



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/14659/2017

THE IMMIGRATION ACTS

Heard at: Birmingham Civil Justice Centre
On: 19 February 2019

Decision & Reasons Promulgated
On: 22 February 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

NIMRA NIMRA
(NO ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER, SHEFFIELD HUB

Respondent

For the Appellant: Mr A. Pipe, Counsel, instructed by Jasvir Jutla & Co Solicitors
For the Respondent: Mrs H. Aboni, Senior Home Office Presenting Officer

DECISION and REASONS

1. The Appellant is a national of Pakistan born in 1994. She appeals with permission the decision of the First-tier Tribunal (Judge Pacey) to dismiss her human rights appeal against a decision to refuse to grant her entry clearance to the United Kingdom. She wishes to come here to settle with her spouse, Mr Mahomed [K].
2. The ECO had refused to grant entry clearance for one reason alone: he could not be satisfied that the sponsor was employed as claimed. During

his consideration of the application the ECO had contacted the sponsor Mr [K] to ask him about the work that he did in the United Kingdom. The ECO took the view that during that conversation Mr [K] was unable to provide basic information about aspects of his employment: he could give neither the telephone number nor address of his workplace, was unable to describe the outside of the building, did not know his salary or when he started working there. So, despite the fact that all of the suitability requirements had been met by the Appellant, and despite the fact that the sponsor had supplied all of the 'specified evidence' relating to that employment, the application was refused.

3. The Appellant appealed. The First-tier Tribunal heard evidence that it had not been Mr [K] who had answered the telephone. He was not permitted to have his phone with him at work so had left his phone with his father. His father had answered the call and that was why he was unable to supply the basic information asked for. Mr [K] Snr had given evidence confirming that this was the case. He said that the person on the other end of the line had insisted that he continue to talk to them and so he had done so "in sheer fright". The Tribunal was told that Mr [K] Jnr had emailed the Home Office the next day but had received no reply. His employer had subsequently spoken to the ECO himself and confirmed that he worked there.
4. The First-tier Tribunal rejected all of that evidence. It gave a number of reasons for finding it not to be credible. It did not accept the evidence of the sponsor's employer that they had confirmed that he worked there when contacted by the ECO. This evidence was rejected on the grounds that it was not credible that the employer would remember such a call over 12 months later. The appeal is dismissed on the grounds that the Appellant has not met the financial requirements of Appendix FM. The Tribunal then finds no reason to go on to consider Article 8 'outside of the rules' and the appeal is thereby dismissed.
5. The grounds of appeal are that the First-tier Tribunal erred in the following material respects:
 - i) In declining to conduct a *Razgar* analysis of Article 8 'outside the rules';
 - ii) Failing to make findings on the sponsor's evidence that his father was to blame;
 - iii) Failing to take material evidence into account, viz the specified evidence relating to the sponsor's employment provided with the application, and the evidence supplied post-decision to rebut the suggestion that this employment was not genuine;
 - iv) Irrationally rejecting the evidence from the sponsor's employer about contact with the ECO.

Discussion and Findings

6. At the hearing I asked the parties to identify the legal basis of the ECO's decision. After some hesitation Mr Pipe pointed to the decision which states "you do not meet the eligibility financial requirement of paragraphs E-ECP.3.1 to 3.4" and "I therefore refuse your application under EC-P.1.1(d) of the Immigration Rules".
7. Paragraph EC-P.1.1(d) reads:
 - EC-P.1.1.** The requirements to be met for entry clearance as a partner are that-
 - (a) the applicant must be outside the UK;
 - (b) the applicant must have made a valid application for entry clearance as a partner;
 - (c) the applicant must not fall for refusal under any of the grounds in Section S-EC: Suitability–entry clearance; and
 - (d) the applicant must meet all of the requirements of Section E-ECP: Eligibility for entry clearance as a partner.
8. It is difficult to discern why the application fell to be refused with reference to this provision. The Appellant was outside the United Kingdom (where she remains), she had made a valid application, the decision-maker had expressly accepted that the application did not fall for refusal on suitability grounds, and as far as I could make out she met all of the requirements of section E-ECP.3.1-3.4:
 - E-ECP.3.1.** The applicant must provide specified evidence, from the sources listed in paragraph E-ECP.3.2., of-
 - (a) a specified gross annual income of at least-
 - (i) £18,600;
 - (ii) an additional £3,800 for the first child; and
 - (iii) an additional £2,400 for each additional child; alone or in combination with
 - (b) specified savings of-
 - (i) £16,000; and
 - (ii) additional savings of an amount equivalent to 2.5 times the amount which is the difference between the gross annual income from the sources listed in paragraph E-ECP.3.2.(a)-(d) and the total amount required under paragraph E-ECP.3.1.(a);
or

(c) the requirements in paragraph E-ECP.3.3. being met. In this paragraph "child" means a dependent child of the applicant or the applicant's partner who is-

- (a) under the age of 18 years, or who was under the age of 18 years when they were first granted entry under this route;
- (b) applying for entry clearance as a dependant of the applicant or the applicant's partner, or is in the UK with leave as their dependant;
- (c) not a British Citizen or settled in the UK; and
- (d) not an EEA national with a right to be admitted to or reside in the UK under the Immigration (EEA) Regulations 2006.

