



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03331/2017

THE IMMIGRATION ACTS

Heard at Birmingham
On 6th February 2019

Decision & Reasons Promulgated
On 12th February 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MRS HOSAI TOURYAKHIL
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the appellant:

Mr Diwnycz, Senior Presenting Officer

For the respondent:

Mr S Woodhouse, Immigration Consultants, Birmingham

DECISION AND REASONS

Introduction

1. Although it is the Secretary of State who is appealing in these proceedings for convenience I will refer hereinafter to the parties as in the First-tier Tribunal.

2. Mrs Touryakhil is a national of Afghanistan, born on 1 May 1991. She applied for entry clearance to join her husband, Mr Mohammad Shafa Touryakhil, hereinafter referred to as her sponsor. He is a British citizen.
3. The application stated he worked in the Alum Rock Road branch of A1 Supermarkets.
4. Her application was refused on suitability grounds. The entry clearance officer concluded the representations about her sponsor's employment were false. The respondent's enquiries indicated that at the time of application A1 Supermarkets had 7 premises in Birmingham and Coventry. Checks revealed in 2011 this supermarket group was named as employing sponsors of two applications. In 2013 they were named in 6 applications. Between January 2014 and January 2016, 42 applications named them. The respondent in December 2014 decided to defer making decisions on applications naming this employer until further enquiries were made.
5. Sponsors were interviewed and there were apparent discrepancies in relation to employment details. The appellant's sponsor was also interviewed and was apparently unable to name colleagues and their duties and rates of pay.
6. On 9 February 2016 immigration officers visited one branch of the supermarket chain and concluded that although sponsors were listed in HMRC records there was no evidence of them actually working and the supermarket was unable to provide payroll details. The premises appeared to have no more than 9 employees whereas one sponsor at interview suggested there were 18. Following this visit no further applications were made in which this supermarket was named as employer.
7. The respondent took the view that the payments made to HMRC were contrived to suggest employment so as to support the applications. Reference was made to the variations in the salary ranges between £18,995 and £30,600. One sponsor said to be a cleaner claimed to have earned £31,800 which exceeded that earned by the store manager.

The First tier Tribunal

8. The appellant's appeal was heard before Judge of the First-tier Tribunal Hetherington at Birmingham on 19 February 2018. Both parties were represented. In a decision promulgated on 26 February 2018 the appeal was allowed on human rights grounds.
9. Paragraph 10 of the decision states:

`There is no need for me to record in detail the complex provisions of the immigration rules or the comprehensive evidence in the appellant's bundle. Trading with the name using the letter `A' without other letters

or numbers is perceived to give an alphabetical advantage in directories and is not confined to the sponsor's former employer. In English law limited companies have separate legal status. There is ample evidence testifying to the appellant's employment with A1 (Alum Rock Road) Limited including evidence from a director (pages 112-115 in the appellant's bundle) and the HMRC. This is a case where the appellant meets the financial requirements. The ECO has failed properly to investigate the employment of the sponsor. I find also that the entry clearance decision is updated'.

The Upper Tribunal

10. Permission was granted because it was arguable there was an inadequacy of reasoning in relation to the issue arising and the judge failed to provide reasons for the conclusion reached.
11. There is a rule 24 response. It is submitted that the judge gave reasons at paragraphs 10 and 12 of the decision as well as at paragraph 11.
12. It is clear from the refusal letter the respondent had noted a pattern in certain entry clearance applications; with sponsors declaring income from employment with a company known as A1 supermarkets Ltd. There was reference to the number of applications made in which this company featured resulted in decisions being deferred pending enquiries. Enquiries consisted of interviews with sponsors when apparent discrepancies were noted. Then, on 9 February 2016 there was a site visit to one of the supermarkets which confirmed the respondent's suspicion. HMRC records showed the payment of income tax but the respondent took the view that the payments were part of an attempt to portray employment which was not actually taking place. The issue for the judge to decide was the genuineness of the employment.
13. The grounds of appeal to the First-tier Tribunal assert the sponsor was in genuine employment and the documents submitted support this. It was suggested the entry clearance officer had relied upon generic reasons. The decision was reviewed by the entry clearance manager. The manager states that the entry clearance officer gave a number of reasons for not accepting the sponsor's employment and did not rely upon generic reasons. The manager stated the decision was made after a careful screening process.
14. For the appeal 2 bundles were provided on behalf of the appellant. The first was submitted in March 2017 and consisted of 17 items. The second bundle was submitted on 12 February 2018 and consisted of 38 items.
15. The 1st bundle contains a statement from a Mr Atal, a British citizen originally from Afghanistan. In correspondence he is described as the managing director for A1 supermarket (Alum Rock) Limited. He states that A1 supermarkets Ltd is the registered name for a company trading from

