Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: VA/09285/2013**

THE IMMIGRATION ACTS

Heard at Field House
On 14 April 2015

Decision Promulgated
On 22 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

MANDEEP KAUR

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Lane counsel instructed by City Law Immigration Ltd

For the Respondent: Ms A Brocklesby-Weller Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant, a national of India, was born on 1 February 1984. The Appellant appealed against the decision of the Secretary of State dated 16 April 2013 to refuse to grant an application for entry clearance as a family visitor in order to

© CROWN COPYRIGHT 2015

spend 4 months with her sister. First-tier Tribunal Judge dismissed the appeal and the Appellant now appeals with permission to this Tribunal.

3. The relevant paragraphs of Paragraph 41 of the Rules for the purposes of this appeal provide that the applicant:

   "(i) is genuinely seeking entry as a general visitor for a limited period as stated by him, not exceeding 6 months or not exceeding 12 months in the case of a person seeking entry to accompany an academic visitor, provided in the latter case the visitor accompanying the academic visitor has entry clearance; and

   (ii) intends to leave the United Kingdom at the end of the period of the visit as stated by him; and

   (vi) will maintain and accommodate himself and any dependants adequately out of resources available to him without recourse to public funds or taking employment; or will, with any dependants, be maintained and accommodated adequately by relatives or friends;"

4. The Respondent refused the application because:

   (a) In a previous application for entry clearance as a visitor on 5 October 2009 the Appellant had stated that she intended to stay for 1 month and when she came she stayed for 4 months.

   (b) In a further application for entry clearance as a family visitor on 30 March 2011 the Appellant stated that she intended to stay for 6-7 weeks but in fact stayed for 4 ½ months.

   (c) In a further application made on 9 May 2012 the Appellant indicated that she would stay for 2 months but stayed just short of 4 months.

   (d) The Appellant did not explain how she met her commitments back in India when she stayed on each occasion for so much longer than she had indicated that she would.

   (e) The Appellant was interviewed and gave unsatisfactory explanations as to why she repeatedly stayed longer that she stated that she would in her visa applications.

   (f)The bank statement produced is inconsistent with her claimed income.

   (g) There was no satisfactory explanation for the origin of the deposits of Rs 40,000 on 24 January 2013.

   (h) The Appellant stated that the sponsor her sister would pay all of the costs of her visit. The sponsor is pregnant with her fourth child and there was no evidence

of her employment status or whether she would receive maternity pay from her employer.

5. The First-tier Tribunal Judge heard oral evidence from the sponsor. The Judge concluded that :
   (a) The issue was whether the Appellant intended to leave at the end of the limited period of 4 months as stated by her in her application.
   (b) The Appellant had a poor record of having stayed longer that she stated that she would in her previous three visits to the United Kingdom and while the Appellant and sponsor gave evidence of the reasons why she did so which the Judge recorded at paragraph 10 there was no satisfactory or credible evidence in support of the explanations.
   (c) The period of four months for her stay was an arbitrary period given that childcare support appears to be the main motive for the visit.
   (d) The funds in the Appellant's account do not provide an accurate reflection of her personal and financial circumstances.
   (e) The Appellant's job is hardly secure given the amount of unpaid leave she has had.
   (f) The Judge did not find the explanation for the deposit of Rs40,000 was credible.
   (g) There was no satisfactory evidence in relation to the ownership of the sponsor's home.
   (h) In relation to maintenance there was very little information and supporting documentation in relation to the income of the sponsor and her husband at the time of the decision.
   (i) The decision was proportionate by reference to Article 8.
6. On behalf of the Appellant Mr Lane made the following submissions:
   (a) The Judge did not refer to or apply the principles set out in <u>Sawmynaden (Family visitors-considerations)[2012] UKUT 00161(IAC)</u> and therefore failed to consider that although the Appellant had stayed longer than she originally planned she had never overstayed and the fact that she was assisting in childcare did not take her out of the definition of visitor.
   (b) The Judge also failed to come to any conclusions as to whether the sponsor was a credible witness in paragraph 25.

(c) In paragraph 27 the Judge confused incentive and intention: on the previous occasions the Appellant had been to the United Kingdom she had demonstrated her intention to return by returning to India where she had a job and family.

(d) In relation to the deposit of Rs40,000 into her account that had to be looked at in the context of the account as a whole where there was a clear paper trail for most of the deposits. It was not clear where this issue took the case if everything else added up.

(e) The Appellant had selected a more realistic time frame for the visit this time.

