



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: VA/35335/2012
VA/35339/2012

THE IMMIGRATION ACTS

Heard at Field House
On 31 July 2013

Determination Promulgated
On 6 September 2013
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Before

UPPER TRIBUNAL JUDGE PETER LANE

Between

TAHIR MEHMOOD
SAKEENA BI

Appellants

And

ENTRY CLEARANCE OFFICE - ABU DHABI

Respondent

Representation:

For the Appellants: Mr S. Hussain, Solicitor, of Mitchell & Co Solicitors
For the Respondent: Ms A. Holmes, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are citizens of Pakistan, born respectively on 27 December 1967 and 1 January 1948. They are son and mother. They applied for entry clearance as visitors to see the sponsor, Mr Zafar Mehmood, who is the son of the second appellant and

brother of the first appellant. Their applications were refused by the respondent on 9 September 2012.

2. The appellants appealed against that decision to the First-tier Tribunal, where their appeal was heard on 2 May 2013 by First-tier Tribunal Judge Britton. He dismissed the appellants' appeals in a determination dated 16 May 2013.
3. On 27 June 2013 permission to appeal against the decision of Judge Britton was granted by the First-tier Tribunal. The main matter which appears to have troubled the granting judge was that the sponsor gave oral evidence, which contradicted certain written statements made by the appellants. The granting judge appeared to think that there was an arguable procedural unfairness in this regard.
4. On 31 July 2013, Ms Holmes, for the respondent, conceded that there was an error of law in the determination of Judge Britton on this issue. That concession strikes me as generous; nevertheless I see no legitimate reason to go behind it. The position, accordingly, is that I re-make the decision in these appeals. In doing so, however, I have treated Judge Britton's determination as a record of what was said to him at the hearing. I indicated as much to the parties on 31 July.
5. The second appellant was a widow living on a pension. The first appellant described himself as an agriculturalist, who also derived an income from hiring out an agricultural vehicle and a car. The first appellant supplied the respondent with various pieces of documentation concerning the vehicles and his land. In particular, documents of July 2012 showed payments in respect of a crop of wheat. There was also evidence showing that the appellant had a wife and four children to support.
6. In the notice of decision, the respondent stated that the documentation provided did not satisfy the respondent that the first appellant received the income claimed from his land and vehicles. A copy of the personal bank statement for the first appellant showed two cash deposit payments in July 2012 totalling PKR 450,000 (£2,958.62), which was "almost 10 times your claimed total monthly income". The respondent was, accordingly, not satisfied that the first appellant had satisfactorily evidenced his circumstances. The respondent was also not satisfied that the first appellant's proposed expenditure was commensurate with his evidenced circumstances. As a result of these matters, the respondent was not satisfied that the first appellant was genuinely seeking entry as a visitor, as required by paragraph 41 of the Immigration Rules. The respondent voiced similar concerns in respect of the second appellant, given that their applications were joint ones.
7. At the hearing before the First-tier Tribunal Judge, the sponsor, who gave evidence with the assistance of an interpreter, is recorded as having stated that the first appellant would pay for the travel of the first and second appellants to the United Kingdom but that the sponsor would maintain them whilst in this country:

“It was put to the sponsor that his brother had stated that his sponsor was going to pay for their travel. The sponsor said he will pay for his maintenance while he is in this country, not their travel. He was not aware that his brother had stated that he, the sponsor, was going to pay for their travel.” [12]

