



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01533/2018
HU/01538/2018
HU/01540/2018

THE IMMIGRATION ACTS

Heard at Field House
On 19th March 2019

Decision & Reasons Promulgated
On 16th April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between

MISS HARIPRADHA RAMAJAYAM
MR SERONSON RAMAJAYAM
MR GNANAKRISHANAN RAMAJAYAM
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss C Patry of Counsel, instructed by Amirthan & Suresh Solicitors

For the Respondent: Mr L Tarlow, a Senior HOPO of the Specialist Appeals Team

DECISION AND REASONS

1. This is the Appellants' appeal against the decision of First-tier Tribunal Judge Geraint Jones QC in respect of a decision promulgated on 27th December 2018 in which the learned Judge dismissed the three Appellants' human rights appeals.

2. Although on the face of the decision it is stated that the hearing was at Hatton Cross on 23rd November 2018 it appears, and both the representatives today tell me, that in fact the hearing was on 14th December 2018.
3. At the appeal before me today the Appellant is represented by Miss Patry of Counsel and the Secretary of State is represented by Mr Tarlow, a Senior Home Office Presenting Officer.
4. Permission to appeal in this case has been granted by First-tier Tribunal Judge Bulpitt on 16th January 2019. Within the Grounds of Appeal three grounds are asserted. It was firstly asserted that the judge erred in failing to grant an adjournment to enable instructed Counsel to attend the appeal hearing. It is argued by Miss Patry today that the judge procedurally erred and failed to act fairly in not granting an adjournment.
5. Secondly it is argued that the judge failed to give adequate reasons for his findings on material matters in respect of the Sponsor's income and failed to deal with the actual issue that was originally raised by the Secretary of State in the refusal letter, namely whether or not the Sponsor's employment was genuine that had been dealt. And thirdly the judge failed to consider the best interests of the two children.
6. Given that one of the Grounds of Appeal related to whether or not Judge Jones QC had acted fairly in deciding not to adjourn the case and proceeding in circumstances where the Appellants were unrepresented, Upper Tribunal Judge O'Connor gave Judge Jones QC the opportunity of commenting upon that issue. In a letter dated 14th February 2019 the judge said that the Sponsor had said that she would like to go ahead even though her solicitor/Counsel failed to turn up. He said he is not in the habit of fabricating the content of a Record of Proceedings and that he actually had a recollection of the case because he was surprised that the Sponsor elected to go ahead absent a representative.
7. At the appeal before me in the Upper Tribunal today, Mr Tarlow on behalf of the Secretary of State has quite properly in accordance with his duty to the Tribunal conceded that in respect of the second Ground of Appeal, in terms of whether or not the judge failed to adequately consider whether or not the financial requirements were met at the date of decision, that the First-tier Tribunal Judge has materially erred in failing to consider that issue adequately.
8. As argued by Miss Patry of Counsel the original refusal by the Secretary of State in the refusal letter dated 24th November 2017 was on the basis that the Secretary of State was not satisfied that the sponsor was genuinely employed. The Sponsor had said that she was employed by Ganapathy CC Limited, but when interviewed on 9th October 2017 she said that she worked from 10am to 12pm, whereas her manager said that she worked from 12pm to 2pm. The Sponsor said that she worked two days a week whereas the manager said she worked five days a week and therefore the genuineness of that employment was questioned and the Secretary of State was not satisfied that she was genuinely employed and that thereby the financial requirements were met.

9. Judge Jones QC in his decision at paragraph 4 stated:

"I should say at the outset that there can be no basis whatsoever for this appeal whatsoever other than, possibly, Article 8 ECHR. I say that because there was not, and there is, no prospect of the Appellants demonstrating that their Sponsor has an annual income of £24,800 or more and/or that she had that level of income when their respective applications were made. I so find. The evidence from Mr. Annasingham did nothing to prevent that rather inevitable conclusion being reached."

