



**UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)**

**APPEAL NUMBERS: VA/05641/2013  
VA/05642/2013**

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On: 5 August 2014  
Prepared: 11 August 2014**

**Determination Promulgated  
On: 13 August 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAILER**

**Between**

**MR HARMANJIT SINGH (1)  
MRS MANDEEP KAUR (2)  
NO ANONYMITY DIRECTION MADE**

**Appellants**

**and**

**THE ENTRY CLEARANCE OFFICER: NEW DELHI**

**Respondent**

**Representation**

**For the Appellants: Mr D Coleman, counsel (instructed by Charles Simmonds Solicitors)**

**For the Respondent: Mr P Deller, Senior Home Office Presenting Officer**

**DETERMINATION AND REASONS**

1. The appellants are nationals of India, and are husband and wife. Their appeals against the decision of the respondent dated 11<sup>th</sup> September 2013 refusing their applications for an entry clearance as visitors to the UK were dismissed by First-tier Tribunal Judge Napthine in a determination promulgated on 30<sup>th</sup> April 2014.
2. Following the submission of lengthy grounds of appeal, First-tier Tribunal Judge Osborne granted them permission to appeal to the Upper Tribunal. It had been contended that the Judge had not had proper regard to the documentation before

him. He noted that the First-tier Judge referred indirectly to the fact that the sponsor attended to give oral evidence at the hearing before him but failed to set out either in summary or in any detailed form the substance of her evidence.

3. In granting permission, Judge Osborne stated that the Judge should accurately record details of the hearing including the evidence of all witnesses including the sponsor. Whilst their sponsor may not be able to give detailed financial information about the appellants' circumstances, the Judge was nevertheless under a duty to indicate which evidence he accepted and which he rejected.
4. The First-tier Tribunal Judge had stated [20] that without proper accounts how could any profit from the land and the hire out of a lorry be assessed. A number of people are dependent on the first appellant's agriculture for the income generated. He accordingly found that the appellants had not proved that their financial and social circumstances in India were such that they are likely to return at the end of the trip.
5. In the Rule 24 response, the respondent opposed the appeal initially as without the extensive documentary evidence not immediately available it could not be accepted that the determination is flawed.
6. At the hearing on 5<sup>th</sup> August 2014, Mr Deller on behalf of the respondent indicated that he had now had the opportunity to consider the documentary evidence, including the statements.
7. Mr Coleman relied on the grounds of appeal, which he did not draft. He submitted that this is a "straightforward visit case."
8. It had been accepted that the sponsors were to bear the costs of the visit. The Judge in the short determination failed to engage with the evidence, including the appellants' circumstances. Nor did he "engage with the sponsor's evidence." Although noting that he had taken into account the documentation including the appellants' bundle and although finding from the sponsor's evidence, that her parents did not overstay their visa period, indicating that the sponsor was a credible witness, he ought to have had regard to the sponsor's further evidence regarding the appellants' circumstances in India.
9. Further, the Judge's statement at paragraph 18 that the first appellant's income is not demonstrated from the bank statements submitted, failed to have regard to the various land deeds, crop receipts produced as well as bank statements for any cash that is deposited. This is a cash based economy and farming income is not taxable. There was also an accountant's report that had not been considered.

10. He submitted that it was irrelevant “how rich or poor they are”. That is because it was accepted that the sponsor would be bearing the costs of the trip. The income from agriculture is pooled and the family lives on the shared amounts.
11. Further, the findings at paragraphs 22, 23 and 24 do not have regard to the evidence and in particular the sponsor's evidence. Mr Coleman referred to paragraphs 11, 13 and 14 of the sponsor's witness statement. In it, she states that her brother provided what was available for him and his share of the income. This consisted of land deeds, translations, crop receipts, a chartered accountant's report and bank statements.
12. At paragraph 13 of her statement, she stated that the land is owned by them and is 13.5 acres and that the income earned was “between the four of them at the time.”
13. He submitted that the evidence thus showed that there was a smallholding for the family to live on. The Judge did not engage with the appellants' circumstances in India. There were no proper findings relating to the sponsor's evidence regarding those circumstances.
14. On behalf of the respondent, Mr Deller stated that what concerned him was that the sponsor's evidence referred to and dealt with matters relevant to the appellants' intention to leave the UK. There had been no suggestion that the funding would not be available.
15. He submitted that it may be that the Judge ‘did search too hard’ for the financial circumstances of the appellants. However, he accepted that the sponsor's evidence went to address the respondent's reasons, and in particular the apparent lengthy visit by her parents. That was a matter which was resolved in their favour by the Judge.
16. He submitted that although a specific finding of credibility cannot “be extrapolated into a general finding regarding her credibility” the Judge did not deal with the balance of her evidence.
17. Moreover, Mr Deller very properly pointed out that the sponsor had sponsored her husband's parents and his young nephew. They all visited and returned home having fulfilled the conditions of their visas.
18. He submitted that if the sponsor “has form” in relation to overstaying visitors, then that can have a significant impact relating to the intentions of the appellants. However, having regard to her good track record, how would this have been different in respect of these appellants' cases?

