



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/19941/2013

THE IMMIGRATION ACTS

Heard at Field House
On 10 February 2015

Determination Promulgated
On 2 March 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL DRABU CBE

Between

ENTRY CLEARANCE OFFICER, NEW DELHI

Appellant

and

MISS NIRMAL KAUR

Respondent

ANONYMITY DIRECTION NOT MADE

Representation:

For the Appellant: Mr S Whitwell, Senior Presenting Officer
For the Respondent: MR G S Hulait the sponsor in person.

DETERMINATION AND REASONS

1. Judge Holder, a Judge of the First Tier Tribunal allowed the appeal of respondent in the appeal before me against the decision of the appellant refusing her entry clearance to come to the UK as a domestic worker. The appellant was granted permission to appeal to the Upper Tribunal by Judge Hodgkinson, a Judge of the First Tier Tribunal for reasons given in his decision of 30 December 2014. The Judge said, "The grounds argue that the Judge provided inadequate reasons as to why he

concluded that certain payments in kind met the requirements of paragraph 195 (v), especially bearing in mind that the Judge also failed to make a finding on what hours the appellant actually intended to work whilst in the United Kingdom. The grounds as pleaded reveal arguable errors of law and permission is granted on all grounds.”

2. At the hearing before me Mr Stillwell representing the appellant asked for permission to add a further ground of appeal namely that the appellant had not been satisfied that the respondent intended to leave the United Kingdom at the end of her leave to remain. I refused the request for amendment /addition to the grounds of appeal as I felt that there had been sufficient opportunity to put in this ground or any further ground before the hearing of this appeal and also because in any event this ground had not been raised before the First Tier Tribunal.
3. Mr Stillwell then drew my attention to the fact that the decision to refuse had been reviewed by an Entry Clearance Manager and the Manager had found the decision to be satisfactory. My response to that argument, if that is an argument, is that there is a statutory right of appeal and that right of appeal is neither negated nor diluted by any review that an Entry Clearance Manager may have carried out. Such review process has no relevance to the matter in appeal.
4. Mr Stillwell then handed me a document entitled Home Office Domestic Workers in private household valid from 06 November 2014. I asked Mr Stillwell if this document had been made available to the First Tier Judge. He said he could not answer that question in the affirmative. I noted that the impugned decision in this case had been made by the appellant on 4 November 2013 and the reasons for the decision to refuse made no mention to this document. Mr Whitwell conceded, quite properly that Guidance does not equate to law or the Rules.
5. Having heard the sponsor who explained the full factual background to the case, I was satisfied that Judge Holder’s decision to allow the appeal was sound in law and correct on facts. Ms Kaur has been to the UK many times accompanying her employer the father of the sponsor to take care of his personal needs. She has always returned to India with her employer who has indefinite leave to remain in the UK but who only makes visits to be with his son’s family from time to time. He is getting old and the sponsor’s wife cooks for him but the respondent makes sure of his hygiene needs. The sponsor said that reiterated that the finding of the First Tier Judge as made in paragraph 14 of his determination was based on facts.
6. The appeal against the decision of Judge Holder is dismissed. With great respect, the grounds do not even raise arguable errors of law let alone material errors of law. The decision of Judge Holder will stand.

K Drabu CBE
Deputy Judge of the Upper Tribunal.
23 February 2015

DIRECTIONS REGARDING ANONYMITY:

No such direction is necessary.

K Drabu CBE
Deputy Judge of the Upper Tribunal

To the Respondent
Fee Award

The decision of Judge Holder to make a fee award in the sum of £70 must also stand

K Drabu CBE
Deputy Judge of the Upper Tribunal