(f) The Judge at paragraph 30 raised concerns about the issue of accommodation although this was not an issue raised in the refusal letter . Had the Judge drawn those concerns to the sponsor in the hearing then this could have been addressed.

(g) There had never been a problem with maintenance during the previous visits. There was evidence in the form of a letter dated 12 April 2013 before the Judge that the sponsor would receive statutory maternity pay. Further the Judge failed to explain why when the balance of the sponsors account was between £5800-£6800 this would be insufficient to bear the additional costs of the visit.

(h) There was a letter on file in relation to the payment of statutory maternity pay which was not referred to by the Judge.

7. On behalf of the Respondent Ms Brocklesby Weller submitted :

(a) The Judge was alert to the fact that the Appellant had never stayed beyond the maximum period of 6 months but she was entitled to look at the fact that the Appellant had always stayed longer than she said she would.

(b) The Judge made clear that she did not accept the oral evidence of the sponsor as to the reasons why she had previously stayed longer that intended.

(c) In relation to her finding in relation to the provision of childcare this was one factor amongst others she had considered.

(d) In relation to her employment given the amount of unpaid leave she was given she was entitled to take the view that her employment was not a significant factor in encouraging her to return. In relation to the deposit of 40,000 into her account the Judge found the explanation was credible.

(e) She conceded that the issue of accommodation was not raised in the refusal letter or in submissions. However both that and the issue of maintenance were not material if the court was with her in relation to 'intention.'

(f) This was just a disagreement with the findings

Error of Law

8. The grounds of appeal to the Upper tribunal content that the First-tier Tribunal Judge erred in two respects.
9. It is firstly contended that the Judge failed to apply the guidance provided in the case of Sawmynaden and did not take into account that while she stayed longer than intended on each occasion she never overstayed the period of 6 months.
10. I am satisfied that the Judge directed herself correctly as to the issues in this case. The provision of paragraph 41 of the Rules that was in issue not only requires that the Appellant intends to leave within 6 months but also requires that she is genuinely seeking entry as a general visitor for a 'limited period as stated by him'. The importance of this provision is obvious in that the period of time that an applicant states they intend to stay in the United Kingdom is the period by reference to which other issues are assessed: a longer stay changes the factual basis on which the ECO made their assessment. I remind myself of what was said by Mr Justice Mc Closky in Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC) :

   "good administration requires applicants to engage with the system and, further, we consider that there are duties of candour and co-operation on all applicants."

11. The Judge was entitled to find that there had been a failure by the Appellant in her previous immigration history to set out the length of her stay with candour and having seen and set out the Appellant's explanation and heard the witnesses give evidence to reject their explanation.
12. There can be no other conclusion to draw from the Judges rejection of the explanations for both the Appellant staying longer than she did and for the Rs40,000 deposit than the Judge found the witnesses were not credible.
13. The Judge made findings that were open to her in relation to those factors which might impact on her intention to return arising out of her social and financial circumstances and I do not consider there is anything she said that suggests she has confused incentive with intention. She did not discount the Appellant's employment but merely stated that given the repeated period of unpaid leave she

was given it would not be a 'major' factor.(paragraph 27) She recognises that while the Appellant has a parent who is alive the Appellant is not the sole carer.

14. I am satisfied that it was open to the Judge to consider whether the Appellant's financial circumstances were accurately set out as again there is a duty of candour as her financial security is a factor against which the ECO would have assessed her intention to return. It was therefore open to the Judge to find that there was an unexplained deposit in her account that was not consistent with her claimed earnings. The Judge had the Appellant's explanation before her and again heard the witnesses give evidence on this issue and did not find that the deposit had been satisfactorily explained. This was a finding that was open to her.
15. I have considered the challenge to the Judge's finding in relation to maintenance. Given that the Judge was required to assess the adequacy of maintenance against the stated period of the visit I am satisfied that having found on the basis of her previous history that the Appellant was not truthful as to the intended period of her stay the fact that the Judge may not have taken into account th level of funds in the bank account of the evidence of the payment of statutory maternity pay made no material difference to the decision.
16. I accept that it was not open to the Judge to raise the issue of accommodation given that it was not raised in the refusal letter and she did not raise her concerns in court to allow the advocates to specifically address it. However given my other findings I am satisfied that this made no material difference to the outcome of the case.

CONCLUSION

17. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

18. **The appeal is dismissed.**

Signed Date 1.5.2015

Deputy Upper Tribunal Judge Birrell