



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/07807/2015

THE IMMIGRATION ACTS

Heard at North Shields
On 8th January 2018

Decision & Reasons Promulgated
On 30th January 2018

Before

Upper Tribunal Judge Chalkley

Between

MUHAMMAD NAZAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant:

Mr S Mohammed, Kingstons Solicitors (Newcastle)

For the Respondent:

Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 24th December 1982. He made entry clearance as a partner under Appendix FM of Statement of Changes in Immigration Rules, HC 395, as amended ("immigration rules").
2. The Entry Clearance Officer believed that the appellant could not meet the requirements of Appendix M and in particular:-

- “• *It was considered that the Appellant could not demonstrate that the income threshold requirement under Appendix FM was met and/or the related evidential requirement under Appendix FM-SE.*
 - *The Appellant was expected to demonstrate that the required gross income of £18,600 could be met.*
 - *The Appellant had failed to provide the required documents under appendix FM, namely wage slips confirming (i) the person's employment and gross annual salary; (ii) the length of their employment; (iii) the period over which they had been or were paid the level of salary relied upon in the application; and (iv) the type of employment (permanent, fixed term contract or agency).*
 - *A contract of employment was submitted but not the required accompanying letter demonstrating the necessary detail.”*
3. The application was refused by the Entry Clearance Officer on 10th September 2015, and the appellant appealed to the First-tier Tribunal.
 4. His appeal was heard at King's Court, North Shields on 21st December 2016, by First-tier Tribunal Judge S T Fox.
 5. The judge dismissed the appeal, finding both the sponsor and the sponsor's employer not credible. He was not satisfied on the evidence that the appellant was entitled to entry clearance and dismissed the appellant's appeal.
 6. The appellant appealed, claiming that the judge erred in finding the sponsor's credibility to be damaged, because the judge failed to take into account independent evidence provided by the employer, the employer's accountant and a verification report provided by the respondent confirming the sponsor's employment income. It was suggested that no appropriate reasons were given for finding the employer not to be credible.
 7. Addressing me today, Mr Mohammed suggested that the judge had taken the wrong calculation, when at paragraph 22 of the determination, he records that the sponsor said that she earned between £7 and £8 per hour and that Mr Hussain confirmed the same figure. At paragraph 23 the judge believes that at £7 per hour, working a 40 hour week, the sponsor would earn £14,560 per annum in a 52 week working year. At £8 per hour she would earn £16,640 per annum and that at £7.68 per hour she would earn £15,974.40 per working year. However, submitted Mr Mohammed, the judge had before him a verification report produced by UK Visas & Immigration from information provided by HM Customs & Excise. This showed that the appellant had a record of earnings with Morrisons of £310.80, a total pay from Solomon's Cuisine Limited of £9,349.89 and that the Solomon's Cuisine Limited employment start date was 6th April 2014. The most recent pay was £1,558.33 on 30th June 2015 and that, he said, shows a total income of £18,699.96 which, he claimed, was sufficient to satisfy the Rules. She started work on 6th October 2014, so that the total pay referred to in the verification report of £9,349.98 related to a six month

period. If that is doubled then of course it gives one the yearly figure which satisfies the immigration rules.

