



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/30455/2012

THE IMMIGRATION ACTS

Heard at Field House
On 12th September 2013

Determination Promulgated
On 10th February 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

MR MOTIN MIAH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Khan (Solicitor)
For the Respondent: Mr C Avery (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh. On 26 July 2012, an Entry Clearance Officer ("ECO") at Dhaka refused him entry clearance as a visitor. The appellant's appeal

against that decision came before First-tier Tribunal Judge CMA Jones (“the judge”) on 25 February 2013. The judge found that there was no valid appeal before her as the appellant could not show that he fell within the Immigration Appeals (Family Visitor) Regulations 2012 (“the 2012 Regulations”). The appellant sought entry clearance to make a visit of four weeks to see his cousin here but, as a first cousin is not a family member for the purposes of the 2012 Regulations, the appellant was not entitled to appeal against refusal, by virtue of Section 88A of the Nationality, Immigration and Asylum Act 2002.

2. Permission to appeal was granted on 11 July 2013. The 2012 Regulations came into force on 9 July 2012 and, as the application for entry clearance was made the day beforehand, on 8 July, the earlier Regulations, made in 2003, fell to be applied.
3. Mr C Avery, for the Secretary of State, said that the Secretary of State did not oppose the appeal. The determination contained an error of law as the judge considered that she had no jurisdiction in the light of the 2012 Regulations. However, the application was made on 8 July 2012 and so the earlier Regulations applied.
4. The Secretary of State’s position was made clear in the response made on 23rd July 2013 under rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
5. In the light of the Secretary of State’s letter and Mr Avery’s brief submission, I concluded that the decision of the First-tier Tribunal contained a material error, such that it fell to be set aside and remade.

Remaking the Decision

6. Mr Z Khan, for the appellant, said that reliance was placed upon the bundle of documents before the First-tier Tribunal, which consisted of 50 pages. Pages 2 to 4 were a witness statement made by the appellant’s sponsor, Mr Mohammed Miah.
7. Mr Miah gave evidence. He adopted his witness statement. He said that the appellant was his mother’s sister’s son and he has land in Bangladesh and a poultry farm where he grows crops, chickens and harvests eggs. His income is 22,000 to 24,000 taka per month. The appellant wished to visit for four weeks. He had two employees at the farm and his wife would also help to look after it while he was present in the United Kingdom.
8. Mr Miah said that his cousin’s wife was a teacher. They have three daughters and a son. The appellant’s mother, two sisters and a brother are also present in Bangladesh. His children’s ages range from 16 to about 7 or 6 years. They are studying. The appellant’s sisters are married and live with their husbands. His brother is younger and has a private job as a supervisor in a factory. The appellant’s wife earns about 5,000 taka per month.

9. Mr Khan asked whether Mr Mohammed Miah had sponsored anyone before. He replied that he had; Mr Abdul Mohammed Ahad and Mr Hussein Miah. He sponsored the first of these two years ago but the application was refused. Mr Miah was his wife's brother and he was given a visa as a working holidaymaker. He stayed here for a time, with a part-time job.
10. Mr Miah said that he last saw the appellant in Bangladesh about four years ago. He visited the family. They were well-off and had a good standard of living. The appellant had incentives to return to Bangladesh, to his farm and family. He had his children, wife and mother and they all relied upon him.
11. In cross-examination by Mr Avery, Mr Miah said that he travelled to Bangladesh three or four years ago by himself. The appellant told him that he wished to visit the United Kingdom to see Mr Miah, Mr Miah's brothers and Mr Miah's mother. The appellant's children were studying and his wife was working. His mother was elderly. Mr Miah saw the appellant's farm and his chickens and crops. The appellant was well-established.
12. Mr Avery asked why the appellant had provided so little evidence with his application, if he were well-established. Mr Miah replied that one of his cousins supported him and so he did not need to provide much. The documents were sent to the solicitors. Mr Avery asked about the document at page 8, where "leaseholder" was spelled incorrectly. Mr Miah said that he took the document to the solicitors once he had received it from his cousin.
13. There was no re-examination.
14. In submissions, Mr Avery said that reliance was placed upon the notice of decision. This showed that the ECO was not satisfied with the account given by the appellant of his circumstances in Bangladesh, although he accepted that the appellant's sponsor would meet the costs of the visit in the United Kingdom. The land deeds did not show what income the appellant derived from this source and detailed receipts were missing. There were no accounts. A personal bank statement in a friend's name stood in isolation. The ECO was entitled to find that the requirements of paragraph 41(i), (ii) and (vii) were not met. If the appellant were in business, one would have expected more documentary evidence to be provided. Most of what appeared in the appellant's bundle was post-decision and the bank statements did not cover the date of application. The provenance of the documents was difficult to establish although the item at page 8 appeared to be from an official source. In view of the notice of decision, the evidence adduced by the appellant was not sufficient to meet the doubts expressed by the ECO. The appellant's circumstances were vague and there was no particular reason for him to visit at this time.

