



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/24085/2012

THE IMMIGRATION ACTS

Heard at Field House
On 3 October 2013
Prepared 3 October 2013

Determination Sent
On 10 October 2013

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

ENTRY CLEARANCE OFFICER - DHAKA

Appellant

and

MD AMIR HOSSAIN

Respondent

Representation:

For the Appellant: Mr P Deller, Senior Home Office Presenting Officer
For the Respondent: Mr S Kamal, of Immigration Solutions Limited

DETERMINATION AND REASONS

1. The Entry Clearance Officer Dhaka appeals, with permission, against a decision of Judge of the First-tier Tribunal Majid who in a determination promulgated on 23 July 2013 allowed the appeal of Md Amir Hossain against a decision of the Entry

Clearance Officer, Dhaka to refuse him entry clearance to come to Britain as a family visitor.

2. Although the Entry Clearance Officer is the appellant before me I will, for ease of reference refer to him as the respondent as he was the respondent in the First-tier Tribunal. Similarly although Md Amir Hossain is the respondent before me I will refer to him as the appellant as he was the appellant before the First-tier Judge.
3. The appellant is a citizen of Bangladesh born on 31 December 1983. He made an application to come to Britain as a family visitor to visit his uncle for a period of two months. The application was refused by the Entry Clearance Officer who noted that the appellant had stated that he had been self-employed at Amir Hossain Constructions since January 2010 earning BDT35,000 per month which, on conversion amounted to £273 and that the appellant had stated that he spent BDT25,000 per month on family members and living costs (£195). That would leave him with a disposable income of £78. The Entry Clearance Officer noted that the appellant had not provided a trade licence, business bank statements, receipts, accounts or tax documents despite having claimed to have established his business since January 2010 and that, moreover, although he had claimed additional income from land he had not provided documentation showing what income was received.
4. He noted that the appellant had provided a personal bank statement showing a closing balance of BDT275,420 (£2,151) but that the financial transactions in the account did not reflect his stated income from employment - no funds, for example, had been deposited in January, February or March. Moreover the debits did not match the appellant's expenditure. BDT153,000 (£1,195) had been deposited in May alone which had been 50 times the appellant's stated monthly disposable income. It was claimed that he had not adequately explained the origin and history of the funds held in the account. It was stated that this cast doubt on the appellant's claim that he had been established in business and was in receipt of the income stated.
5. It was also said that he had not provided sufficient evidence of his personal, social and financial situation in Bangladesh such as to indicate that he would have any incentive to leave Britain at the end of the short stay. It was therefore not accepted that he intended to travel to Britain solely as a visitor and that he would leave Britain at the end of the visit.
6. It was therefore decided that the appellant had not shown that he was a genuine visitor who would leave at the end of his visit.
7. Issues of accommodation and maintenance by the sponsor were also questioned.
8. Judge Majid heard the appeal on 19 June 2013. He heard evidence from the sponsor and some submissions from both representatives before noting that the sponsor had said that he would fund the appellant's air ticket. In paragraph 16 he commented:-

“Those who know about the sale of travel tickets know that a one-way ticket is very expensive to buy and commonsense dictates that a return ticket is purchased. The ticket having been purchased, the appellant’s visit to this country becomes a minor issue.”

He then went on to say that it was clear from the sponsor’s declaration that the appellant was not the kind of person who would break the law.

9. In paragraphs 18 onwards of the determination he appeared to deal with the issue of the rights of the appellant under Article 8 of the ECHR. Having referred to the judgment of the House of Lords in **Beoku-Betts v SSHD [2008] UKHL 39** he stated that it was important to take into account the rights of others other than the appellant.
10. In paragraphs 31 and 32 he stated:-
 - “31. I am fully conscious of the ‘legal requirements’ stipulated by the Immigration Rules. I am clearly persuaded that it is a straightforward family visit, having no risk of the appellant becoming a burden on public funds. Of course, the sponsorship declaration gives clear evidence of that fact.
 32. Accordingly in view of my deliberations in the preceding paragraphs and having taken into account all of the oral and documentary evidence as well as the submissions at my disposal, cognisant of the fact that the burden of proof is on the appellant and the standard of proof is the balance of probabilities, I am persuaded that the appellant merits the benefit of the Immigration Rules HC 395 (as amended) as well as the provisions of the ECHR.”
11. He therefore stated that he allowed the appeal.
12. The Entry Clearance Officer appealed, firstly stating that the judge had erred in not adjourning the appeal but secondly stating that there was no clear finding on the issue of maintenance. The grounds referred to the fact that the judge, in paragraph 12 and 13 had stated that maintenance was the only issue raised by the Entry Clearance Manager.
13. I indicated at the beginning of the hearing that I found that there were errors of law in the determination of the Immigration Judge and that he had not properly considered the reasons for the refusal of the application and had failed to give clear and reasoned findings for his decision.
14. Mr Kamal argued, however, that the issue of accommodation was no longer in issue and that the judge had dealt properly with the issue of maintenance. There were good reasons why the appellant would come to visit the large numbers of relatives which he had in Britain and that food and accommodation would be provided. He referred to the appellant’s bank statements which showed that he would easily be able to pay for the return ticket and relied on the evidence of the sponsor that there

was no hidden agenda and that the sponsor would ensure that the appellant would return to Bangladesh.

