



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01018/2016

THE IMMIGRATION ACTS

Heard at Field House
On 26 October 2017

Decision & Reasons Promulgated
On 07 November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

MRS VARINDER KAUR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. P. Turpin, Solicitor
For the Respondent: Mr. L. Tarlow, Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a citizen of India who on 4 November 2015 made application for leave to enter the United Kingdom as the spouse of Mr Kulwant Singh, a British

citizen born on 25 March 1978 ("the sponsor"). The application was refused and the appellant appealed.

2. Following a hearing, and in a decision promulgated on 26 January 2017, Judge of the First-tier Tribunal Row dismissed the appellant's appeal.
3. The appellant sought permission to appeal which was granted by Judge of the First-tier Tribunal Pullig. His reasons for so doing are:-
 - (1) "The appellant, a national of India seeks permission to appeal, in time, against the decision of First-tier Tribunal Judge Row, promulgated on 26 January 2017, dismissing the appellant's appeal on human rights grounds against the Entry Clearance Officer's decision refusing the appellant entry clearance as the spouse of a British citizen because of an alleged failure to meet the financial requirements.
 - (2) The grounds seeking permission quote from the respondent's notice of decision, which gives the reason for the decision as being that the sponsor's July (2015) salary was not paid into his bank account until the following September. The appellant had provided a letter explaining the late payment. The respondent did not find the explanation credible. That was the only issue identified by the decision. The grounds identify a further problem in that the respondent's bundle did not contain the documents submitted with the application. This I find clear from reading it. The grounds complained that the judge, far from dealing with that one issue, dismissed the appeal for want of the documents demonstrating the sponsor's income and found the employment not to be genuine.
 - (3) I agree that the grounds identify an arguable error of law in failing to deal with the one issue in the appeal and deciding on the basis of the lack of documentation that was before the respondent but had wrongly not been copied in to the respondent's bundle and in respect of which the appellant was at a significant disadvantage.
 - (4) Accordingly, I grant permission."
4. Thus the appeal came before me today.
5. In making his submissions Mr Turpin relied upon the grounds seeking permission to appeal and expanded thereon. In October 2015 the appellant made her application for entry clearance as a partner under Appendix FM of the Immigration Rules (HC 395 as amended). She sought to join her husband, a British citizen, following their marriage in India on 11 June 2012. The issue in the appeal was whether the decision amounted to a breach of Article 8 as part of that issue it fell to the judge to determine whether the application met the requirements of the Immigration Rules in Appendix FM. With her application the appellant had submitted evidence of her husband's employment as a butcher. The evidence submitted to the Entry Clearance Officer consisted of, in accordance with Appendix FM-SE, an employer's letter, payslips

covering a period of six months and bank statements covering the same period of six months. The evidence covered the six months from April to September 2015. The July salary was not, however, paid into the sponsor's account until September of that year. The application was refused and in the notice of refusal it stated:-

"You have submitted Barclays bank statements in your sponsor's name. However, I note that these show that your July salary was not paid until more than a month later in September. You have provided a letter of explanation; however I do not find it credible that you would not be paid for more than a month even if one partner is ill for several weeks. I am therefore not satisfied that your sponsor's employment and earnings are as stated."

He went on to submit that the issue for the Tribunal was therefore to determine whether on the basis of the documents submitted to the Entry Clearance Officer the explanation was credible and the sponsor's employment and earnings were as stated. Unfortunately at the hearing the respondent failed to produce the documents which were submitted with the application but nevertheless it was clear that the issue was not the submission of documents but whether they represented genuine employment. The judge has erred in approaching the issue before him on the basis that it was the documents which would have demonstrated that the sponsor was employed as claimed. The respondent's contention was not, however, that the documents were absent. Rather it was that the documents that had been provided showed a delay between the month of employment (July) and the deposit of the salary (September) thereby putting the credibility of the employment at issue. The judge failed to make any findings on the credibility of the sponsor as a witness. She attended the hearing and gave evidence. Therefore the judge has failed to determine this appeal "properly in accordance with the law and the Rules".

6. Mr Tarlow argued that the judge has shown a "measured approach whilst interpreting the documentation provided in this appeal" and has fairly found that the appellant's employment was not genuine. As stated by the judge it is for the appellant to prove his case. The sponsor in this appeal failed to provide the specified evidence in relation to the claimed employment. The judge directed himself appropriately. The appellant had a year to provide photocopies of the relevant documentation but failed to do so. This is a challenge which amounts to nothing more than a disagreement with reasoned findings.
7. I find that there is here no material error of law. The judge was entitled to find that it was "impossible on the evidence" to say what bank statements or wage slips had been before the respondent with the application. Neither the sponsor nor the appellant could give evidence about this. The respondent had not produced the documents which were submitted with the application. Whoever submitted the application on behalf of the appellant did not record which documents were sent with the application. The bundle that was submitted for the hearing contained no wage slips at all. It contained bank statements for the period 1 April 2015 to 28 August 2015 and not for the required period of April to October. They recorded payments of what appeared to be wages on 8 April, 8 May, 8 June and 6 July 2015.

The payments which are said to have been made in August and September were not shown. The judge then considered other evidence which he found unsatisfactory. The judge took account of the sponsor's evidence (paragraph 6 of the decision) in coming to his findings. He was entitled to conclude (paragraph 15 of his decision) that the evidence did not show the sponsor was employed as claimed or earned £18,600 per annum. Beyond that the balancing exercise required for consideration of Article 8 was duly carried out.

8. These grounds disclosed no material error of law. The burden of proof rested upon the appellant to prove his case to the required standard. Quite simply he failed to do so. That was the judge's findings. The appellant's remedy is a further application.
9. There is no material error of law.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

No anonymity direction is made.

Signed

Date 6 November 2017.

Deputy Upper Tribunal Judge Appleyard

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