



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/01616/2015

THE IMMIGRATION ACTS

Heard at Field House
On 19 October 2018

Decision and Reasons Promulgated
On 24 October 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MD KAPTAN MIAH
(anonymity direction not made)

Appellant

and

ENTRY CLEARANCE OFFICER (NEW DELHI)

Respondent

Representation:

For the Appellant: Mr S Karim instructed by Hamlet Solicitors LLP.

For the Respondent: Mr S Walker Senior Home Office Presenting Officer.

DECISION AND REASONS

1. On 4 March 2015 the respondent refused an application for entry clearance to visit the United Kingdom for a period of 3 to 4 months by the above-named appellant. The purpose of the visit is for the appellant to see his spouse, daughter and other family members in the UK.
2. The reason for refusal, set out in the decision under challenge, is in the following terms:

“In your current application you state that you are self-employed, trading as Rumena Store since 01/12/2000, earning £200 per month. It also states you have additional income of £90 per month from properties and rents. In support of your application you have submitted a trade licence and ownership of land receipts. However, I am not satisfied that these documents demonstrate yourself employment status and that you have the income levels claimed. Given the above, I am not satisfied that you have presented a complete and accurate picture of your personal and economic circumstances in Bangladesh. I am therefore not satisfied that you plan to leave the UK at the end of your visit or that you are genuinely seeking entry as a general visitor for a period not exceeding 6 months. (Paragraph 41 (i) (ii) of HC 395 as amended).

Discussion

3. The only ground of appeal available to the appellant, in light of the date of the decision under challenge, is on human rights grounds. It was accepted by both advocates that the tribunal has jurisdiction to consider the appeal on this basis.
4. There has been a history of decisions made by the First-tier Tribunal dismissing the appeal being set aside, most recently by Upper Tribunal Judge Canavan in a decision promulgated on 9 August 2018.
5. The matter was reserved to the Upper Tribunal and proceeds today on the basis this tribunal will substitute a decision to either allow or dismiss the appeal.
6. The appellant’s wife attended to give oral evidence. Two witness statements have been filed by this witness the first dated 24 October 2016 in which the witness confirms the appellant arrived in the United Kingdom with her on 24 February 2010 but returned to Bangladesh on 7 June 2010. Prior to that he had arrived in the United Kingdom as a visitor on 27 May 2007 and returned to Bangladesh on 5 September 2007 remaining on both occasions for 3 months and 2 weeks. The witness states the appellant returned as he did not like to stay in the United Kingdom permanent leaving his family behind in Bangladesh. At the date of that statement the witness stated they have 3 daughters aged 21, 18 and 16 and a married son aged 29 whom the appellant was looking after in Bangladesh and that unless and until they are married it was not socially acceptable to leave them without a guardian permanently.
7. The witness confirms the appellant runs a grocery store which pays for the needs of the family making profits of about £200 a month together with rent from properties and that the family have a good quality of life from that income. The witness states she asked her husband to visit her in the United Kingdom as she cannot visit him as a result of health needs as a result of which she receives Employment Support Allowance as a result of being unfit to work.
8. The witness states she is “dying to see her husband and 2 daughters” who she has not met for 6 years and states the visit is important to help her deal with her depression. The witness states the appellant will return to Bangladesh after about 3 months as he will not want to live in the United Kingdom permanently leaving the business and their daughters in Bangladesh.
9. The witness states her husband submitted the same documents that he provided in 2007 and 2010 and that there has been no change in circumstances.
10. In a 2nd witness statement dated 2 February 2018 the witness states her personal circumstances have deteriorated and that she is now in receipt of Personal

Independence Payment and Employment Support Allowance and needs help and supervision from her immediate family members. The witness states that her daughter and son-in-law have been looking after her very well and make sure that she needs everything and that she has been allocated a flat by the local authority.

11. The witness confirms again the appellant will not remain in the United Kingdom after the visit and that he will return as he has previously. The appellant says it is now 8 years since she last met her husband and that she cannot return to Bangladesh due to her personal circumstances. The appellant states her husband will still need to return to look after their children until they are married and that he is still in business in Bangladesh.
12. There was no cross examination of this witness who confirmed the content of the witness statements are true.
13. A number of documents and other witness statements have been provided in support of the application all of which had been considered.
14. Whilst the ECO may have had concerns it is clear that the evidence provided in support of earlier applications satisfied another ECO that the appellant is a genuine visitor to the United Kingdom, a fact amply demonstrated by the appellant returning to Bangladesh before the expiry of the visit visas in 2007 and 2010.
15. It was accepted family life recognised by article 8 ECHR exists and that refusal interferes with the exercise of that family life sufficient to engage article 8.
16. The proportionality of the decision requires consideration of the competing arguments. The ECO's argument is that because the appellant did not provide sufficient evidence to prove his circumstances are as claimed he will not return from the United Kingdom. The appellants argument is that he has always returned in the past, supported by evidence that he does not wish to live in the United Kingdom and strong ties to Bangladesh by way of his business and daughters who are as yet unmarried and who will require the appellant's presence as their guardian, in accordance with social norms, until such time as they are married and independent.
17. I am satisfied on the evidence that the respondent has failed to discharge the burden of proof to the required standard to establish that the interference with family life as a result of this decision is proportionate to the legitimate aim relied upon. There is no more than speculation that the appellant will not return to Bangladesh in the face of evidence clearly supporting his assertion that he will.
18. The sponsor, who attended to give evidence, was advised at the conclusion of the hearing that as the original decision was made in 2015 the ECO may wish to interview the appellant or contact him to obtain up to date information to ascertain his circumstances remain as they were at that time. This is an option fully open to the ECO and if such a request is made the appellant should cooperate fully, including providing documentation when required, to avoid the possibility of a further refusal.

Decision

19. **I remake the decision as follows. This appeal is allowed on human rights grounds.**

Anonymity.

20. 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 pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 19 October 2018