



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/06799/2012

THE IMMIGRATION ACTS

Heard at Manchester
On 23rd September 2013

Determination Promulgated
On 24th September 2013

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR SHOUKAT PARVEZ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Mr R O'Ryan (instructed by Silverdale Solicitors)

For the Respondent: Mr G Harrison (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a citizen of Pakistan born on 1st October 1961. He appeals to the Upper Tribunal against a decision of the First-tier Tribunal (Judge Foudy) promulgated on 21st May 2013 dismissing his appeal against the Entry Clearance Officer's decision to refuse to grant him entry clearance as a spouse.

2. The judge dismissed the appeal on the basis that the Appellant could not be accommodated without reliance on additional public funds. She did so on the basis that the Sponsor currently receives a 25% discount on her council tax because she lives alone. She is entirely dependent upon public funds for payment of her rent and council tax and so that additional 25% would have to be financed by way of public funds. Although it was claimed that the Appellant had the offer of employment in the UK the Judge found that not to be genuine.
3. The Appellant sought and was granted permission to appeal to the Upper Tribunal by a Judge of the First-tier Tribunal on 1st July 2013. In granting permission to appeal the Judge noted that it was no error of law for a Judge to consider a different subparagraph of 281 of HC 395 at the hearing should it raise a concern for the Judge (see RM (Kwok On Tong: HC 395 para 320) India [2006] UKAIT 00039). However the Judge did find it arguable that in this case the First-tier Tribunal had erred in law by “not giving an opportunity to the Appellant to lodge appropriate documentary evidence to prove adequacy of maintenance in response if this was a new matter raised by the Judge for the first time during the hearing and for which the Appellant was not required to be prepared for or able to respond to”.
4. Mr O’Ryan provided me with the benefit and tax credit rates relevant at the date of decision and he also provided me with IO (“Points in Issue”) Nigeria [2004] UKAIT 00179.
5. It is accepted that the Entry Clearance Officer did not raise adequacy of maintenance or reliance upon public funds in the refusal. In reciting the reasons for refusal in her determination Judge Foudy does refer to the Appellant’s inability to be maintained and accommodated adequately without recourse to public funds. In doing so she was mistaken. The Entry Clearance Officer referred only to the adequacy of the accommodation. However, for the reasons which follow that has no bearing on the Judge’s decision and reasoning.
6. The Judge found in the Appellant’s favour on the other reasons for the Entry Clearance Officer’s refusal. However, when looking at accommodation and the adequacy of the accommodation which had been raised by the Entry Clearance Officer, the Judge noted that the rent and the council tax were paid for entirely from public funds. While the rent would not increase by virtue of the Appellant’s arrival in the UK, the council tax payable would. At paragraph 10 of the determination the Judge noted that Mr Malik, on the Appellant’s behalf accepted there would be an increase in the amount of council tax payable as he agreed that the Sponsor would lose her discount once the Appellant arrived. The Judge noted that Mr Malik argued that there would not however be any increased reliance on public funds because at the date of decision the Appellant had an offer of employment.
7. The Judge noted that there was no witness from the takeaway restaurant purporting to offer employment to confirm the offer and to establish that the business could afford to take on another employee, significantly as the position had apparently been

kept open for the Appellant for an inordinate period of time. The Judge also noted that no hours of work were specified and so it could not be shown that the earnings would be sufficient to eliminate reliance on council tax benefit. The Judge noted also that the offer of employment was not consistent with the oral evidence of the Sponsor. Unsurprisingly the Judge concluded the job offer was not genuine.

8. In the grounds seeking permission to appeal it is argued that in raising an issue not raised by the Entry Clearance Officer or indeed by the Home Office Presenting Officer at the start of the proceedings the Judge was guilty of procedural unfairness which amounted to an error of law. I note from the Judge's record of proceedings that they were a great many questions asked of the Sponsor about the job offer and in submissions the Home Office Presenting Officer referred to reliance on public funds in relation to council tax and the credibility of the job offer. It was also dealt with in his submissions by the Appellant's representative.
9. Accordingly, there is no question of procedural unfairness. The issue that was concerning the Judge was clearly canvassed at the hearing. Questions were asked and answered about it and submissions made on the point. The Appellant was professionally represented at the hearing and if the representative had any concerns over a new issue being raised he could and should have applied for an adjournment and yet he did not. No complaint was raised at the time about the new issue.
10. For the above reasons I find that the First-tier Tribunal did not make an error of law in its determination and the appeal to the Upper Tribunal is therefore dismissed.

Signed

Dated 23rd September 2013

Upper Tribunal Judge Martin