



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/31546/2014

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 30 April 2015

Decision Promulgated
On 6 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

CELAL ASLAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Syed of Hadi solicitors

For the Respondent: Mr G Harrison

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is the resumed hearing of an appeal against a refusal of further leave to remain as the spouse of a person present and settled in the United Kingdom. On 20 February 2013 I heard the appeal and set aside the decision made by the Judge as he had made errors of law in applying the incorrect law to the Appellant's application. This hearing was to consider whether the Appellant met the requirements of paragraph 284 and 285 of the Rules which in so far as they are applied to the Appellant were those that applied at the time he was initially granted entry clearance as provided by the transitional provisions of Appendix FM (Appendix FM A280 (c)) as agreed at the error of law hearing. The only provisions in dispute were:

“Requirements for an extension of stay as the spouse or civil partner of a person present and settled in the United Kingdom

284. The requirements for an extension of stay as the spouse or civil partner of a person present and settled in the United Kingdom are that:

...

(vii) there will be adequate accommodation for the parties and any dependants without recourse to public funds in accommodation which they own or occupy exclusively; and

(viii) the parties will be able to maintain themselves and any dependants adequately without recourse to public funds; and

(ix) (a) the applicant provides an original English language test certificate in speaking and listening from an English language test provider approved by the Secretary of State for these purposes, which clearly shows the applicant's name and the qualification obtained (which must meet or exceed level A1 of the Common European Framework of Reference)”

The Law

3. The burden of proof in this case is upon the Appellant and the standard of proof is upon the balance of probability.
4. As the Appellant is in the United Kingdom, I can take into account evidence that concerns a matter arising after the date of the decision in accordance with Section 85(4) Nationality, Immigration and Asylum Act 2002.
5. The Appellant's appeal is pursuant to Section 82 of the 2002 Act.
6. The appeal must be allowed if I find that the decision against which the appeal is brought was not in accordance with the law or with the Immigration Rules or if the decision or action involved an exercise of discretion by the Respondent, which should have been exercised differently. Otherwise, I must dismiss the appeal.

Evidence

7. On the file I had the Respondents bundle. I had a copy of the reason for refusal letter. The Appellant put in an appeal I have now been provided with an additional statement from the Appellant addressing the specific issues relating to this hearing together with a schedule that addresses the maintenance issue in this case.
8. Before the Appellant gave evidence Mr Harrison indicated that he had had the opportunity to study the maintenance schedule and discuss it with Mr Syed. He

indicated that while the Appellant's earnings were in cash and not reflected in bank deposits he accepted that even if that sum was excluded from the calculation taking the other sources of income into account the income into the household exceed the sum that the Appellant and his wife would receive in income support.

9. I heard evidence from the Appellant.
10. He adopted the contents of his witness statement. He confirmed that at present the Appellant and his wife were not living together although that was their intention when he found a job in Blackburn.
11. He explained that he had an extendable tenancy on a two bedroomed property.
12. He confirmed that when he had first been granted entry clearance he had provided an English Language Certificate that met the requirements at level A1 and those documents were in the bundle at pages 46-48.

Final submissions

13. On behalf of the Respondent Mr Harrison made the following submissions:
 - (a) The refusal letter was of little assistance as he conceded that it wholly failed to address the relevant law in this case which was paragraph 284 and 285.
 - (b) He conceded that it appeared that the Appellant met those requirements.
14. On behalf of the Appellant Mr Syed made the following submissions
 - (a) He relied on the documentary evidence and the copies of the relevant provisions of the Rules.

Findings

15. On balance and taking the evidence as a whole, I have reached the following findings
16. The Appellant is a 44 year old national of Turkey who was an application made on 23 May 2014 for further leave to remain as the spouse of Jean Armstrong a British Citizen that he had married on 20 April 2010. He has not yet applied for indefinite leave to remain as he failed the life in the United Kingdom test.
17. As a result of that marriage the Appellant made an application to enter the United Kingdom as a spouse which was granted and the Appellant entered the United Kingdom on 8 March 2012.
18. I am satisfied that the refusal letter in this case was wrong in that it considered the Appellant's application by reference to the new Rules governing family life which were introduced on 9 July 2012. The Appellant's application was an application for further leave to remain and as such was, in accordance with the transitional provisions referred to above to be considered by reference to paragraph 284.
19. The issues in this case were narrow as it was always accepted that the Appellant and his wife were in a genuine and subsisting relationship and I have no reason to doubt

this was a very proper concession. While they are not at present living together this is because of problems in relation to employment as the Appellant has been unable to find work in Blackburn where his wife lives.

20. The first concern was in relation to maintenance. Mr Syed very helpfully provided me with a schedule setting out a 'maintenance calculation using the examples set out in the Home Office Guidance.
21. I accept that the schedule sets out an accurate account of the Appellant's income. I found him to be a credible witness and while he is paid in cash there is no mandatory documentary requirements as there are in Appendix FM. I find that the Appellant and his wife meet the required level of assessment which is the equivalent income support for a married couple.
22. In relation to their accommodation the Appellant has produced evidence of a joint tenancy agreement in respect of the property where his wife is currently living. I accept that this would be adequate accommodation for the purposes of the Rules in the event of him living permanently with her.
23. In relation to the language proficiency I accept that the Appellant would not have been granted entry clearance if the language certificate he had provided had not shown that he met the required standard in speaking listening and writing, A1. The certificate appears at page 46 of the bundle. The Appellant has gone on to pass English qualifications at a higher level since he has been in the United Kingdom. The refusal letter did not of course address the language issue but Mr Harrison did not seek to suggest that the evidence that the Appellant had produced did not meet the requirements. I accept they show this particularly taking into account what is said in paragraph 32 D of Appendix FM-SE which suggests that even if the language provider is no longer approved provided the test certificate was accepted for the previous application and the Appellant has had continuous leave since then and was not withdrawn by the provider.

Conclusion

24. I find that the Appellant has discharged the burden of proof on him to show that the terms of paragraph 284 of the Rules are met.
25. I therefore find that the decision of the Respondent appealed against is not in accordance with the law and the applicable Immigration Rules.

Decision

26. The appeal is allowed.
27. No anonymity direction is made.

Signed

Date 5.5.2015

Deputy Upper Tribunal Judge Birrell

