IAC-AH-LEM-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/13399/2013

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham	**Decision & Reasons Promulgated**
On 24th July 2015	**On 11th August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MUHAMMAD IKHLAQ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER – ABU DHABI

Respondent

Representation:
For the Appellant: Mr S Saini (Solicitor)
For the Respondent: Mr D Mills (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Pacey, promulgated on 8th July 2014, following a hearing at Sheldon Court on 24th June 2014. In the determination, the judge dismissed the appeal of Muhammad Icklaq. The Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 10th September 1986. He appealed against the refusal of entry clearance as a family visitor by the Respondent in a decision dated 17th June 2013. The Appellant's claim is that he wishes to visit his brother, Mr Mohammed Altaf, who is the Sponsor and his sisters. He had made a previous application for entry clearance which had been refused less than two months previously.

The Respondent's Decision Dated 17th June 2013

3. The Respondent's decision states that the Appellant had not addressed the Entry Clearance Officer's concerns the last time in the previous refusal notice two months earlier. He claimed to be employed as a head electrician with Mughal Construction. As evidence of his employment he provided a letter or reference from his employers. However, the ECO could not be satisfied that this document supported the claimed employment circumstances. The Appellant had provided the same documentation in his previous application for entry clearance. He had not addressed the concerns which were raised then. It was not credible that the employer would authorise three months' continuous leave from the Appellant's employment for the purpose of a family visit alone. The Appellant resided in a joint family system. He had no dependent family of his own. He had no assets of his own. The ECO was concerned about the Appellant's personal and employment circumstances and was not satisfied that he had demonstrated a significant social or economic tie enabling him to return to Pakistan in the event of the grant of a visitors visa to the UK.

The Judge's Finding

4. The judge had regard to the fact that there was a letter from Mughal Construction dated 28th May 2013 confirming that the Appellant had been employed full-time for five years earning 20,000 rupees and that he had been granted three months' leave. There was also a bank statement in the Appellant's name (see paragraph 8). The judge did not draw any adverse inferences at all from the fact that the Appellant's employer had granted him three months' leave to go to the UK (see paragraph 12).

5. However, if the Appellant's job could be filled during the time that he was away for three months, then, "It should equally be possible to fill his job on a permanent basis so that the employer would not be disadvantaged should the Appellant chose not to return and hence would not be concerned to ascertain his intention" (see paragraph 13).

6. The fact was that this was a case where the Appellant lived with his parents and he owned no property of his own and had no family of his own (see paragraph 14). The judge concluded that,

> "Given that there has been no new evidence provided with this application in the form of a new letter from the employer or any other evidence of the

> Appellant's ties to Pakistan, and given my concerns set out in paragraph 13 above, I am satisfied that the Appellant has not … discharged the burden of proof" (see paragraph 15).

The appeal was dismissed.

7. The Grounds of Appeal state that the judge provided little reasons as to why the appeal was rejected. There were only three short paragraphs which provided inadequate assessment of the evidence. But the refusal was speculative.

8. On 12th August 2014, permission to appeal was granted.

9. On 28th August 2014, a Rule 24 response was entered by the Respondent Secretary of State to the effect that the judge had directed himself appropriately.

Submissions

10. At the hearing before me on 24th July 2015, Mr Saini, appearing as the Appellant's representative, argued that the primary issue was that of "intention" on the part of the Appellant. There had been an employer's letter confirming that the employer would give him three months' leave to go to the UK to visit his brother and sisters. However, there was no proper reference by the judge to the documents that she had referred to.

11. Secondly, the credibility of the application, in terms of the "intention" of the Appellant, can properly be assessed by looking at the wider circumstances, which in this case were to do with the fact that the Appellant's parents and his brothers had also come to the UK previously and had all returned back to Pakistan. This evidence was in the bundle before the judge. The judge made no reference to it. This amounted to a fundamental failure to have regard to material considerations.

12. For his part, Mr Mills submitted that the appeal could not succeed because the judge directly addressed the issue that, "there has been no new evidence provided with this application in the form of a new letter from the employer or any of the evidence of the Appellant's ties to Pakistan …" (paragraph 15). In this respect, the judge was entirely correct in stating what she did state. This is because the employer's letter was simply the same letter as the one provided last time. All that had happened was that the date had been changed and the same letter re-signed again. The refusal was dated 17th June 2013. The letter is dated 24th June 2013. It is the same letter. There is nothing new advanced. The judge was concerned to have new evidence, especially in the light of what she had said at paragraph 13, namely, that it would be easy to fill the Appellant's job even on a permanent basis, were he to go for as long as three months to the UK.

13. Second, whereas it was now being argued that the Appellant's brothers had come to the UK and had returned back to Pakistan, this was entirely

irrelevant. This was because the brothers were married and they did leave their families behind before they came to the UK. In this case, the Appellant was single, unattached, without children, and without any assets of his own. Such earnings that he had from a low paid job were hardly of much significance.

14. In reply, Mr Saini submitted that the evidence that family members had been coming over a number of years and returning back to Pakistan was material evidence. The judge should have taken it into account.

No Error of Law

15. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCA 2007) such that I should set aside the decision and remake the decision. This is a supervising Tribunal. It can only intervene in the decision of a lower Tribunal if the decision of the lower Tribunal amounts to perversity or leads to a decision that is irrational and it is important to remember the stricture by Brooke LJ in **R (Iran) [2005] EWCA Civ 982**, that "these epithets are completely inappropriate" in many cases when applied by practitioners. It would have been otherwise if there has been a new employer's letter and the judge had overlooked this. What transpired from the employer was not new evidence because all it was, was the same letter with the date changed.

16. Second, as far as evidence of other family members is concerned as having visited the UK and then returned back to Pakistan, whilst this was relevant evidence, it is not such as to tilt the balance decisively in a case such as the present in favour of the Appellant, where the crucial "intention" is that of the Appellant himself. This is the Appellant who is at the date of the decision, single, unattached, and living in an extended family system, with no assets of his own. The judge was entitled to give such an application the scrutiny that it deserved, and in the absence of evidence specific to the Appellant, she was entitled to conclude as she did. It is obviously open to the Appellant to make another application with proper new evidence. This would then have to be assessed anew.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 3rd August 2015