8. In his evidence to me, given with the assistance of an interpreter, the sponsor said that he had paid for the travel tickets of the appellant. He had done so in April 2013. Asked, therefore, about paragraph [12] of the First-tier Tribunal’s determination, the sponsor said that “maybe I said something that was wrong.” He then said that it was possible he had not understood. The sponsor gave no clear answer to the question of whether it had always been the intention of the parties that he should pay for the travel costs of the appellants. Asked why the appellants needed to have travel money sent from the United Kingdom, the sponsor said that he went to Pakistan every year and they would spend money on him and his family. When it was put to the sponsor by Ms Holmes that he had been untruthful about who would pay for the tickets, the sponsor replied that he had not understood. He had given £1,500 in cash to a friend who had taken it to Pakistan, where it had been paid to an agent to buy tickets. The sponsor showed me documentation relating to this transaction.
9. I have taken account of all the evidence in this case and of the submissions made by Ms Holmes and Mr Hussain. It is for the appellants to prove on the balance of probabilities that they meet the relevant requirements of the Immigration Rules. In the present case, the issue is whether a genuine visit is intended and whether the appellants intend to return at the end of that visit.
10. I fully appreciate the difficulties faced by somebody in the position of the first appellant, in establishing his economic circumstances in Pakistan. It is clearly unrealistic in such a case to expect detailed, independent audited accounts showing family income and expenditure over a suitable period of time. That said, however, there are plainly difficulties with the evidence put forward by the appellants in the present case. The second appellant is a widow of modest means, who is now aged 65. Her evidence does not sufficiently indicate ties with Pakistan, such as to lead her to return. The first appellant, by contrast, has a wife and four children. That consideration is one to which I give weight.
11. However, I do not in all the circumstances consider that it overrides the problematic features of the first appellant’s evidence. Even making allowances for the matters I previously described, the evidence regarding his economic position in Pakistan was and remains problematic. The large payments into the first appellant’s bank account, which troubled the respondent, might relate to the sales of wheat. The position is, however, not clear. In order to get a coherent picture, evidence over a much longer period was needed, which could show how the first appellant’s claimed average monthly income derived from the sales of produce from his land, as well as rentals from his vehicles.

12. Notwithstanding all this, it might have been possible to make allowance for the various evidential deficiencies, had the other evidence adduced in support of the appellants been cogent. That, however, is not the case. As is already apparent, the evidence of the sponsor is particularly problematic. Other than vaguely referring to possible misunderstandings, he could not explain why he had said what is recorded by the First-tier Tribunal Judge at [12] of the determination. On the contrary, his evidence to me made what he said to the First-tier Judge intensely problematic. It frankly beggars belief that the sponsor would not have said that he had paid for the costs of travel if, as he told me, prior to the hearing in May 2013 he had sent a significant sum in cash to Pakistan, to be used for precisely that purpose. The suggestion that, having done so, the sponsor was then able to say that he was not going to pay for the travel is, frankly, unsatisfactory. On a matter that could be tested, the evidence adduced on behalf of the appellants can be seen to be lacking in credibility. Notwithstanding Mr Hussain's submissions, I consider that this properly affects the view I should take of the documentary evidence relating to the first appellant's financial circumstances in Pakistan. There is, in short, no scope for giving any "benefit of the doubt" to the appellants, as regards that evidence. I conclude that I have not been given a credible or coherent account of the socio-economic situation of the appellants. In all the circumstances, I conclude that they have accordingly failed to show that a genuine visit is intended and that they intend to return at the end of that visit.
13. I note that the sponsor has signed what he describes as an undertaking, that he will be responsible for "all the required costs for their deportation", should the appellants refuse to leave at the end of their permitted time in the United Kingdom. This document is, however, dated 2 October 2012, and thus postdates the decision in question. By reason of section 85A of the Nationality, Immigration and Asylum Act 2002 in a case of this kind I may consider "only the circumstances appertaining at the date of the decision". Particularly in view of my findings regarding the sponsor, I am not satisfied it has been shown that this undertaking relates to such circumstances. Indeed, I regard that undertaking and what the sponsor said at the end of the hearing, that he was prepared to "put my house as a guarantee", as further examples of the sponsor's propensity to say anything he thinks it might take in order to enable the appeals to succeed.
14. For these reasons, I find that the appellants have not discharged the burden of showing that they meet the requirements of the Immigration Rules. This does not, however, mean that any applications they might make in the future are doomed to failure. On the contrary, if the appellants are able to put forward satisfactory evidence regarding the position of the first appellant, in terms of his income and outgoings, a different result might ensue. That is so, notwithstanding the negative findings I have made in respect of the sponsor. Amongst other things, he told me that he had successfully sponsored three or four other people to visit the United Kingdom from Pakistan and that each had returned. No further details were given. As a result, although I give that evidence no significant weight in the context of the

present appeals, detailed evidence in the context of any future applications may well be of material assistance to the appellants.

Decision

15. The determination of the First-tier Tribunal has, by concession, been set aside for error of law. I accordingly re-make the decision as follows. The appellants' appeals against the refusal decisions of the respondent are dismissed.

Signed

Date

Upper Tribunal Judge Peter Lane