15. I found that there are material errors of law in the determination of the judge. He simply does not engage with the issues in the refusal. He does not consider in any way the appellant's business and how the appellant would have been able to amass the large sum in his account from which he proposed to pay for the air fare. He does not engage with the issue of intention. Moreover he was wrong to find that the appellant's appeal could succeed on human rights grounds. The appellant is aged 29. It does not appear that he has ever lived with the relatives whom he wishes to visit or has he seen them in recent years. It cannot be said that the appellant is exercising family life with them. The judgment of the Court of Appeal in Kugathas [2003] EWCA Civ 31 is clear: unless there are unusual circumstances it is most unlikely that family life can be shown between adults. Certainly in this case no such circumstances exist. I would add that the judge's reference to the judgment of the House of Lords in Beoku-Betts is clearly distinguishable. In that case a young man was to be separated from the family with whom he had lived in Britain for many years – it was a removal case. Those circumstances are completely different from those of the appellant and the sponsor.
16. Having found that there was a material error of law in the determination it was agreed by both representatives that it would be appropriate for me to hear and determine the appeal rather than remitting it to the First-tier Tribunal.
17. The sponsor Mr Md Lal Miah gave evidence relying on his witness statement. He said that he had last seen the appellant in 2010. When asked about the large sums deposited in the appellant's account he stated that the appellant ran a cash business and that he would put money in the account to buy the materials for the business. However, on a day-to-day basis he would be receiving money from clients which he would use to pay the labourers who worked for him. He stated that he would help the appellant should he require further support while he was in Britain but that the appellant had clearly enough money for his return ticket. He would make sure that the appellant returned to Bangladesh by informing the police if he wished to overstay but in any event he would make sure he went. He said that the appellant would stay with him here.
18. In reply to questions from Mr Deller he stated that his home had a sitting room and two bedrooms. He had three children aged 8, 5 and 1. The 8 year old had his own room and the other two children slept in the same bedroom as he and his wife. The appellant would sleep on a bed in the reception room.
19. He again emphasised that the appellant ran his business on the basis of "cash money." He could come to Britain to see England and his family. He would only stay two to four weeks.

20. Mr Deller put to him that the appellant had said that he would stay two months but the sponsor said that he would be unable to stay for that length of time here.
21. In his submissions Mr Dellar adopted the terms of the refusal. He accepted that the accommodation requirements were met but with regard to maintenance he referred to the lack of evidence of the appellant's own income and stated that that was relevant both with regard the issue of maintenance but also regard to the intention to return. He stated that there were clearly discrepancies about the length of the visit and doubts over when the appellant would leave. He asked me to make an adverse inference from the evidence before me and to find that the appellant had not discharged the burden of proof upon him.
22. In reply Mr Kamal again emphasised that the appellant worked on the basis of a "cash business" and that he had good reasons for doing so - he was paying the labourers he employed daily. Moreover the money in his account showed his ability to pay for the air ticket. Clearly it was his intention to return to his business. Mr Kamal emphasised that the appellant's mother had obtained a visit visa in 2007 (when the appellant had been refused) and that she had come to Britain and then returned. He asked me to find that the appellant was genuine and credible when he stated that he intended to leave at the end of the visit and that therefore he met the requirements of the Rules.

Decision

23. Quite correctly for the reasons which I have set out above Mr Kamal did not argue that the appellant's rights under Article 8 of the ECHR were infringed by the decision.
24. The central issue in this appeal is that of the intention of the appellant to return at the end of the visit. To ascertain that intention it is necessary to consider the life which this appellant was leading in Bangladesh. He is not married nor does he have children in Bangladesh. What he claims is that since 2010 he has been running a business there - it is a business in which some labourers are employed. The Entry Clearance Officer in the refusal pointed out that there was scant evidence of the business. Some documentary evidence by the way of licences was later produced but as the Entry Clearance Manager pointed out such documents can easily be obtained in Bangladesh. It is more important to consider the evidence of the appellant's bank accounts particularly in the light of his claimed income in Bangladesh.
25. The bank accounts do not show that the appellant is running a profitable business in Bangladesh. There is nothing to show his regular monthly income. Even if it were the case that a certain amount of the money which he received was used for cash payments to daily labourers there should surely still be the profit element that would go into his own account and I would expect that to lead to increasing amounts saved over a period of time. There is nothing to indicate that that had happened: rather there is the large sum of money - no evidence is given as to exactly where that

money came from – placed in the appellant’s account. The appellant had the opportunity of producing evidence to explain how that sum arrived and indeed to show the accounts of the business or even tax returns that would show that the business was functioning and it was in profit such that he would be able to not only support himself in Bangladesh but would also be able to build up the funds that would fund his holiday – given the level of his income it would surely have taken him some considerable time to build up enough for the air fare let alone the sum of over £2,000 which suddenly arrived in his account – but that evidence was not produced.

26. These factors were such as to lead the Entry Clearance Officer to question the status of the appellant’s business and hence the issue of whether or not he had a business to which he would return in Bangladesh.
27. Taking these factors into account I find that the appellant has not discharged the burden of proof – the balance of probabilities – which rests on him.
29. I accept that the accommodation requirements of the Rules would be met and moreover that it is likely that the sponsor would have sufficient funds to support the appellant during a short visit. However, I find that the appellant has not shown that he intends to return to Bangladesh after a short visit and for that reason I dismiss this appeal.

Decision

This visit appeal is dismissed.

Signed

Date

Upper Tribunal Judge McGeachy