Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/24232/2014

THE IMMIGRATION ACTS

Heard at Columbus House, Newport	**Decision & Reasons Promulgated**
On 3 December 2014	**On 9 December 2014**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SASHI KUMAR NATESAN

Respondent

Representation:

For the Appellant: Mr I Richards, Home Office Presenting Officer
For the Respondent: No representative and no appearance

DETERMINATION AND REASONS

1. The Secretary of State appeals against the decision of the First-tier Tribunal (Judge Camp) allowing the appeal of Sashi Natesan, a citizen of India born on 11 February 1982, against a decision of the Secretary of State refusing to grant him leave to remain as a Tier 5 Temporary Worker (Creative and Sporting) Migrant under para 245ZR of the Immigration Rules (Statement of Changes in Immigration Rules, HC 395 as amended) on 27 May 2014 and also to make a decision to remove him by way of directions under s.47 of the Immigration, Asylum and Nationality Acts 2006.

2. For convenience, I will refer to the parties as they appeared before the First-tier Tribunal.

3. The appellant's immigration history is as follows. On 2 May 2013, he was granted leave to enter the United Kingdom as a Tier 5 (Creative and Sporting) Migrant valid until 3 February 2014. On 14 February 2014 he was granted leave to remain in the UK on that same basis until 2 May 2014. On 30 April 2014, he made a combined application for further leave to remain in the UK as a Tier 5 Temporary Worker (Creative and Sporting) Migrant and for a Biometric Residence Permit.

4. On 27 May 2014, the Secretary of State refused that application. Although the Secretary of State was satisfied that the appellant met the relevant requirements for Attributes in Appendix A and for Maintenance in Appendix C and awarded him the required points, the Secretary of State refused him leave on the basis that:

> "Grants of Entry Clearance of Leave to Remain in the Creative and Sporting sub-category of Tier 5 (Temporary Worker) are limited to a maximum continuous period of 12 months, as specified in the Immigration Rules.
>
> In view of the fact you have previously been granted 12 months of leave in the United Kingdom, the Secretary of State is not satisfied that a further period of leave to remain in this category can be granted."

5. The appellant appealed to the First-tier Tribunal. The appeal was determined by Judge Camp on the papers as no oral hearing was requested. Having set out the requirements of para 245ZR and, in particular, sub-paragraph (b), Judge Camp concluded that there was nothing in para 245ZR(b) which restricted the grant of entry clearance or leave to a maximum continuous period of twelve months. Judge Camp also referred to para 245ZR(f) which allowed for the grant of a maximum of 24 months in total to a Tier 5 applicant in the "creative" category. Judge Camp concluded that it was not clear whether the applicant fell within the "creative" or "sporting" category and concluded at paras 18-20 of his determination as follows:

> "18. There is nothing in the refusal letter or in any of the respondent's documents which shows whether the appellant is in the creative, rather than sporting, category. This in itself, renders it impossible to determine whether the correct rule or rules have been applied. The outcome would be different in each case.
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> 19. Inadequate reasons have therefore been given for the decision.
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> 20. I consequently allow the appeal on the basis that the decision is not in accordance with the law, in order to enable the respondent to give proper consideration to the application."

6. On 26 September 2014, the First-tier Tribunal (Judge Chambers) granted the Secretary of State permission to appeal. The grounds of appeal argue that it was clear from the appellant's application that he fell within the "sporting" category as he was seeking employment as a "work - rider/groom". Consequently, by virtue of para 245ZR(b)(ii)(1) he was limited to a total of twelve months' leave and therefore the Secretary of State's decision not to grant the appellant further leave was in

accordance with the Rules as the appellant had already been granted twelve months' leave.

7. The appellant is unrepresented and did not attend the hearing. Mr Richards, who represented the Secretary of State, invited me to determine the appeal in the absence of the appellant. I confirmed the address of the appellant on the Tribunal's file was the address held by the Home Office. Notice of the hearing was sent to the appellant at that address on 24 October 2014. In those circumstances, I was satisfied that the appellant had been notified of the hearing or that reasonable steps had been taken to notify him of it and that it was in the interests of justice to proceed with the hearing in the exercise of my discretion under rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).