E-ECP.3.2. When determining whether the financial requirement in paragraph E-ECP. 3.1. is met only the following sources will be taken into account-

- (a) income of the partner from specified employment or self-employment, which, in respect of a partner returning to the UK with the applicant, can include specified employment or self-employment overseas and in the UK;
- (b) specified pension income of the applicant and partner;
- (c) any specified maternity allowance or bereavement benefit received by the partner in the UK or any specified payment relating to service in HM Forces received by the applicant or partner;
- (d) other specified income of the applicant and partner; and
- (e) specified savings of the applicant and partner.

E-ECP.3.3. The requirements to be met under this paragraph are-

- (a) the applicant's partner must be receiving one or more of the following -
 - (i) disability living allowance;
 - (ii) severe disablement allowance;
 - (iii) industrial injury disablement benefit;
 - (iv) attendance allowance;
 - (v) carer's allowance;
 - (vi) personal independence payment;
 - (vii) Armed Forces Independence Payment or Guaranteed Income Payment under the Armed Forces Compensation Scheme;

- (viii) Constant Attendance Allowance, Mobility Supplement or War Disablement Pension under the War Pensions Scheme; or
- (ix) Police Injury Pension; and

(b) the applicant must provide evidence that their partner is able to maintain and accommodate themselves, the applicant and any dependants adequately in the UK without recourse to public funds.

E-ECP.3.4. The applicant must provide evidence that there will be adequate accommodation, without recourse to public funds, for the family, including other family members who are not included in the application but who live in the same household, which the family own or occupy exclusively: accommodation will not be regarded as adequate if-

- (a) it is, or will be, overcrowded; or
- (b) it contravenes public health regulations.

9. The ECO having expressly accepted that the Appellant had supplied all of the specified evidence, and the decision making no reference to any of the 'general grounds for refusal', it is clear that the decision to refuse was incoherent on its face. If the Appellant met all of the requirements, she should have been given leave to enter as a spouse.
10. Mrs Aboni accepted this analysis and agreed that notwithstanding the fact that no-one appears to have pointed this out to Judge Pacey, it was an error of law for the Tribunal to have failed to appreciate that the decision itself was flawed. If there was no reason given under the Rules to refuse the Appellant, that was obviously relevant to the question of whether it would be a disproportionate interference with the Appellant's Article 8 right to be with her husband. The 'credibility' of the witnesses before the Tribunal was in those circumstances of little relevance.
11. I should add for the sake of completeness that I accept that Mr Pipe's grounds, as summarised above, were also made out. The Tribunal entirely fails to take into account the uncontested fact that all of the specified evidence relating to the sponsor's employment was submitted with the application. This included, contrary to its findings at paragraph 25 of its decision, his P60s covering the relevant period. As for the finding that it is "not credible" that the sponsor's employer would be able to recall the ECO's telephone call, this is entirely unreasoned, and contrary to the evidence of the ECO himself, who admits on the face of the refusal that the call took place: "however as part of our consideration of your application on 15 May 2017 a Home Office official telephoned your sponsor's employer, Ryalls HMB Ltd".
12. I therefore set the decision of the First-tier Tribunal aside.

13. The re-making will not take long. As I note above the ECO's decision does not itself contain a clear reason as to why the application was refused, since the Appellant is found to meet all of the requirements of the rules cited therein. If it could at one time have been argued that the decision to refuse leave was nevertheless proportionate because of the doubts about the sponsor's employment and documentation, that day has passed. That is because Mr [K] has now produced statements from HMRC demonstrating that in the year in question he declared an income from employment at Ryalls of £3997, precisely the amount he had claimed to have earned in the first place. The Respondent accepts that these statements are accurate; on that basis Mrs Aboni invited me to allow the appeal¹.

Decisions

14. The determination of the First-tier Tribunal contains material errors of law and it is set aside.
15. I remake the decision in the appeal by allowing it on human rights grounds.
16. I was not asked to make a direction for anonymity and I see no reason to do so.
17. The Respondent will no doubt wish to action this decision expeditiously given that it has now been some two years since the Appellant made her application.

Upper Tribunal Judge Bruce
19th February 2019

¹ The minimum income requirement being met by Mr [K]'s additional earnings of c £17,000 pa in his employment at Chubb Fire and Security Ltd.