



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12891/2015

THE IMMIGRATION ACTS

Heard at Bradford
On 27th February 2018

Decision & Reasons Promulgated
On 19th March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

IRFAN IRFAN
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mrs Petterson, HOPO

For the Respondent: Mr Macreadie of Counsel, instructed by Berwicks Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Hindson made following a hearing at North Shields on 11th May 2017.

Background

2. The appellant is a citizen of Pakistan born on 10th March 1986. He applied to come to the UK as the spouse of a person present and settled here but was refused on the

grounds that the Entry Clearance Officer did not accept that he was in a genuine and subsisting relationship nor that the financial requirements were met.

3. The Immigration Judge found that the relationship between the couple was genuine and subsisting and there is no challenge to that aspect of his decision.
4. So far as the financial requirements of the Rules are concerned he wrote as follows
“I now consider the sponsor’s financial circumstances. She gave oral evidence about her earnings which show that she just meets the 18,600 threshold. She has provided her self-assessment tax returns for the financial years 2015 to 16 and 2016 to 17. Both show her total earnings to be in excess of 19,000 per annum which is sufficient to meet the threshold. I accept that she failed to provide the specific evidence in connection with the original application. However I am satisfied on the basis of the documents available to me, and on her oral evidence, that she does in fact earn sufficient to meet the financial requirements.”
5. The judge acknowledged that the appellant had not met the specified evidence requirements of the Rules, but given that the couple have been living apart for two years he concluded that it would be disproportionate to require them to continue to do so in order that a further application could be made and considered.
6. On that basis he allowed the appeal.
7. The Secretary of State sought permission to appeal on the grounds that it was not clear what the basis was for the Immigration Judge’s conclusions that the claimant had met the income threshold, or that the requirements had in fact been met. Neither had the judge undertaken a proper balancing exercise in assessing the proportionality of the decision, given that the specified evidence Rules clearly reflect the policy of maintaining the integrity of the immigration system and ensuring that decision making is fair and consistent.
8. Permission to appeal was granted by Judge Omotosho on 7th December 2017 for the reasons stated in the grounds.
9. Following the grant of permission the claimant filed a detailed response setting out the evidence which was before the judge which formed the basis of his decision, and arguing that the judge was entitled to reach the decision that he did.

Submissions

10. Mrs Petterson accepted that the judge was entitled to allow the appeal on human rights grounds even given that the specified evidence requirements of the Rules had not been met. However she submitted that it was simply not at all clear from the determination what the basis was for the judge concluding that the financial requirements of the Rules had been met.

Findings and Conclusions

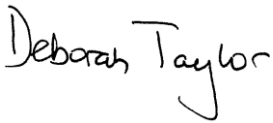
11. This determination lacks detail which makes it vulnerable to appeal. However it is clear that in fact the evidence was before the judge which enabled him to see that the sponsor's income was in excess of the £18,600 threshold.
12. The sponsor has three sources of income. Her income from paid employment is undisputed. She has two further sources of income, namely from self-employment and rental income.
13. So far as that is concerned, the sponsor provided evidence of a tax calculation for the relevant tax year, which was in fact 2014 to 2015, stating that she had £11,188 from her employment, £6,892 from her self-employment and £1,540 from her land and property, making a total of £19,620. She also had a self-assessment statement for the same year. Mr Macreadie told me, and Mrs Petterson did not dispute, that the tax calculation from HMRC would have been based upon a tax return from the sponsor and so, whilst there was not a tax return for that tax year before the Immigration Judge, the tax calculation established that a return would have been made. There were tax returns for the subsequent years.
14. In relation to the rental income, the sponsor provided evidence of her purchase of the property and a tenancy agreement. She also provided a set of bank statements for the relevant years to the judge which showed the income being paid from 9th March 2015 on a monthly basis.
15. So far as the self-employment is concerned the sponsor provided a letter from her accountant stating that she was self-employed and that they had prepared an account for the year ending 5th April 2015 for the submission of her self-assessment tax return. According to their accounts, her self-employed income for the period was £6,892. The judge also heard oral evidence from the sponsor. She was able to identify the credits in the bank account which came from her self-employment. She does private care work and deposits the money into the account herself.
16. I have sympathy with the Secretary of State in that it is not sufficiently clear from this determination what the evidence was before the Immigration Judge. However, having gone through that evidence, I am in fact satisfied that it was before him and that he was entitled to conclude that the financial requirements of the Rules were met.
17. Whilst the reasoning on its face appeared to be thin, given that the evidence was in fact before him, any defects are not material.
18. Mrs Petterson made it clear that she was not challenging the judge's decision to allow the appeal on Article 8 grounds in relation to the lack of specified evidence. The judge recorded that his reasons for doing so were the lengthy separation of the couple from 2015 when the sponsor left Pakistan following their marriage in 2012. She did not demure from Mr Macreadie's argument that whilst ECOs are bound by the strict requirements of Appendix FM/SE, Courts and Tribunals are prevented to

take a more flexible approach when deciding what evidence they require to establish that the minimum income threshold has been met (R on the application of MM Lebanon Appellant v SSHD Respondent [2017] UKSC 10). The quality of evidence necessary to satisfy the financial requirements in a particular case are matters of practicality, rather than principle (Lord Reed, Agyarko).

Notice of Decision

19. The original judge did not err in law. His decision stands.

No anonymity direction is made.

A handwritten signature in black ink that reads "Deborah Taylor". The signature is written in a cursive style with a large initial 'D' and a long tail on the 'y'.

Signed

Date 19 March 2018

Deputy Upper Tribunal Judge Taylor