10. The evidence however before Judge Jones QC were the witness statements from the Sponsor and from her employer together with a variety of P60s and wage slips.
11. In the Sponsor's statement Mrs Ramajayam stated in paragraph 3 that evidence of employment came from the wage slips and bank statement where money was remitted in accordance with the hours mentioned in the wage slips and the P60 which precisely indicated her annual salary in respect of the employment. She argued that a careful perusal of the document would establish a constant sequence and stability of her employment and that her wage slips, bank statement and P60 all reflected her version of events regarding her employment.
12. There was also a statement from her employer Mr Annasingham who in his statement dated 2nd October 2018 had set out how Mrs Ramajayam the Sponsor had been employed by his organisation since June 2016 on a part-time basis and that he had twenty employees working on payroll apart from the casual employees and his wife arranges shifts for staff and deals with all other related issues. He said he recalled receiving two phone calls referring to the same verification and the long conversation took place whilst he was at home. He said his answers to questions were from memory and at the time he did not have the opportunity of referring to the staff file and he said his direct involvement with the staff with regard to their shifts is very remote.
13. The P60s for the year ending 5th April 2018 have been submitted, which in respect of Ganapathy CC Limited was for in the sum of £5,880 before tax which is at page 11 of the Appellants' bundle before the First-tier Tribunal and the P60 in respect of the Sponsor's employment at Avery Homes Nelson Limited is at page 26 and is in the sum of £23,383.35 for the year ending 5th April 2018.
14. From the record of proceedings, no questions were asked in cross-examination of the Sponsor regarding her employment or the discrepancies in the account regarding her employment as discussed within the original refusal notice. She was simply asked questions in cross-examination on behalf of the Secretary of State at the First-tier Tribunal regarding her family life. As far as her employer was concerned no questions were asked in cross-examination at all of Mr Annasingham. He was called to give evidence and confirmed his statement but no questions were then asked of him. His recollection and account of why it was that there were discrepancies regarding the Sponsor's employment was therefore unchallenged at the First-tier Tribunal.

15. Despite that, Judge Jones simply said there was no prospect of the Appellants demonstrating the Sponsor had an annual income of £24,800 and/or that she had that level of income when the respective applications were made. However, the issue taken by the Secretary of State was whether or not the employment with Ganapathy CC Limited was genuine rather than whether or not she actually met the level of £24,800 in respect of her income. Clearly there was documentation before the First-tier Tribunal in respect of her income which at least for the year ending 5th April 2018 was in excess of that required amount.
16. But the issue before the judge was whether or not that employment was genuine. That issue Judge Jones QC has not dealt with, as properly conceded by Mr Tarlow today. Issue was not taken in the refusal notice regarding the level of income and if that was going to be something that Judge Jones QC then wanted to take issue with and find against the Appellants on that ground then quite clearly the opportunity should have been given for the Sponsor to deal with that point at the hearing. It cannot be the case that a judge can find against an Appellant on a basis which was not raised with the original refusal notice without giving that Appellant the opportunity of dealing with the concerns that the judge has on that issue.
17. In that regard it is quite clear that Judge Jones QC has not adequately dealt with the actual issue before him regarding the genuineness of the Sponsor's employment and has also wrongly taken issue with the level of earnings without giving the Appellant and the Sponsor the opportunity of dealing with that point when the same was not raised in the original refusal notice.
18. There is following the case of **MK (Duty to give reasons) Pakistan v Secretary of State for the Home Department [2013] UKUT 641 (IAC)** an obligation on a First-tier Judge to give sufficient reasons to enable the losing party to know why they have lost in an appeal. Given that in this case the Sponsor has submitted both a statement from herself and her employer together with P60s and wage slips, simply for the judge to say there was no prospect of the Appellants demonstrating the Sponsor had an annual income of £24,800 or more and/or that she had that level of income when their respective applications were made, fails to explain to the losing party, in this case the Appellants, why that was the case and why their documentary evidence was not acceptable or sufficient as far as the judge was concerned.
19. Mr Tarlow quite properly concedes that these are material errors such that the decision of First-tier Tribunal Judge Jones QC is set aside and the matter is to be remitted back to the First-tier Tribunal for rehearing before any First-tier Tribunal Judge other than Judge Jones QC.
20. Just dealing briefly though with the first Ground of Appeal. As Judge Jones QC quite properly pointed out, he had asked the Sponsor whether or not she wanted to proceed in the absence of her legal representatives. He had actually gone to the trouble of phoning the solicitors to find out why no representative was there, going beyond what many First-tier Tribunal Judges would do in that regard and he acted

very fairly as far as the Appellants were concerned in that regard. to see why their representatives were not there rather than simply proceeding.

21. I have seen a witness statement from the Sponsor dealing with that issue in which she also quite properly concedes that she was asked and did say that she wanted to go ahead, but she says that she panicked and did not really realise the consequences of going ahead and thought it might go against her if she asked for an adjournment. It is quite clear from that she did not ask for an adjournment and it has not been suggested that she was misled by Judge Jones QC in any way to believe that the appeal may go against her if she did not ask for an adjournment. She had agreed for the case to go ahead. I do not in those circumstances see that Judge Jones had acted in any way unfairly and did not procedurally err in those circumstances.

Notice of Decision

The decision of First-tier Tribunal Judge Geraint Jones QC does contain a material error of law and is set aside. The case is remitted back to the First-tier Tribunal for rehearing before any judge other than First-tier Tribunal Geraint Jones QC.

The First-tier Tribunal Judge did not make any order for anonymity and no such application has been made before me today and therefore I do not make any order for anonymity.

Signed

Date 14th April 2019



Deputy Upper Tribunal Judge McGinty