



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: VA/15438/2013
VA/15439/2013

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court
On 5th September 2014

Determination Promulgated
On 15th September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) MR RANA A. A. KHAN
(2) MRS MARYAM SADDIQA
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - ABU DHABI

Respondent

Representation:

For the Appellants: No appearance
For the Respondent: Mr D Mills (HOPO)

DETERMINATION AND REASONS

1. This was an appeal against the determination of First-tier Tribunal Judge Malik promulgated on 25th April 2014, following a “paper hearing”, in which the judge had

refused the appeals of Mr Rana Azhar Ahmad Khan and his wife Mrs Maryam Saddiqa, both of whom subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are husband and wife respectively. The first Appellant, the husband, was born on 2nd March 1972. The second Appellant, his wife, was born on 15th July 1987. Both are citizens of Pakistan. Both applied for a visitor's visa in order to visit their Sponsor and relative, Mr Arshad Mahmood, who is the first Appellant's brother, and the second Appellant's brother-in-law.

The Appellants' Claim

3. The Appellants' claim is that the ECO was already satisfied that the Sponsor could pay for the Appellants' maintenance and accommodation once they had visited in the UK. The Appellant had stated his income was £544 per month from his jewellers business which operated since 14th August 2011. He had provided a letter from the Anuman-e-Tajran Chenab Nagar and a bank statement. The bank statement showed an increasing balance from £299 on 6th December 2012 to £15,593 on 14th May 2013. It is true that the ECO had held that the provenance of these funds could not be demonstrated. However, he was wrong to conclude that the Appellants were not generally seeking entry as visitors. The review by the Entry Clearance Manager on 19th January 2014 was also wrong in upholding the decision of the original Entry Clearance Officer.

The Judge's Findings

4. The judge held that, given that the first Appellant, Mr Rana Azhar Ahmad Khan "has supplied numerous documents in support of his appeal that is in business as claimed ... I am satisfied on the balance of probabilities he is" (paragraph 8). However, the judge then turned to consider whether in "turning next to the issue of income" the Appellant could discharge the burden of proof that was upon him (see paragraph 9). Here the judge held that the Appellant could not discharge the burden of proof.

Grounds of Application

5. The grounds of application state that given that the judge was satisfied that the principal Appellant was in business as he claimed it was wrong to have dismissed the appeal.
6. On 2nd July 2014 permission to appeal was granted on the basis that "it is arguable that the judge applied a too high standard of proof".

Submissions

7. At the hearing before me the Appellants were again unrepresented and the Sponsor, Mr Arshad Mahmood, was also not in attendance. With respect to the Respondent, Mr D Mills, a Senior Home Office Presenting Officer, was in attendance. He

submitted that the judge was perfectly entitled to conclude that the first Appellant was in business, and at the same time to find that, the income derived from the business was not such as to enable the first Appellant to discharge the burden of proof that was upon him.

No Error of Law

8. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside this decision. My reasons are as follows. This is a case where the judge considered the evidence in the round. He approached the matter comprehensively. He decided that the Appellant, on the basis of the documentation provided from the bank, and in the form of a letter, was generally in business. However, it is also the case that the Entry Clearance Officer had expressed concern in this case that the Appellant's income had shot up from £299 on 6th December 2012 to £15,593 on 14th May 2013 (see paragraph 4).
9. The question here was whether the Appellant generally was in receipt of such an income. In a well crafted, and fully reasoned determination, the judge went on to hold (see paragraph 9) that the Appellant could not discharge the burden of proof in this respect. He was categorical in his statement that, "I am unable to determine the income generated either through buying or selling".
10. He gave his reasons. First, there were no certified completed tax returns. Second, the Appellant had not provided a credible explanation as to how the balance in his account increased to over £15,000. Third, there was no reasonable evidence before the judge to indicate that the funds in the business account were solely for the Appellants' personal use to fund the trip. Finally, there was no evidence that the Appellant derives an income from this land, and nor was there evidence that he derived an income from his investments.
11. The judge was perfectly entitled to come to these conclusions. The findings were open to him. The decision is in no way irrational.

Decision

12. There is no material error of law in the original judge's decision. The determination shall stand.
13. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

11th September 2014