



SELF-TYPED

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/15679/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 April 2016**

**Decision & Reasons Promulgated
On 20th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

ENTRY CLEARANCE OFFICER (NEW DELHI)

Appellant

and

**MRS FAHMIDA AHMED
(ANONYMITY DIRECTION NOT MADE)**

Respondent/Claimant

Representation:

For the Appellant: Ms S. Sreeraman, Specialist Appeals Team

For the Respondent: Mr S. Kamal, Legal Representative, Immigration Solutions Ltd

DECISION AND REASONS

1. The Specialist Appeal Team has appealed to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Haria sitting at Hatton Cross on 10 October 2015) allowing the claimant's appeal against the decision to

refuse to grant him entry clearance as a Tier 2 migrant. The ground of refusal was the sponsor had not followed the correct procedure for conducting a resident labour market test for her job, which was that of a web designer, and so she did not have a valid CoS. The ground of appeal to the Upper Tribunal is that the FtT Judge was wrong to allow the appeal under the Rules, as the claimant's right of appeal is limited to contending that the decision was unlawful under section 6 of the HRA 1998. Permission to appeal on this ground was granted on 24 March 2016. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the claimant should be accorded anonymity for these proceedings in the Upper Tribunal.

2. The application was made on 3 November 2014, and the claimant was interviewed in English about her application on 18 November 2014. On the same day her application was refused. She was informed that she could apply for Administrative Review if she believed the decision to be incorrect, and that her statutory appeal right was limited to the grounds contained in section 84(1)(c) of the 2002 Act.
3. The claimant exercised her right of appeal and also asked for an administrative review. On 29 December 2015 an Entry Clearance Manager gave his reasons for maintaining the decision following an administrative review.
4. Both parties were legally represented before Judge Haria. He allowed the appeal under the Rules as he was satisfied, from the documentary evidence provided *inter alia* by way of appeal, that the job had been advertised as required by the rules so that it passed the Resident Labour Market test. Accordingly, the CoS was valid. However, he dismissed the appeal under Article 8 ECHR as the parties to the marriage (the claimant in India and the claimant's husband in the UK, who had only limited leave to remain in the UK as a student) had chosen to live apart since their marriage in 2012, and so the interference with family and private life consequential upon the (incorrect) refusal decision was not disproportionate.

The Error of Law Hearing in the Upper Tribunal

5. At the outset of the hearing, Ms Sreeraman announced that she was not pursuing the appeal because, having investigated the matter, she believed that the FtT Judge had jurisdiction to allow the appeal under the Rules. Accordingly, I did not call upon Mr Kamal to respond.

Discussion

6. As stated in a Home Office guidance document "Rights of appeal" (Version 3.0) in a section headed "Transitional appeals", the new framework for appeals established by the Immigration Act 2014 against the refusal of protection and human rights claims came fully into force on 6 April 2015. However there were saving provisions made in the Immigration Act 2014

(Commencement No 4 Transitional and Saving Provisions and Amendment) Order to protect certain persons who had rights of appeal at the time they applied for leave to enter or remain.

7. Under the pre-Immigration Act 2014 appeals regime, PBS applicants had full appeal rights for PBS refusals. These appeal rights continue to exist for decisions made on or after 6 April 2015 where:
 - An application was made before 20 October 2014 for leave to remain as a Tier 4 Migrant or their family member
 - An application was made before 2 March 2015 for leave to remain as a Tier 1 Migrant, Tier 2 Migrant or Tier 5 Migrant or their family member
 - Any other application was made before 6 April 2015 the outcome of which was an appealable decision under the pre-Immigration Act 2014 regime, unless the decision was a refusal of an asylum or human rights claim.
8. Ms Sreeraman relied on the 2 March 2015 deadline. However, the guidance refers to applications for leave to remain by Tier 2 Migrants, not applications for entry clearance by Tier 2 Migrants. On the other hand, the claimant's application meets the criteria of being "any other application made before 6 April 2015" which is (a) an appealable decision under the pre-Immigration Act 2014 regime and (b) not a decision which constitutes a refusal of an asylum or human rights claim.

Notice of Decision

9. The appellant orally withdrew the case that the decision of the First-tier Tribunal contained an error of law, and the Upper Tribunal consents to the withdrawal. The Entry Clearance Officer's appeal to the Upper Tribunal is thereby dismissed, and the decision of the First-tier Tribunal allowing the claimant's appeal stands.

Signed

Date

Deputy Upper Tribunal Judge Monson