15. Mr Khan said that there were four relevant factors: the appellant's finances in Bangladesh, his ties to that country, his individual characteristics and his sponsor's support.
6. So far as finances were concerned, the appellant provided evidence with his VAF. Evidence of his ownership of land was not challenged, the ECO doubting instead the income derived from land. It was clear from the notice of decision that the appellant had provided ownership documents. The item at page 8 was a description of a document, rather than an original item. The misspelling was not significant. The respondent's bundle included land valuation certificates, which were before the ECO. At page 9 of the appellant's bundle were sales receipts. There were four on that page and they were all dated before the notice of decision. They could properly be taken into account. The receipts beyond that date showed the position all the way into 2013 and bore on the circumstances "appertaining at" the date of decision. There was sufficient here to corroborate the claim to an income from land.
7. So far as ties to Bangladesh were concerned, there were birth certificates in the respondent's bundle showing that the appellant has four children. They were relatively young and in education, save for the very youngest. The appellant was 45 years old, married and with children. His mother was dependent upon him as well. He had a family in Bangladesh. His sponsor gave reasons why he wished to visit; significant reasons justifying the visit were not required. The appellant had every incentive to return. Finally, so far as the appellant's sponsor was concerned, Mr Miah had supported two earlier applications, one of them resulting in a person coming to the United Kingdom. The picture which emerged was one where the family complied with the Immigration Rules. The ECO accepted that Mr Miah would be able to meet the costs of the visit here and the Tribunal should find that Mr Miah could be trusted to meet his obligations as a sponsor. If Mr Miah were found to be a credible witness, this would tend to show that the appeal ought to be allowed. There were no good reasons to suppose that the appellant would wish to remain beyond his visa as it was clear that he enjoyed a better life in Bangladesh.

Findings and Conclusions

8. In this appeal, the burden lies with the appellant to prove the facts and matters he relies upon and the standard of proof is that of a balance of probabilities. By section 85A of the Nationality, Immigration and Asylum Act 2002, I may consider only the circumstances "appertaining at" the time of the adverse decision, on 29 July 2012.
9. As Mr Avery submitted, the thrust of the ECO's decision to refuse entry clearance was the paucity of documentary evidence regarding the appellant's circumstances in Bangladesh. Importantly, he did not doubt Mr Miah's ability to meet the costs of the appellant's expenses in the United Kingdom and there was no challenge to the deeds showing that the appellant owned land. Instead, the ECO was not satisfied that the appellant had shown that he derived an income from this source. The ECO was also

not satisfied that the appellant's circumstances provided him with an incentive to leave the United Kingdom at the end of the short visit.

10. In response, the appellant has adduced evidence of an income from his poultry farm. This appears, for example, at page 9 of the appellant's bundle. As Mr Khan submitted, this is evidence which may properly be taken into account as the four sales receipts on that page all predate the decision to refuse entry clearance. The appellant's case also receives support from his sponsor, Mr Miah. Having heard him give evidence, I find that he is a credible witness and I accept what he told me about the appellant's circumstances. Mr Miah was last in Bangladesh three or four years ago and saw the appellant and his farm at that time. They discussed a possible visit by the appellant. Mr Miah gave evidence that he has sponsored two people in the past, one of them his wife's brother, who came to the United Kingdom as a working holidaymaker. Importantly, Mr Miah was able to describe the appellant's circumstances in Bangladesh and his comfortable lifestyle there. He has four children, all but the youngest in education. His wife and elderly mother are dependent upon him.
11. There is some force in Mr Avery's submission that a person established as a successful farmer in Bangladesh might have been expected to provide more documentary evidence than accompanied the application. On the other hand, what has emerged since, and which bears on circumstances at the relevant time, does support the core of the appellant's claim that he owns land, derives an income from it and that he has family ties to Bangladesh. There is nothing to show that his family, or Mr Miah's family, have ever acted in breach of the Immigration Rules. Mr Miah has, in the past, successfully met his obligations as a sponsor. Accepting that the documentary evidence remains rather modest, I find, nonetheless, that when weighed with the oral evidence I heard, the appellant has discharged the burden upon him. He has made out his case that the requirements of paragraph 41 which were put in issue by the ECO were met, as at the date of decision. I find that a genuine visit was intended, that the appellant intended to return to Bangladesh at the end of the visit and that he had access to sufficient resources, taking into account support from his sponsor, to ensure that all the costs of the visit would be met, including the cost of the return or onward journey.
12. As the appellant has shown that the requirements of the rules were met, the appeal is allowed.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell

Anonymity

There has been no application for anonymity at any stage in these proceedings and I make no direction on this occasion.

Fee Award

As the grounds of appeal have been made out and I have allowed the appeal, I make a whole fee award in respect of any fee which has been paid or is payable in these proceedings.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell