



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA013872015

THE IMMIGRATION ACTS

Heard at Bradford Phoenix House
On 6 June 2016

Decision & Reasons Promulgated
On 9 June 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

HAMMAD FAROOQ
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Mr Khalid a Solicitor

For the Respondent: Mrs Peterson a Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Respondent refused the Appellant's application for leave to enter on 11 December 2014. His appeal was dismissed by First-tier Tribunal Judge Tindal ("the Judge") following a consideration of the papers on 13 August 2015. I note here that the Respondent is not the Secretary of State for the Home Department as

wrongly identified by the Judge as this was an out of country application and appeal.

The grant of permission

2. First-tier Tribunal Judge Holmes granted permission to appeal (15 January 2016) stating that:

“4. This was by any standard an extraordinarily brief decision given the nature of the issues raised, and the evidence relied upon, even though the appeal was listed for disposal upon the papers filed (which are voluminous). It is well arguable that the Judge failed to engage with the evidence before him, and the issues raised by the decision and the grounds of appeal, and thus failed to address his mind to the findings of fact that needed to be made. There is, for example, no attempt at all to engage with either the Article 8 appeal, or the issue of whether this was a genuine and a subsisting marriage. The Judge apparently instead chose to dismiss the appeal for lack of one month’s bank statement, without considering the Appellant’s explanation for its omission from the application, and his subsequent production of it in evidence in support of the appeal.

5. In the circumstances it is well arguable that the Judge failed to engage with the disputed issues of fact raised before him, and failed to engage with the grounds of appeal, and to give adequate reasons for his decision to dismiss the appeal.”

Respondent’s position on 20 April 2016

3. When this matter was initially listed before me at an error law of law hearing, Mr Diwnycz (who represented the Respondent at that hearing) relied on the Rule 24 notice (22 January 2016) which stated that the Judge directed himself appropriately, had no oral evidence, had to dismiss the appeal given the inadequate documentary evidence, and a fresh application is the best course of action.

Appellant’s position on 20 April 2016

4. The missing part of the bank statement had been submitted with the notice of appeal and should have been considered by the Respondent and Judge.

Discussion regarding whether there was an error of law

5. The decision comprises 7 paragraphs of just over 1 ½ pages. Paragraph 1 is preamble. Paragraph 2 sets out parts of the immigration rules. Paragraph 3 briefly considers SS (Congo) v SSHD [2015] EWCA Civ 387. Paragraph 4 summarises the refusal letter. Paragraph 5 states that the missing document is fatal. Paragraph 6

said that the Judge assumes that the couple are in a genuine relationship. Paragraph 7 announces the decision.

6. The Judge notes that the missing evidence was submitted with the notice of appeal. The Judge does not consider Mandalia v SSHD [2015] UKSC 59 or DR (ECO: post decision evidence) Morocco* [2005] UKAIT 00038. He does not consider the Respondent's own evidential flexibility policy as set out in Appendix FM-SE D (b) (i) (aa) regarding where part of a series of otherwise intact bank statements is missing. In my judgement the decision was inadequate for all the reasons given by Judge Holmes which I will not simply repeat and fully endorse. That amounted to a material error of law. I therefore set the decision aside.
7. Both representatives agreed that I need not remit the matter to the First-Tier Tribunal. Mr Diwnycz confirmed that, despite the brevity of the consideration of the nature of the relationship, the Respondent was not seeking to go behind the finding that it was assumed the couple were in a genuine relationship.

Rehearing on 20 April 2016

8. I did not have all the papers that were before the Judge as there was no copy of the missing bank statement that covered the period from 8 May 2014 to 30 June 2014 whereas it had plainly been submitted with the grounds of appeal as the Judge referred to it. I also did not have a copy of the actual refusal letter.
9. In the interest of fairness, I stood the matter down for the Sponsor to get a further copy of the missing part of the bank statement from the bank. Mr Khalid provided me with his copy of part of the refusal letter. When the matter was recalled later in the day the Sponsor had managed to obtain part of the bank statement. It did not contain any deposits or balance. She told me that the bank official had told her that a full copy of the statement with the missing information would take 2 or 3 days to be produced.
10. In the interest of fairness, and having considered submissions, I decided to adjourn the hearing to enable this crucial piece of corroborative evidence to be produced, the original having been provided with the grounds of appeal but having subsequently disappeared. The evidence was readily obtainable, likely to be determinative, and the delay is brief as compared to the almost 18 months since the original refusal.

Rehearing 6 June 2016

11. When the matter was relisted before me, the missing bank document was produced. Mrs Peterson conceded that the relevant documentation was now in order, the Entry Clearance Officer should have exercised her discretion to ask for the missing document from the series to be produced, and that was a breach of policy. She conceded that the appeal should be allowed.

12. I agree with Mrs Peterson and will not simply repeat what she said. The missing page from the bank statement was submitted with the appeal, should have been considered by the Entry Clearance Manager, and the application should then have been allowed. The Appeal is allowed as the relevant documents clearly show that at all times the financial thresholds were met and, had the Respondent followed her own policy, that would have become clear.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I allow the Appellant's substantive appeal.

Signed:

Deputy Upper Tribunal Judge Saffer

6 June 2016