Stratford Road, Birmingham. He then refers to the other trading addresses and says that they are in fact operated by separate limited companies with similar names. The names are a variation on the A1 supermarket name, primarily varying according to the address. For instance, one company was using the registered name 'A1 Supermarket (Stratford Road) Ltd'. He also takes issue with the claimed visit on 9 February 2016 by immigration officials stating that the businesses were closed at that time.

16. The bundle contains a payroll printout in respect of the sponsor's employment. There is also a P60 for the year ending 5 April 2015 showing the sponsor earned £17,610 a year of which £1520 was paid in tax. No tax was deducted in respect of previous employments. There is also P60 for the following year, stating he earned £19,199 of which £1717 was deducted in tax.
17. The 2nd bundle contains a statement from the sponsor wherein he states he worked for A1 supermarket on Alum Rock Road until it closed. He then worked for the new supermarket until he became a taxi driver in April 2016. He refers to photographs showing him working. There are also statements from customers referring to the appellant's presence.
18. The decision is extremely brief. It does not say what witnesses were called or what evidence was considered. Paragraph 10 is the only specific reference to the issues raised in the refusal. The judge accepts the sponsor's employment and following paragraph refers to provisions in section 117 B, stating the financial requirements in appendix FM are met.

Conclusions

19. Whilst brevity is commendable the judge is required to evaluate the evidence presented and explain to the parties the reasoning behind the conclusion. It is wholly inadequate to simply refer to the appeal bundle and say its contents are being accepted. The judge was required to evaluate the application made and the evidence of employment. The judge was required to consider and evaluate what evidence there was in support of the suggested abuse. There may or may not have been records of the interviews with sponsors or of the visit to one of the premises. It is not apparent from the decision. There may have been carelessness in the naming and identifying the precise limited companies involved. All these matters require evaluation. The judge has not done this but has simply made a bald statement.
20. The Secretary of States grounds of permission refer to the decision of Budhathoki (reasons for decisions) [2014] UKUT 00341 which commended brevity but did said it was necessary for judges to identify and resolve the conflicts in the evidence and to explain in clear albeit brief terms their reasons so that the parties can understand why they have won or lost. This is

patently absent in the present decision. It may be that the respondent failed on an evidential basis to support the allegations. However, the judge does not explain this. Consequently, I find a material error of law requiring the decision to be set aside and the matter remitted for a fresh hearing de novo.

Decision.

The decision of First-tier Tribunal judge Hetherington allowing the appeal of Mrs Touryakhil materially errs in law and is set aside to be re-heard de novo in the First tier Tribunal. This appeal by the Secretary of State in the present proceedings is allowed.

Francis J Farrelly
Deputy Upper Tribunal Judge

Date: 10th February 2019

Directions

1. Relist for a de novo hearing in the First-tier Tribunal in Birmingham excluding Judge the First-tier Tribunal Heatherington.
2. An interpreter is not required unless the appellant's representatives advise to the contrary.
3. The issue in the appeal relates to genuineness of the sponsor's employment. No other issue had been taken by the respondent and the representatives should prepare accordingly. Reference should be made to the applicable legal and evidential burden of proof in respect of the respondent's allegations. Presumably, this would be akin to the English language personation cases.
4. The respondent should provide details of the investigations that were carried out and be aware that limited companies, even with similar names, are separate entities though they may have common directors. The respondent should provide copies of the evidence relied upon to show abuse by the alleged employer; for instance, the interviews referred to and the site visit. As a guide in assessing the genuineness of the stated employment, the respondent should also set out what income tax and national insurance was paid by the sponsor
5. If reliance is placed upon subsequent employment by the sponsor then the respondent should be advised in advance and asked to confirm if this is treated as a new matter and if consent is forthcoming.
6. The application date is not clear but it appears to have been made a number of years ago. The appellant's representatives should check whether there is a full right of appeal or if it is restricted to human rights considerations.
7. The hearing should take no more than 1 ½ hours.

Francis J Farrelly
Deputy Upper Tribunal Judge.

Date: 10th February 2019