



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/07593/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 9th June 2014

Determination Promulgated
On 26th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

MOHAMMAD MAHMUDUL KARIM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellant: Mr K Noor of Noor Law Associates
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction and Background

1. The Appellant appeals against a determination of Designated Judge of the First-tier Tribunal McClure promulgated on 31st January 2014.

2. The Appellant is a citizen of Bangladesh, born 6th April 1985 who applied for entry clearance to the United Kingdom as a visitor. He indicated that he wished to visit his grandfather for a period of two months.
3. The application was refused on 24th March 2013 with reference to paragraph 41 of the Immigration Rules. The Respondent did not accept that the Appellant was genuinely seeking entry to the United Kingdom as a visitor for a limited period as claimed, nor that he intended to leave the United Kingdom at the end of the visit, and it was not accepted that the Appellant had proved that he could meet the cost of a return or onward journey. The Respondent therefore relied upon paragraph 41(i), (ii) and (vii) in refusing the application.
4. The Appellant's appeal was heard by Judge McClure (the judge) on 24th December 2013. The judge heard evidence from the Appellant's grandfather Hobibur Rahman and considered a substantial bundle of documents submitted on behalf of the Appellant. The judge dismissed the appeal, not being satisfied that the Appellant intended a visit to the United Kingdom for the period stated, or that he would leave the United Kingdom at the end of the visit. The judge was not satisfied that the Appellant could be adequately maintained and accommodated in the United Kingdom.
5. The Appellant applied for permission to appeal to the Upper Tribunal which was granted in the following terms by Designated Judge French;
 1. The Appellant applies in time for permission to appeal the decision of Designated Judge McClure to dismiss his appeal against refusal of entry clearance as a visitor.
 2. In the grounds it is argued that the judge erred in not stating, and not applying, the correct standard of proof, that he failed to take account of all relevant evidence and that his findings were unreasonable and irrational.
 3. The judge gave various reasons why he found that the Appellant had not established that his circumstances in Bangladesh were as claimed and there is no indication that he applied anything other than the correct burden and standard. It is however arguable that he may have erred in not making express findings on the evidence of the Sponsor, the Appellant's grandfather, and in making findings on the proposed accommodation and maintenance arrangements in this country when these issues had not been raised by the Respondent and there is no indication that they were relied on by the Presenting Officer at the hearing.
 4. Whilst many of the matters raised in the grounds by the Appellant appear to have little potential merit, in the light of the guidance in Ferrer (limited grounds of appeal; Alvi) [2012] UKUT 00304 (IAC) permission is granted on all grounds.
6. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 contending, in summary, that the judge had directed himself appropriately and adequately considered all relevant matters.
7. Directions were subsequently issued making provision for there to be a hearing before the Upper Tribunal to decide whether the First-tier Tribunal determination should be set aside.

The Appellant's Submissions

8. At the hearing before me Mr Noor relied and expanded upon the grounds contained within the application for permission to appeal. I was advised that if the decision was set aside, Mr Noor wished to make an application to submit further documentation under rule 15(2A) of The Tribunal Procedure (Upper Tribunal) Rules 2008 and submit further documents that were not before the First-tier Tribunal, although it was accepted that this was not relevant to my consideration of error of law. The Grounds of Appeal are summarised below.

Ground One

9. The judge misdirected himself in law by failing to apply the correct burden and standard of proof.

Ground Two

10. The judge failed to take into account all relevant evidence:
- (i) At paragraph 13 the judge had found there was no evidence of any income regarding Polli Electronics but had ignored the Islami Bank statements at pages 20-22 of the Appellant's bundle (the AB).
 - (ii) At paragraph 14 the judge had found that in part the Appellant intended to pay for the cost of travel and his holiday relying upon the bank account of Polli-Multipurpose Society and had ignored the Appellant's personal bank statements contained at pages 23-26 of the AB.
 - (iii) It was contended that the judge was inaccurate at paragraph 20 in recording that the only evidence of transactions undertaken by Polli-Multipurpose Co-operative appear to be payments to the Appellant on a monthly basis.
 - (iv) The judge noted at paragraph 29 the bank accounts belonging to the Appellant appear to have a very modest balance, with the exception of a large deposit in January, and it was contended that the judge had not taken into account the Appellant's personal bank statement at page 26 of the AB where there was a balance of 268,447.60 BDT on 30th December 2012.
 - (v) The Appellant had provided evidence of his claimed studies at Metropolitan Law College by way of a letter dated 25th February 2013. The judge had found that this did not prove that the Appellant was studying during the academic session 2012/2013 and it was contended that the judge had failed to distinguish the difference between 'academic session' and 'academic year' in that an academic session remained the same until a student completed their course of studies.
 - (vi) The judge had raised the issue of maintenance and accommodation in his determination when this had not been raised in the refusal notice and this was not raised at the hearing.

Ground Three

11. The judge's findings were unreasonable or irrational and no decision maker presented with the evidence, could properly have made those findings. The judge had given excessive weight as to how many people from the Appellant's family had made an application for entry clearance, and had not made any findings regarding the credibility of Mr Rahman.

The Respondent's Submissions

12. Mr Harrison contended that the determination is clear and thorough and the judge had considered all the evidence that was before him and made findings which were open to him to make in view of the evidence. Mr Harrison submitted that the weight to be attached to the evidence was a matter for the judge.
13. Mr Harrison pointed out that in paragraph 7 of the determination the judge had noted that five people from the same family were applying for entry clearance at the same time, and taken into account that the members of the family who had visited, had stayed longer than they initially indicated. One of those people was a minor who had been in the United Kingdom for approximately six months, when he was of school age.
14. Mr Harrison contended that the grounds amounted to an attempt to reargue the case and did not disclose a material error of law in the determination.

The Appellant's Response

15. In relation to the point made by the judge that there had been a large deposit of funds in January, Mr Noor submitted that an explanation had been given for this, which was reasonable, and that prior to that deposit there were substantial funds in the Appellant's personal account. I was asked to note that the Entry Clearance Manager had withdrawn the refusal decision for some of the other family members, and there was reference to the withdrawal of one appeal in paragraph 2 of the determination.
16. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

17. I will refer to the grounds as they are set out in the application for permission to appeal.

Ground One

18. Having carefully considered the determination I can find no indication that the judge applied an incorrect standard or burden of proof. I find no error of law on this issue.

Ground Two

19. Weight to be given to evidence is a matter for the judge hearing that evidence, provided the judge does not give weight to immaterial matters, or fail to take into account material evidence. I do not find that the judge has fallen into material error when considering the evidence.
- (i) In relation to Polli Electronics, the judge does not err in recording that there is no evidence of income, in that no company profit and loss accounts were produced. A bank statement of the company does show that there are cash deposits and cash withdrawals. In my view the judge when referring to a lack of evidence of income, was referring to the lack of profit and loss accounts, showing the income and outgoings of the company.
 - (ii) At paragraph 14 of the determination the judge correctly recorded that the Appellant relied in part upon the bank statements of Polli-Multipurpose Co-operative Society and that there was no evidence that the funds in that account were available purely for the Appellant to pay for a holiday. The judge was aware that the Appellant had submitted other bank statements and in this paragraph was dealing with the Polli-Multipurpose Cooperative Society and did not err in so doing.
 - (iii) The judge at paragraph 20 did not err in not being satisfied that the Appellant was entitled to use money from Polli-Multipurpose Cooperative to finance a holiday in the United Kingdom, on the basis that other individuals were involved in the running of that business. The judge erred in finding that the only evidence of any transactions being undertaken appear to be payments to the Appellant on a monthly basis, as the statement at pages 27-32 show numerous deposits and withdrawals by a number of individuals, not only the Appellant. This however is not in my view a material error, the point that the judge was making, was that he was not satisfied that the Appellant would be able to use the funds in that account, because the funds were not under his sole control but other people were involved, according to the Appellant's claim.
 - (iv) The judge erred in recording in paragraph 29 that leaving aside the large deposit in January, there appeared to be a very modest balance in the Appellant's account, as his personal account shown at page 26 of the AB indicated a balance of 268,447.60 BDT at 30th December 2012 which I accept amounts to approximately £2,255.
 - (v) I do not accept that the judge erred in his consideration of the Metropolitan Law College letter dated 25th February 2013. The judge was perfectly entitled to find that the letter which referred to the academic session 2011-2012, did not prove that the Appellant was studying in the academic session 2012-2013.
 - (vi) The judge was entitled to consider maintenance and accommodation even if these matters were not raised in the refusal notice, provided that the Appellant was given notice of this, and the opportunity to answer any concerns. I accept

