and yet failed to address this in the Grounds of Appeal, such that there was no explanation as to how Mr Shah, the principal Appellant, was involved in his business, and who would be managing the business during the two months that he intended to be in the UK.
5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the couple have two daughters who are studying in India and that they would remain behind and be looked after by their aunt who will take them into their home.
7. On 6th May 2014, permission to appeal was granted on the basis that in his Notice of Appeal the husband had stated that he was running a partnership business in India which would imply that there was a partner to conduct the business in his absence, and the determination did not engage with this explanation, or indeed did the documentary evidence.

Submissions

8. At the hearing before me, there was no-one in attendance on behalf of the Appellants, and nor was there any explanation. There was in attendance a representative for the Respondent Entry Clearance Officer, namely, Mr N Smart, a Senior Home Office Presenting Officer, and he submitted that he would rely upon his Rule 24 response of 22 May 2014. This explains that the Appellants were interviewed in Bombay. It was clear from this that the grounds of application had no merit. The

Appellant was asked what his occupation was and he said that he ran a business but he provided no evidence of his partner and therefore it could not be said that the partner would manage the business in his absence. No evidence of the partner was presented before the judge either. Therefore there could not be an error of law.

No Error of Law

9. I am satisfied that the making of the decision by the judge did not involve the making of an error (see Section 12(1) of TCEA 2007) of law, such that it falls to be set aside. The judge was entitled to come to the findings that he did.
10. In particular, that, although a large bundle of documents had been submitted by the Appellant now, "Many of these documents do not appear to have been before the original decision maker" and that in particular that "Mr Shah does state that he is a partner in a business but the evidence in relation to this claim is weak" (paragraph 4). It does not end there.
11. The judge goes on to say that "He has submitted a copy of a State Bank of India book which demonstrates only a few transactions each year since 2008..." (paragraph 4).
12. Given that the concerns of the judge were in relation to the financial situation, it is clear that there was ample basis upon which the judge could come to the findings that he did. There is no error of law.

Decision

13. There is no material error of law in the original judge's decision. The determination shall stand.
14. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

8th September 2014