Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/21073/2012

THE IMMIGRATION ACTS

Heard at Bradford **Determination Promulgated**
On 30 October 2013 **On 22 January 2014**
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Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

SLAMAT ALI KHAN

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

DETERMINATION AND REASONS

1. The appellant, Slamat Ali Khan, was born on 15 June 1979 and is a citizen of Pakistan. The appellant appealed to the First-tier Tribunal against the decision of the respondent (the Entry Clearance Officer, Islamabad) who refused to grant him entry clearance to the United Kingdom as the spouse of a person present and settled in the United Kingdom. That decision was made on 9 October 2012.

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2. The application was subject to the requirements of paragraph 281 of HC 395 (as amended). There are three grounds of appeal. The findings of the First-tier Tribunal as regards the maintenance requirement are summarised in the grounds [3.2-3.3]:

> "[22] The FTT noted the sum of sum of £205.84 per week was required to reach the level of adequacy for maintenance. This comprised £111.45 (income support for a couple); £64.99 (for a child); £17.40 (family premium); £12 (council tax).
>
> [23] The FTT noted that the income of the sponsor (£141.07) fell short by £64.77
>
> At [25] The FTT accepted the sponsor had savings of £3678.81 at the date of the decision.
>
> At [26] The First-tier Tribunal divided this amount by 104 weeks (equivalent to £35.37 per week) but found nevertheless that the revised weekly figure of £176.44 was still below the level needed to satisfy the income support threshold of £205.84."

3. The grounds go on to assert that the appellant had applied for a transfer of the conditions of a previous visa which had been endorsed in a passport which the appellant had lost in the United Kingdom. The appellant and his United Kingdom spouse suffered problems in their marriage and the appellant had returned to Pakistan. However, the couple had reconciled and the appellant then sought to transfer the conditions of his visa (which expired on 26 August 2012) to his new passport. However, the decision on the appellant's application was not taken by the ECO until 9 October 2012; as the respondent states in the Rule 24 response of 12 September 2013 "any transfer would have been of no value to the appellant. The ECO then triggered the application as a fresh application for a settlement visa."

4. The grounds assert that there was no reference to the transfer of conditions application in Judge Reed's determination. That is not accurate. At [4] the judge noted that "the appellant had wanted to transfer his conditions to a new passport." The grounds assert that the guidance for those wishing to transfer the conditions on an existing visa to a new passport "only mentions that the applicant should complete the form and submit it with the full fee. It does not mention that supporting documents should be provided (as in a fresh settlement application)." If the ECO required additional information from the appellant, it should have been requested.

5. It is not entirely clear to me exactly what error Ground One submits the First-tier Tribunal Judge perpetrated. If it was that the judge had failed to understand the nature of the application, then that is not the case for the reason I have given. If it is then the ECO should have asked for additional information to support the application, I do not see why that would indicate an error of law in the determination.

6. Ground Two has more substance. Because the appellant had eight months of leave on his initial visa remaining at the time he made his application for a transfer of conditions, it is submitted that the sponsor's savings should have been spread over

the eight month period rather than over a period of 104 weeks, that is the initial probationary period of any new grant of leave to remain. As the grounds assert:

> Undertaking this calculation [over a period of eight months] it is clear that the appellant was able to demonstrate adequate maintenance: £3,678.81 ÷ 34 = £108.20. This would be more than sufficient to cover this shortfall of £64.67 identified by the FTT at [22].

7. The grounds are correct in stating that in stating that the judge spread the sponsor's savings of £3678.81 over a period of 104 weeks [26]. The resulting notional income figure amounted to £176.44 per week which, as the judge noted, was still "well below the figure that will be given by way of income support such a couple with a child once their housing costs had been met (which as I set at above works out in total at £205.84)." The appeal was dismissed under paragraph 281(v) accordingly.

8. The grounds do not assert that there was an undue delay between the appellant making his application for a transfer of conditions and the decision of the ECO. I find that any delay was reasonable in the circumstances, given that the appellant's relationship with the United Kingdom sponsor appeared to have broken down only for there to be a subsequent reconciliation. As the Rule 24 response notes, it was necessary for the ECO to consider the application "after undertaking due diligence in the light of [those] circumstances." I consider the point is well made in the Rule 24 statement that the application for a transfer of conditions was meaningless after the appellant's existing visa expired on 26 August 2012. Further, the appellant's representative did not disagree with me when I suggested to him that, had the ECO granted the appellant's application, then the resulting visa would have been for a two year period and not simply the remaining period of his previous visa. It would, therefore, have been meaningless for the judge to have calculated the available income over any period other than that of two years because (a) there was no visa to which the conditions might be transferred after August 2012 and; (b) the transferred or new conditions would be contained in a visa having an expiry date two years from the ECO's decision. In the circumstances, I find that the judge has not erred in law in his approach to the evidence and in his calculations.

9. Ground Three asserts:

> The FTT also missed the fact that the sponsor has a child and receives child benefit or £20.30 per week. This ought to form part of the maintenance calculations.

10. In the light of the calculations of Judge Reed which I have set out above and which I find to be accurate, a further addition to the income of the sponsor of £20.30 per week would still not carry the appellant above the threshold of £205.84.

11. Judge Reed went on to dismiss the appeal on Article 8 ECHR grounds also. However that part of the determination has not been challenged.

12. For the reasons I have stated above, this appeal is dismissed.

DECISION

13. This appeal is dismissed.

Signed Date 10 December 2013

Upper Tribunal Judge Clive Lane