8. Mr Richards relied upon the grounds of appeal and submitted that the appellant fell within para 245ZR(b)(ii)(1) and as a consequence any grant of leave was restricted to a maximum of twelve months. He submitted that the judge had erred in law in allowing the appellant's appeal and he invited me to set it aside and remake the decision dismissing the appellant's appeal under the Rules.

9. Paragraph 245ZR sets out the period and conditions of any grant of leave to an individual seeking to remain in the UK, inter alia, as a Tier 5 (Temporary Worker) Migrant. So far as relevant, para 245ZR provides as follows:

> "(a) If any calculation of period of leave comes to zero or a negative number, leave to remain will be refused.
>
> (b) Subject to paragraphs (c) to (f) below, leave to remain will be granted for:
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> (i) the length of the period of engagement, as recorded in the Certificate of Sponsorship Checking Service entry, plus 14 days (or, where the applicant has consecutive engagements, a period beginning on the first day of the first period of engagement and ending 14 days after the last day of the last period of engagement) or
>
> (ii) the difference between the period that the applicant has already spent in the UK since his last grant of entry clearance or leave to enter as a Tier 5 (Temporary Worker) Migrant and:
>
> (1) 12 months, if he is being sponsored in the Government Authorised exchange sub-category for a Work Experience Programme where the initial grant of leave was granted under the Rules in place from 6 April 2012, the Creative and Sporting sub-category, or the Charity Workers sub-category, or
>
> ...
>
> whichever of (i) or (ii) is the shorter."

10. Summarising those provisions, the length of leave to be granted is the shorter of the two periods calculated under sub-paragraph (i) and (ii).

11. Sub-paragraph (i) calculates the period of leave to be granted as that specified in the Certificate of Sponsorship as the length of the engagement to be undertaken by an individual plus fourteen days. That certificate is not contained within the bundle of papers although reference is made to a gross annual salary of £17,500 in the appellant's application for leave. It may well, therefore, have been an application where leave was sought for twelve months. In fact, it is not material to the outcome of the appellant's appeal whether his application was for twelve months or less. This is because he falls within para 245ZR(b)(ii)(1) and the effect of that applied to him is that he is only entitled to a maximum of twelve months as a Tier 5 (Temporary Worker) Migrant falling in the "Creative and Sporting sub-category". He was, therefore, by virtue of that provision, entitled to leave calculated as the difference between twelve months and the period he had "already spent in the UK since his last grant of entry clearance or leave to enter" as a Tier 5 Migrant. The appellant was last granted leave to enter (as opposed to leave to remain) on 2 May 2013. He had, by the date of his application, been in the UK for twelve months with leave until 2 May 2014. The difference, therefore, between twelve months and the period he had already been in the UK since he was last granted entry clearance or leave to enter was, in fact, zero. He was, therefore, not entitled to the grant of further leave as a Tier 5 (Temporary Worker).

12. The judge referred to para 245ZR(f) which he noted allowed a "creative worker" under the Tier 5 route to be granted a maximum of 24 months' leave with the same sponsor.

13. It is not entirely clear whether the judge had in his papers the appellant's application. However, it is clear from that application that the appellant was <u>not</u> applying in the "creative" worker category. At section L43 the appellant stated that his job title was "work – rider/groom". The job clearly fell within the "sporting" category. As a result para 245ZR(f) had no application. The appellant's application was governed by para 245ZR(b) and, in particular, sub-paragraph (ii)(1) and as a result the appellant was not entitled to the grant of leave of any further. He had already been granted the maximum leave he was entitled to.

14. For these reasons, the First-tier Tribunal erred in law in allowing the appellant's appeal. The appellant could not succeed under para 245ZR and the Secretary of State's decision to refuse his application was in accordance with the Immigration Rules.

15. Consequently, I set aside the decision of the First-tier and I remake the decision dismissing the appellant's appeal under the Immigration Rules.

Signed

A Grubb
Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

I have dismissed the appellant's appeal and for that reason I do not make a fee award.

Signed

A Grubb
Judge of the Upper Tribunal