



UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: IA/25509/2014

THE IMMIGRATION ACTS

Heard at: Field House  
On: 7 April 2015

Determination Promulgated  
On: 22 April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MR MUHAMMAD SULEMAN  
NO ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr S Randhawa, solicitor (Sky Solicitors Ltd)

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Pakistan, born on 20 September 1979. His appeal against the decision of the respondent dated 28 February 2014, refusing his application for an extension of stay as a domestic worker in a private household, was dismissed by First-tier Tribunal Judge S J Clarke in a determination promulgated on 21 November 2014. The appeal was dismissed both under the rules and on human rights grounds.
2. The appellant appeals with permission against that determination.

3. It is contended that the Judge misdirected himself by “misreading the evidence.”
4. At paragraphs 13-15 of the determination, the Judge stated that when he looked at the bank statements belonging to the appellant and his wife, the ones shown in the respondent's bundle up to January 2014 showed only one payment from Mr Malik – the sponsor – and the ones in the appellant's bundle show one payment of £1500 from Mr Malik and another for £1000 on 10 September and 23 September respectively.
5. He was not provided with any schedule showing how the money was adjusted to ensure that the appellant received reimbursement for his expenses, and how his wages were adjusted to accommodate the payments said to have come from customers of his sponsor, Mr Malik.
6. At paragraph 14, the Judge noted that the appellant's account showed payments in of larger sums as the year progresses, and the closing balances swell to over £10,000. On 15 September there is a payment of £10,000 to Barclays. There is no evidence to show whose account this went into or any more details about it.
7. Mr Randhawa submitted that the bank statements referred to in those paragraphs were in fact not the appellant's bank statements but his sponsor's bank statements. These had been provided as part of the evidence contained in the appellant's bundle at pages 27-45. The appellant's bank statements however were produced at pages 12-22. The statements provided however, in fact relate to a joint account at Barclays held by the appellant and his wife, Mrs A Kanwal.
8. These statements show that the appellant's account balance remained for most of the period under £300, with the highest balance at any time being £690.59.
9. Mr Randhawa submitted that the error is compounded by what the Judge stated at paragraph 15, namely that the difficulty in the appellant's case is that the sums of money get bigger and bigger, which in itself supports the claim that this was not just his occasionally going to a builder's merchant to pick up some materials because Mr Malik was too busy.
10. That finding he submitted was thus made on the faulty premise that the Judge thought he was having regard to the appellant's bank statements, whereas they were in fact those belonging to his sponsor.
11. The Judge also referred to the absence of documentary evidence including evidence of payslips or evidence that he pays tax and National Insurance<sup>1</sup>.
12. There was also evidence that the appellant on occasion made purchases on behalf of his sponsor for the improvements that he was carrying out on one of his own

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<sup>1</sup> At the hearing before the Upper Tribunal, the appellant produced evidence of those documents including Inland Revenue documents confirming his payment of tax. However, no application had been made under the 2008 Rules for this evidence to be admitted. I accordingly pay no regard to it.

properties. He also occasionally purchased building materials for his sponsor for the sponsor's building business [12].

13. The Judge ultimately found that the appellant had “completely” breached the conditions attached to his latest leave because he had not been working as a domestic worker at all [18].
14. On behalf of the respondent, Mr Tarlow submitted that the appellant appears to have admitted that he was engaged in work outside of his contract. There was also a reference to his not being aware of his contracted working hours. Nor was there much evidence that he was paid as a domestic worker.
15. Mr Tarlow submitted that there was no evidence of tax and national insurance that had been paid. That had merely been asserted by the appellant and Mr Malik at the hearing [17]. There is only one example of the appellant's salary going into his account. The grounds of appeal amount to a disagreement with the findings of the First-tier Judge; there was no material error of law. There is only one example of the appellant's salary going into his account.

### **Assessment**

16. I have had regard to the appellant's as well as Mr Malik's evidence at the hearing. The appellant stated that he was only working as a domestic worker which involves working for his employer and completing some ad hoc demands beyond his contract. He is paid a monthly sum of £970. His sponsor used to pay him in cash in hand every month. This involved the transferring of some of his wages through direct payments from some of the sponsor's own clients and this amount was in due course adjusted.
17. The payments referred to by the respondent in his account occurred as his employer used his account from time to time for his business use. It was not always possible for him to travel to the shops and that is why he gave the appellant some additional 'cards' in case he requires anything in a hurry. He had to do things asked of him and was acting on his employer's instructions only. He was still in employment as a domestic worker.
18. Mr Malik in his evidence stated that the appellant had applied as a domestic worker in a private household to continue working with him in the UK. He had been an employee since 2008. He was required to continue as a domestic worker with them.
19. The appellant has been working there as a domestic worker since then. His family including his wife and son are residing with them.
20. He confirmed that the appellant used to carry out ad hoc work for him. He runs businesses including a fast food takeaway as well as a furniture business, including fittings. He sometimes asks the appellant to run errands on his behalf in relation to his business as he is not always able to do so.

21. He confirms that he asked his clients to pay the amounts owed to Mr Malik into the appellant's bank account to be adjusted towards his monthly wages payments. He 'is also providing invoices for the work carried out' by himself for various clients.
22. I have also had regard to the appellant's employment contract entered into on 27 February 2014. The appellant's duties are set out at paragraphs 1-7, including cleaning the house, cooking meals, washing windows and carpets, and performing such duties out of working hours in special circumstances authorised by the employer.
23. His hours of work are from Monday to Friday inclusive, between 6pm and 9pm and on Saturdays and Sundays from 7.30am to 11.30am and 5.30pm to 9.30pm.
24. The appellant and his family are entitled to reside free of cost at the house.
25. I find that the Judge has mistaken the owner of the bank account which he was considering. He appears to have confused the appellant's bank statements with those of the sponsor.
26. Based upon that error, the Judge understandably reached negative credibility findings against the appellant which, as noted by Judge Foudy in granting the appellant permission to appeal, might not otherwise have been made.
27. The Judge thus proceeded on the basis of a false premise, resulting in the ultimate negative finding that the appellant had not been working as a domestic servant in Mr Malik's household.
28. Before arriving at that conclusion, the First-tier Tribunal Judge was obliged to have proper regard to the evidence presented in regard to the respective bank statements.
29. In the circumstances, I am satisfied that the appellant has not had his appeal decided properly on the basis of the documentary evidence and witness statements that he presented before the First-tier Tribunal.
30. I find that the decision of the First-tier Tribunal thus involved the making of an error on a point of law. In the circumstances, I set aside the decision.
31. Both parties submitted that this was an appropriate case to be remitted to the First-tier Tribunal for a fresh decision.
32. I have had regard to the Senior President's Practice Statement relating to the issue of remitting an appeal to the First-tier Tribunal. In giving effect to that approach, I am satisfied that the extent of judicial finding which is necessary in order for the decision to be made is extensive. The appellant has not had his case considered on the basis of the evidence presented. There will have to be a complete re-hearing with no findings preserved. I have also had regard to the overriding objective and conclude that it would be just and fair to remit the case.

33. In the circumstances, I direct that the appeal be remitted to the First-tier Tribunal (Taylor House) for a fresh decision to be made.
34. The necessary administrative arrangements will need to take place.

**Notice of Decision**

The determination of the First-tier Tribunal involved the making of material errors of law. It is accordingly set aside.

The appeal is remitted to Taylor House for a fresh decision to be made.

No anonymity direction is made.

Signed

Date 21/4/2015

Deputy Upper Tribunal Judge