



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/16662/2013
OA/10822/2014
OA/10828/2014
OA/10824/2014

THE IMMIGRATION ACTS

Heard at Field House
On 12 May 2016

Decision & Reasons Promulgated
On 31 May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

RASHID RAZZAQ
NASEEM AKHTAR
NASIR RAZZAQ
FARRUKH RAZZAQ
(ANONYMITY DIRECTION NOT MADE)

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ian Jarvis, a Home Office Presenting Officer
For the Respondent: Mr Paul Turner of counsel

DECISION AND REASONS

Introduction and background

1. This is an appeal by the respondent against the decision of Judge Callender Smith to allow the appellants' appeals under the Immigration Rules. The appellants in this

case are Mrs Naseem Akhtar and Mr Rashid Razaqq, Mr Nasir Razzaq and Miss Farrukh Razzaq. Their dates of birth were respectively 11th February 1970, 10th April 1996, 15th February 1999 and 25th May 1997.

2. The appellants each applied for settlement in the UK to join their father, who is Mr Abdul Razzaq, a British citizen, whose date of birth was 5 May 1969. The appellants appealed to the First-tier Tribunal against the respondent's decisions in their cases to refuse entry clearance to join the sponsor. It is clear from paragraph 3 of the decision of Judge Callender Smith (before whom the appeals came on 30 September 2015 at Taylor House) that she regarded there as being two points in the linked appeals: first, whether the sponsor met the financial requirements of the Immigration Rules and secondly, the status of Rashid Razzaq, given that he did not turn 18 until 10th April 2014. She refers to the financial requirements that needed to be met by the sponsor. She also referred to an application by Rashid Razzaq under paragraph 297 of the Immigration Rules for settlement with his father under that paragraph.

Requirements of the Immigration Rules

3. In relation to the requirements of the Rules, I have been taken to Appendix FM by Mr Jarvis. I will set out below the relevant requirements below. In addition, I have considered the requirements of paragraph 297 of the Immigration Rules, as it applies to Rashid Razzaq. Paragraph 297 of the Immigration Rules is set out in Phelan at p.847. It sets out the requirements a child of a parent present and settled in the UK must satisfy before he will be allowed indefinite leave to enter the UK. I understand it is not disputed by the respondent that Rashid's father (the sponsor) is settled in the UK. However, a number of other the requirements had to be satisfied before indefinite leave to enter would be given. Where a child seeks to join a parent present and settled in the UK that the parent must have sole responsibility for the child's upbringing. I understand that as far as Rashid was concerned this was the principal issue in his case.
4. In relation to the other appellants, they had to meet the requirements of Appendix FM and Appendix FM-SE (in Phelan at 1144 and 1172 et seq.). These included providing wage slips covering a period of six months prior to the application. These had to be provided for the employer of the person concerned, or in relation to a period of salaried employment for the period of twelve months prior to the date of the application, the wage slips for at least the last six months had to be provided. Also, a letter from the employer confirming the type of employment and the length of that employment were required. There should also be an indication of any prior employment of that the person where relevant. Personal bank statement had to be provided as well. This is paragraph 2(c) according to page 2 of the refusal in Naseem's case, but no precise reference is given. Personal bank statements which correspond with the wage slips showing the salary having been paid into the bank account of the person concerned for the relevant period will also be needed. I will

not expand on those requirements at this point as they are fully set out in the respondent's refusal.

The appeal proceedings

5. The Secretary of State appealed the decision by the Immigration Judge which was promulgated on 20 October 2015 because the Secretary of State said the salary requirements of the Immigration Rules had not been met. In particular, the sponsor appeared to receive a salary of £19,220 plus a bonus of £7,508 giving an annual income of between £26,720 and £27,220. This was insufficient to meet the minimum income threshold required by the Rules for such a large family.

Discussion

6. Mr Jarvis's figures before the Upper Tribunal are slightly different from those summarised in the previous paragraph, but the substance of his attack on the decision of the First-tier Tribunal is that the rules are clearly designed to require evidence which satisfies the minimum income criteria. Those requirements were mandatory. Those requirements were not met here. Accordingly, the Immigration Judge erred in allowing the appeal under the Immigration Rules.
7. An additional difficulty with the Immigration Judge's decision is that she says: "The relevant date for my consideration is 13 September 2013". As I understand it the decisions in this case were made on 24 July 2014, in the case of Rashid Razzaq, and 11 August 2014, in the case of the other appellants. In any event, the minimum income criteria plainly were not met at the latter of those two dates (i.e. on 24 July 2014) As Mr Jarvis submitted, the minimum income criteria would be £18,600 for Mr Abdul Razzaq and an additional £3,800 for the first child plus £2,400 for each additional child.
8. In terms of evidential requirements of Appendix FM-SE the six-month period should have covered the period 28 December 2012 to 28 May 2013. Unfortunately, there was no adequate evidence that the minimum income requirements were met by the sponsor over that period. In addition, the bank statements produced did not corroborate the payments to the sponsor on the payslips. They show sums of £299.88 and £68.01 per week which, when the calculation is carried out, show that the minimum income criteria was short by up to £5,000.
9. Furthermore, although the Immigration Judge did not deal with human rights, it is clear following the Court of Appeal's decision in **SS (Congo)** that a failure to meet the minimum income criteria in Appendix FM-SE are significant matters. In the event that an appellant is unable to meet the minimum income requirements set out in Appendix FM-SE compelling reasons must be given for departing from those requirements before an appeal may be allowed on human rights grounds. Therefore, if the appellants' human rights were considered I am satisfied that the Immigration

Judge would also have dismissed the appeal on human rights grounds as well as under the Immigration Rules.

Conclusions

10. I am satisfied that the minimum income criteria contained in Appendix FM-SE were not met. I am also satisfied that Rashid Razzaq did not satisfy the requirements of paragraph 297 of the Immigration Rules. The sponsor would not have had sole responsibility for that appellant, who has now turned 18 in any event, having been born on 10 April 1996.
11. It follows that there were errors of law in the decision of the First-tier Tribunal, as Mr Turner, who appears for the appellants, accepts. I am unable to accept his submission that the errors of law identified were immaterial. The Immigration Judge in the First-tier Tribunal failed to properly apply the minimum income criteria in the Immigration Rules and failed to deal properly with the requirements of paragraph 297 of the Immigration Rules.
12. In the circumstances I have decided to set-aside the decision of the First-tier Tribunal and re-make the decision. There is no application to adduce any additional evidence before the Upper Tribunal. My decision is therefore based on the documentary evidence supplied to the FTT and submissions made to the Upper Tribunal. Having considered that evidence and those submissions, I find that the appellants did not meet the minimum requirements of Appendix FM-SE and I find that the appellant Rashid Razzaq did not meet the requirement of paragraph 297 of the Immigration Rules.

Notice of Decision

13. For those reasons the Secretary of State's appeal is allowed and I substitute my decision which is to dismiss the appeals against the respondent's decisions to refuse entry clearance made on 24 July 2014 and 11 August 2014.
14. No anonymity direction is made.

Signed

Date 25.5.16

Deputy Upper Tribunal Judge Hanbury

Fee award

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 25.5.16

Deputy Upper Tribunal Judge Hanbury