19. Mr Deller therefore accepted that the First-tier Tribunal had not given proper consideration and weight to the evidence of the sponsor. He should have considered the implications of the rest of what the sponsor said. The Judge however looked 'too searchingly to the appellants' resources'.
20. Having considered the submissions of the parties, I find that the decision of the First-tier Tribunal did not properly deal with the evidence of the sponsor. Nor was her track record of successful sponsoring of family members taken into account. I set aside the decision and remake it.
21. Mr Coleman called Mrs Rupinder Kaur to give evidence. She adopted her witness statement dated 24<sup>th</sup> March 2014. The only change to the statement is that she has since given birth to her child.
22. Mrs Kaur is a Portuguese national, as is her husband. They are both employed and their "cumulative income" exceeds £40,000 per annum. They also have savings of over £7,000 in a joint account.
23. The appellants are her brother and sister in law. She confirmed her sponsorship declaration dated 10<sup>th</sup> January 2013. Their children do not have appeal rights. The appeals are only being brought on behalf of the appellants. Even if the appeal were to succeed, the children would not seek to accompany the appellants to the UK.
24. Her brother and sister in law live in a joint family in India, in the paternal family home. They are self employed and have comfortable lives. They have shared family living costs, no rent, no mortgage and only small bills. Their children are both at school and doing well.
25. The land owned by the appellants comprises about 13.5 acres and the income is about Rs 850,000 between the four of them.
26. The land deeds produced indicate that her brothers, father and grandfather own the land. Her brother explained what income is made per acre and how the income is roughly split. There is no tax payable on the income. That is why there are no tax documents.
27. She confirmed that her brother does the work he stated and earns the income claimed. That income has since "gone up".
28. He also has funds in his Punjab National Bank Account which he holds.
29. She "completely disagrees" with the assertion of the respondent that the appellants would not return to India after their visit. They have every reason to return because of their own circumstances and because of hers as their sponsor.

30. She has sponsored other relatives who have always complied with the terms of their visas. She would not allow anyone to jeopardise or affect her position or her record.
31. Nor is it true that her parents visited the UK for nine months on a six month visa: - that has been accepted and is no longer a contention.
32. Mr Coleman asked her whether they would go back. She said that they have family there. She will not keep them here. Nobody has stayed before. Their children would be left behind. Were the appeal to succeed they would not bring the children over.
33. Mr Deller did not ask any questions. He was content for the contents of the witness statement to stand.
34. In submissions, Mr Deller accepted that the parents had not overstayed in their visit. The question is whether on the balance of probabilities, the appellants have discharged the burden of showing the genuineness of the visits and their intentions to return. The evidence should be looked at in the round.
35. On behalf of the appellants, it was submitted that the sponsor should be found to be credible. This is a straightforward visa case. The children are being left behind. There are "big familial roots to return to." There is income generated from the land which has to be worked. Regard also should be had to the previous track record of the sponsor.

#### **Findings and determination**

36. I found the evidence of the sponsor to be credible. There has been no challenge to any of her assertions.
37. I accordingly accept that the appellants live in a joint family in India in the family home. They are self employed and share family living costs. Their children are at school. In any event they would not be accompanying their parents to the UK.
38. I have also had regard to the sponsor's record of sponsoring relatives. There has never been any overstaying.
39. In these circumstances I have no reason to suppose that the intentions of the appellants are anything other than that which they have given. It is difficult in these circumstances to imagine any ulterior motive in wanting to visit the UK. It is perfectly natural that they would wish to visit family members here. I am also satisfied that they have strong social as well as financial roots in India.

40. Having regard to the evidence as a whole, I find that the decision of the respondent was not in accordance with the law and the immigration rules.

**Decision**

Having set aside the decision of the First-tier Tribunal, I re-make the decision allowing the appellants' appeals.

No anonymity order made.

Signed

Date 11/8/2014

C R Mailer

Deputy Upper Tribunal Judge