8. Mr Mohammed suggested that there were also bank statements which had been submitted to the Entry Clearance Officer, but since these were not challenged by the Entry Clearance Officer they were not placed before the judge. Mr Mohammed pointed out that Mr Hussain, the employer, had given evidence suggesting that the sponsor was paid at the lower rate of pay of £18,700, rather than the national average of £21,000, because she had a lack of experience and lacked training.
9. The judge had criticised the evidence of Mr Hussain, because the claim that the job needed to be filled quickly because there was demand for such a position, conflicted with the appellant's decision to take a six week holiday to go to Pakistan and marry. Shortly, thereafter she went on nine months maternity leave and Mr Hussain's evidence was that he and his brothers, "took up the slack" generated by the appellant's absence. The judge found that that evidence that the position required filling did not sit well with the evidence that prolonged periods of absence could be facilitated by the company for holidays and for maternity leave, without hiring a temporary worker to take over during the maternity period.
10. Mr Bates drew my attention to paragraph 8 of the determination in relation to the documents, some of which were only received on the day of the hearing. There were three letters from the sponsor's employer, confirming her salary of £18,700. The respondent had not accepted that the sponsor was qualified for the post she currently held of a restaurant manager. Her reasons for that were put to the appellant in cross-examination. The sponsor gave oral evidence that she learned of the job through friends and family. The judge noted that she claimed that her family did not know Mr Hussain of Solomon's Cuisine Limited however, in his statement Mr Hussain claimed to know of the appellant's family. This inconsistency was not addressed by the appellant or representatives. The judge noted Mr Hussain's evidence that she had been given two extra weeks holiday with pay rather than the four weeks holiday according to her contract, because she was a good worker. In evidence when she was asked how much she was paid, she said she thought it was between £7 and £8 per hour and Mr Hussain confirmed the same figure. The sponsor then believed it was some £7.68 per hour. If in fact she was paid £18,700 per year, it is curious that both she and Mr Hussain should have attempted to explain her income in terms of hourly wage, rather than as annual salary. The judge did not believe it was credible that the employer would allow the sponsor to go on six months holiday and then take nine months maternity leave without employing additional staff and simply by managing because, "brothers rallied round".
11. I reserved my determination.
12. There were three letters before the judge from Solomon's Cuisine to show that the sponsor earned £18,700 per annum. He also had a letter from the employer's accountants in which they confirmed the same earnings. Unfortunately, they say

that the sponsor commended employment on 1st October 2014, rather than 6th October 2014. This evidence was contradicted by the oral evidence of the sponsor and her employer.

13. The sponsor gave oral evidence to the judge but unfortunately contradicted herself on several occasions. She was warned that credibility was an issue in the appeal, but the respondent did not accept that the sponsor was qualified for the post she held and the sponsor and Mr Hussain were inconsistent as to whether or not the sponsor's family knew Mr Hussain.
14. I find it curious that when asked how much she was earning, the sponsor replied by quoting £7 or £8 per hour rather than her yearly salary of £18,700 if, in fact, that is what she was being paid. I found it curious also that the employer gave a similar answer instead of simply quoting the yearly wage. The judge was entitled to find that if the position occupied by the sponsor required filling so evidentially as claimed, it did not sit well with the evidence before him that prolonged periods of absence could be facilitated by the company for a holiday and maternity leave. There was no evidence that during this maternity leave another employee was employed to cover for the sponsor's absence. The judge felt that when that was taken into account, along with the sponsor's lack of experience in the food and service industry as a waiter or a manager, the credibility was damaged. At paragraph 28 the judge is critical of the employer by claiming that he "appears to be trying very hard to compliment the evidence of the sponsor". Both witnesses gave evidence that conflicts with the documentary evidence, particularly regarding the claimed earnings. The judge was entitled to have doubts that these documents can be relied upon.
15. Mr Bates suggested that the verification report was very clearly taken into account by the judge and that his reference to the documentary evidence includes the verification report. However, since the verification report itself was compiled from evidence provided by Mr Hussain to HM Revenue & Customs and since he has been found not to be credible, it follows, suggested Mr Bates, that the verification report cannot be relied upon.
16. I am satisfied that the judge was entitled to make the findings he did on the evidence before him. There is no perversity on his part in the public law sense. The witnesses clearly contradicted the documentary evidence and he was entitled to find that the oral evidence before him could not be relied upon. Since the evidence from HM Revenue and Customs was prepared on the basis of information supplied by the sponsor's employer, who had been found by the judge not to be credible, he was entitled not to place reliance on it.
17. I believe that the making of the determination by First-tier Tribunal Judge Fox did not involve the making of an error on a material point of law. I uphold his appeal. The appellant's appeal is dismissed.

There is no order for anonymity.

Richard Chalkley

Upper Tribunal Judge Chalkley

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Richard Chalkley

Upper Tribunal Judge Chalkley

Date 26th January 2018.