



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/38434/2012

THE IMMIGRATION ACTS

Heard at Manchester
On 9th May 2014

Determination Promulgated
On 6th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

MR SHIRIN (AKA SHIRIN SON OF NAIMULLAH)
(NO ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - NEW DELHI

Respondent

Representation:

For the Appellant: The Sponsor attended
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mr Shirin, date of birth 1st January 1952, is a citizen of Afghanistan.

2. I have considered whether any of the parties to the present proceedings requires the protection of an anonymity direction. Taking account all of the circumstances I do not consider it necessary to make an anonymity direction.
3. This is an appeal by the appellant against the determination of First-tier Tribunal Judge Herwald promulgated on 4th November 2013. The judge dismissed the appeal of the appellant against the decision of the respondent dated 7th November 2012 to refuse the appellant entry clearance to the United Kingdom as a family visitor. The appellant wished to visit his son and the son's family.
4. Upper Tribunal Judge Grubb by a decision dated 17th January 2014 granted permission to appeal. The substance of the grant is in paragraph 2 and provides as follows:-
 - "2. The grounds challenge the judge's finding that the appellant had not established that he would return to Afghanistan at the end of his visit. The judge's reasoning is based upon an assessment of the documents relating to the appellant's (claimed) car sales business in Kabul. The judge, however, makes no reference to the oral evidence or the written statement of the sponsor which, in part, addressed some of the judge's concerns about the documentary evidence. The judge makes no finding in respect of the sponsor's evidence nor does he engage with its substance. In failing to do so, the judge arguably erred in law in reaching his adverse finding in respect of return to Afghanistan based exclusively on the documents."
5. The sole issue before First-tier Tribunal Judge Herwald was the intention of the appellant to come to the United Kingdom for a holiday of less than six months and to return to his home country within the terms of any visa granted.
6. In assessing that the judge had concentrated upon the claims by the appellant that he was a self-employed car salesman and that he had a business. The findings with regard to those claims are set out in paragraph 12.
7. However it has to be noted that the appellant as confirmed by evidence by the sponsor has a wife and two daughters in Afghanistan; that he had a family home; and that he had a settled lifestyle in Afghanistan. There appears to be no findings with regard to whether the appellant did have a wife and two daughters or whether or not he had other family, social or property commitments within Afghanistan, which would cause him to return there. There was evidence before the judge but the judge appears not to have made any findings with regard to such.
8. In paragraph 12 of the determination the judge has assessed the evidence with regard to the appellant's claim to have been a self-employed car salesman. The judge examines documentation produced on behalf of the appellant to substantiate that he has a car business with care. He noted that the documents appeared to be translated into English but that the originals were not in the documentation. He noted that whilst some documents describe the appellant as the outright owner of the business others suggested that he was a partner or that he was not the owner. Whilst there was a licence suggesting that it was granted in September 2005, elsewhere the same

licence appears to be dated 2nd October 2013. The judge finds that he can place little reliance upon the documentation submitted to substantiate that the appellant is a self-employed car salesman.

9. The judge went on to find that the bank accounts do not reflect the transactions that one would expect from such a business. Whilst the sponsor had sought to give an explanation for parts of the discrepancies in the accounts and other documents the judge rejects the explanation given by the sponsor specifically at paragraph 12(e).
10. Within paragraph 12(e) the judge has considered the evidence of the sponsor and does not find that that is consistent with the bank accounts that had been submitted. The judge goes on to make findings with regard to the lack of other documentation such as tax documents, documents from trade associations, documents by way of bills for purchase and sales of vehicles, rental notices from the landlord or other documentation to substantiate that the appellant had a business.
11. The conclusions by the judge are that he is not persuaded that the appellant is in business as claimed and the discrepancies in the evidence led him to doubt the credibility of the appellant and his intention to return to his homeland.
12. Whilst the judge has limited himself to considering the evidence of the sponsor directly relevant to the business and the documentation produced, the judge has in point of fact considered that evidence. Whilst there was other evidence about the family circumstances of the appellant in Afghanistan the judge was concentrating upon the financial circumstances of the appellant and was not satisfied on the basis of the evidence presented as to the financial circumstances of the appellant or that the appellant had a genuine business. The appellant had made that a significant part of his application to claim that he would be returning home. Whilst there was other evidence that he had family and other commitments the judge was entitled to look at the evidence presented and determine that the appellant had failed to satisfy him that he did genuinely have a business and therefore a financial interest to return to. In the light of that the judge was entitled to find that the appellant had failed to show that he had a business. In coming to that conclusion the judge did take into account the evidence of the sponsor.
13. The issue then is whether or not the judge was required to make specific findings with regard to the remaining evidence. It is clear that the judge did not accept the explanation given by the sponsor with regard to the documentation. Whilst there was other evidence as to the family commitments of the appellant in Afghanistan the judge was not satisfied on the basis of the evidence presented that the appellant's account was credible and was therefore not satisfied that the appellant was coming to the United Kingdom for a limited period of less than six months and that he would return to Afghanistan.
14. In the circumstances the judge was entitled to come to the conclusion that he was not satisfied as to the financial circumstances of the appellant and the fact that the appellant had a claimed business. The judge was therefore entitled to conclude from

that he was not satisfied with the intention of the appellant and therefore to dismiss this appeal.

15. The consequence of the decision is that the appellant can make another application. I appreciate that this may cause some difficulty. The appellant appears to have travelled to New Delhi in order to make this application to enter the United Kingdom. That is not an inconsiderable journey. However it is for the appellant to submit the documentation. There must be other documentation to substantiate that the appellant has a business and accurately reflect his interest in that business. The appellant needs to give a coherent and credible explanation for the discrepancies in the documentation and how his business is run and why payments into the bank seemed not to be on a consistent basis. The appellant can obtain documentation and can then substantiate that he does have a business and does have a car sales business. Once the appellant manages to obtain further evidence to substantiate his business interest he can make a further application.
16. However that does not alter the fact that on the basis of the documentation and on the basis of an assessment of the sponsor's evidence the judge has given valid reasons for finding that he was not satisfied that the appellant had a car sales business and was therefore not satisfied as to the intentions of the appellant.
17. In the circumstances there is no material error of law in the determination. I uphold the decision to dismiss this matter on all grounds.

Signed

Date

Deputy Upper Tribunal Judge McClure