that maintenance and accommodation were not raised in the refusal notice, nor in the Respondent's review, but I do not find that the judge materially erred on this issue, as it is quite clear from reading the determination that the main focus of the judge, and the main reason for dismissing the appeal, was because he was not satisfied that the Appellant had discharged the burden of proof in relation to his intention to visit the United Kingdom and to leave at the conclusion of the visit.

Ground Three

20. There is a high threshold for irrationality, and I do not consider the findings made by the judge can be properly described as either irrational or unreasonable.
21. I set out below paragraph 30 of the determination which summarises the findings made by the judge;
 30. Taking all the matters into account I am not satisfied that the Appellant has such commitments in his home country as would cause him to return there. There is no evidence that the Appellant is presently studying. There is no statement of income confirming earnings from the businesses that he appears to be running. There is no indication of the profits being made by the businesses. There is no indication of any monies that he is earning within the businesses. The Appellant is single; is not in education; it is unclear how he is earning his living. Taking all those matters into account I am not satisfied that the Appellant has such social, family or other ties within Bangladesh as would cause him to return there. I am not satisfied that the Appellant is coming to the UK for the period stated or that the Appellant will leave the UK at the end of any period provided for in a visa.
22. The judge was entitled to reach the conclusions set out above. In my view there was no satisfactory evidence before the judge, to prove on a balance of probabilities that the Appellant was studying. There was no satisfactory evidence of the income that he claimed to earn from two separate businesses. There were no accounts for those businesses. The judge was aware, and was entitled to take into account that five people from the same family had applied at the same time to visit the United Kingdom and he took into account that an appeal by another family member had resulted in the Respondent withdrawing that decision. These were all matters that the judge took into account before reaching a conclusion.
23. The judge examined the evidence presented to him, and noted in paragraph 15 of the determination that an income tax certificate had been submitted on behalf of the Appellant, and he recorded the numerous deficiencies in that document.
24. In relation to Mr Rahman's evidence, the judge makes reference to this in paragraphs 7-12, and also at paragraphs 23 and 28 in relation to accommodation. I am satisfied from reading the determination as a whole that the judge took into account Mr Rahman's evidence, but found that he could not discharge the burden of proof in relation to the Appellant's circumstances in Bangladesh, which were one of the main issues in the appeal. There was no evidence from Mr Rahman that he had visited the Appellant in Bangladesh recently or at all. Mr Rahman did not mention visiting

Bangladesh in his witness statement. The issue before the judge related to the intention of the Appellant, not the intention of Mr Rahman. I do not find that the judge materially erred in relation to Mr Rahman's evidence.

25. The judge was entitled to find that the Appellant had not discharged the burden of proof, having weighed up all that was before him. The grounds amount to a disagreement with the findings made by the judge, but do not disclose a material error of law.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision. The appeal is dismissed.

Anonymity

No order for anonymity was made by the First-tier Tribunal. There has been no request for anonymity and the Upper Tribunal makes no anonymity order.

Signed

Date 18th June 2014

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The appeal is dismissed. There is no fee award.

Signed

Date 18th June 2014

Deputy Upper Tribunal Judge M A Hall