



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number HU/08066/2016

THE IMMIGRATION ACTS

Heard at Centre City Tower
On 19th March 2018

Decision and Reasons Promulgated
On 20th March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

IRFAN AHMED SULEMAN PATEL
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr E Barr (Counsel, instructed by Bhavsar Patel Solicitors)
For the Respondent: Mr D Mills (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a citizen of India. On the 11th of February 2016 he applied for entry clearance as a spouse of a British national. The application was refused on the 1st of March 2016 and the Appellant appealed. The appeal was heard by First-tier Tribunal Judge Watson at Birmingham on the 13th of July 2017 and allowed for the reasons given in the decision promulgated on the 25th of July 2017.
2. The application had been refused on a number of grounds including an allegation that false documents had been provided in support of the application and that the Sponsor did not meet the financial requirements of Appendix FM. The Judge found that it had not been shown by the ECO that the documents relied on were false. The Judge did go on to find that the documents were not reliable and stated that she excluded the claimed wages from calculating whether the Sponsor could maintain the Appellant.
3. The Judge then went on in paragraph 25 to consider the Sponsor's receipt of child benefit, working tax credit, child tax credit and carer's allowance giving her an income of £215.57

against an income support level for a couple of £181.75. The Judge found that the Appellant met the Immigration Rules and went on to find that exclusion of the Appellant was disproportionate.

4. The grounds start with the Judge's finding that the discrepancy in the wage slips discussed in paragraph 22 of the decision could be explained by a mistake by the employer and at paragraph 23 finds that they are not reliable. The Judge had not identified the distinction as to why they were unreliable but not false. Having stated that the wage slips could not be taken into consideration the Judge then took them into account in assessing whether the Sponsor's income was sufficient to meet the financial requirements. That error infected the article 8 findings.
5. Permission to appeal to the Upper Tribunal was granted by Designated Judge Manuell on the 20th of December 2017. He observed that it was not easy to see why the appeal was allowed given that a significant proportion of the key evidence had been found to be unreliable with all the implications that had for suitability under the Immigration Rules and proportionality.
6. At the hearing Mr Mills relied on the grounds and submitted that the finding that the ECO had not shown that the documents were false and that the Appellant had not show that they were reliable were contradictory and could not stand given that the same standard of proof applied. It was unclear how the Appellant could succeed on article 8 grounds and submitted that the decision should be set aside and remitted.
7. For the Appellant Mr Barr submitted that the findings were open to the Judge and that it was on the basis of the HMRC evidence that the Judge was entitled to find that the Appellant had adequate funds available for maintenance. The findings were not perverse and the Judge was entitled to have regard to the totality of the evidence including that from HMRC.
8. Where fraud is alleged the burden is on the ECO to prove on a balance of probabilities although it is frequently observed that cogent evidence is required to justify such a finding. It is for an Appellant to show that documentation submitted is reliable on a balance of probabilities. Given the different emphasis on the quality of evidence required it is not inevitably inconsistent for a Judge to find that the ECO's evidence does not show that documentation is false and to find that an Appellant's evidence is insufficient to show that documentation is reliable.
9. A Judge is entitled to find that the evidence presented is insufficient to discharge the burden of proof. Where that is the case and a party does not discharge the burden it does not follow that the opposite contention is proved, a Judge is entitled to find that the evidence presented does not permit a finding on a particular point to be made.
10. Having said that the Judge appears to have accepted the reasons put forward by the ECO in support of the contention that the documentation was false. In those circumstances the reasoning is less easy to follow and there appears in the findings made to be a distinction without a difference. In those circumstances the findings are contradictory and cannot stand.
11. Having found that the documentation relating to the employment could not be relied on the Judge then placed weight on the evidence from HMRC. If the employment evidence was unreliable, and that would be the information that HMRC were relying on. I do not see how the judge could then place reliance on the figures from HMRC to find that there were sufficient funds for maintenance if the underlying information was not reliable. That reasoning is inconsistent and not justified by the findings made.
12. Given the difficulties with the findings made in relation to the evidence relied on by the ECO, the contradictions that follow from that and the reliance on the figures from HMRC on what the

Judge had found anyway was a flawed basis I find that the decision of Judge Watson contains errors of law and cannot stand. The decision is set aside with no findings preserved and is remitted to the First-tier Tribunal to be re-heard, not by Judge Watson.

CONCLUSIONS

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

I set aside the decision.

The appeal is remitted to the First-tier Tribunal to be re-heard with no findings preserved, not to be heard by Judge Watson.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 200 and I make no order.

Fee Award

In remitting the appeal I make no fee award which remains for the First-tier Tribunal at the conclusion of the remitted hearing.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 19th March 2018