



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: VA/11443/2013
VA/11446/2013

THE IMMIGRATION ACTS

Heard at Field House, London	Determination Promulgated
On 12 June 2014	On 3 July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

REIXHEP BACE
NERZIKATE BACE

Appellants

and

ENTRY CLEARANCE OFFICER - TIRANA

Respondent

Representation:

For the Appellants: Mr R Malko, sponsor

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, nationals of Albania, appealed to the First-tier Tribunal against the decision of the Entry Clearance Officer (ECO) of 21 June 2013 to refuse their applications for entry clearance as a visitor to visit their daughter and her husband and child in the UK. The appellants' son-in-law appeared as the sponsor on behalf of the appellants at the hearing in the First-tier Tribunal and before me in the Upper Tribunal. Judge of the First-tier Tribunal Beg dismissed the appeal. The appellants now appeal with permission to this Tribunal.

2. The ECO refused the applications under paragraph 41 (i), (ii), (vi) and (vii) of the Immigration Rules. Paragraph 41 (i) and (ii) relate to the requirements that the appellants are genuine visitors and their intention to leave the UK at the end of the visit. Paragraph 41 (vi) and (vii) require that the appellants can meet the cost of their onward journey and that they will be adequately maintained in the UK.
3. As she accepted the financial evidence relating to the sponsor the Judge accepted that the appellants met the requirements of paragraphs 41 (vi) and (vii) [9]. That finding is not challenged. However the Judge did not accept that the appellants are genuine visitors who will leave the UK at the end of the family visit.

Error of Law

4. It was accepted by Mr Whitwell at the hearing before me that the First-tier Tribunal Judge made a number of factual errors in the determination. The issue was therefore whether these errors are material to the decision.
5. There were four factual errors identified in the First-tier Tribunal Judge's decision. The first error identified was at paragraph 4 where the Judge recorded that the sponsor said that he earns £13,500 per annum. In fact the documentary evidence shows that he earns £38,549 per annum. Mr Whitwell accepted that this is a factual error but submitted that it is not material as the Judge accepted that the sponsors could maintain and accommodate the appellants in the UK and pay for their airfare. I am satisfied that this error related to a matter the Judge found in the appellants' favour and was therefore not material to her decision to dismiss the appeal.
6. The second error identified was at paragraph 10 where the Judge said that the first appellant had a pension but the second appellant had no independent income of her own. This is wrong as there was evidence before the Judge that the second appellant also receives a pension. Mr Whitwell accepted that the Judge made a mistake here too but submitted that it was not material.
7. The Judge referred to there being some untranslated documents in the respondent's bundle. She did not say how that was significant. In fact there are no untranslated documents in either bundle.
8. The fourth error identified is at paragraph 10 where the Judge said:

"I take into account that the second appellant came to the United Kingdom in 2011 and then returned to Albania. However I also bear in mind that there is family history of migration and settlement abroad. The sponsor's wife settled in the United Kingdom after arriving here on a spouse visa."
9. It was accepted by Mr Whitwell that the sponsor and his wife have limited leave to remain in the UK, the sponsor as a work permit holder and his wife as his dependant. There is therefore no family history of settlement abroad.
10. Mr Whitwell submitted that the mistakes identified were not material and that there were sufficient other reasons left behind when these errors were removed so that there

was enough to save the determination. He pointed to the reason given at paragraph 9 where the Judge relies on a discrepancy between the visa application form where the appellants said that their total monthly income is the pensions and that they receive no income from other sources whereas the sponsor said in oral evidence that he sends the appellants £400 every two or three months. The Judge also found that the appellants had not provided a full financial picture as the bank certificate does not show a full history of the account. Although Mr Whitwell relied on these findings as being sustainable it is clear from reading the decision that these findings relate to the maintenance requirements as they are contained in paragraph 9 which the Judge concludes by finding that the sponsor can maintain the appellants and pay their airfare, the Judge then starts paragraph 10 by saying *"In considering the issue of intention to return I take into account the social and economic position of the appellants in Albania"*. This indicates that she is moving on to consider paragraph 41 (i) and (ii).

11. Mr Whitwell submitted that the Judge properly took account of the fact that on this occasion both appellants are travelling to the UK together whereas previously the second appellant came and returned alone. The Judge also took account of the fact that the appellant's property is co-owned with other family members. These are factors taken into account in considering the appellants' intentions. However I find that they are not sufficiently discrete to allow me to be sure that they would have stood or would be sufficient without the matters upon which the Judge made factual errors.
12. In these circumstances I am satisfied that the decision of the First-tier Tribunal Judge contains material errors of fact which adversely affected her findings in relation to paragraph 41 (i) and (ii) and I therefore set aside those findings. As they were not challenged I preserve her findings in relation to paragraph 41 (vi) and (vii).

Remaking the decision

13. I remake the decision on the basis of the evidence before me which is the same as that before the Judge. The decisions appealed against were made on 21 June 2013 so I may consider only the circumstances at that date.
14. The appellants applied for entry clearance to visit their daughter and son-in-law and their child the UK for a period of one month. According to the application form the sponsor is employed as a teacher at the Central School of Ballet on a work permit and their daughter is a freelance opera singer. Whilst the application form states that the appellants do not receive income from any other sources the sponsor said in oral evidence in the First-tier Tribunal that he sends money to them. I have read the note of his evidence in the Record of Proceedings and it is noted that he said; *'I sometimes send money to them -£400 on average from time to time -2/3 months'*. He told me that the money he sends is not regular and is just money he sends them for gifts. I am satisfied that the evidence he gave to me is consistent with the note of the evidence before the First-tier Tribunal and does not amount to a significant conflict with the information in the visa application form.
15. The appellants are both retired. They each receive a pension. They own property which is in joint names along with their two children. Their daughter is in the UK as a

dependant of a work permit holder and their son still lives in Albania along with his wife and two children. The appellants therefore have ties in Albania. The second appellant previously visited the UK and returned to Albania. The sponsor told me that the appellants do not want to stay in the UK. They do not speak the language and the sponsor does not want them to stay after the visit.

16. I am satisfied on the basis of all of this evidence that the appellants have demonstrated that at the date of the decision they were genuine visitors and intended to leave the UK at the end of the visit in accordance with paragraph 41 (i) and (ii) of the Immigration Rules.

Conclusions:

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set the decision aside and remake it by allowing the appeals.

Signed

Date: 1 July 2014

A Grimes
Deputy Judge of the Upper Tribunal