



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/09316/2012

THE IMMIGRATION ACTS

Heard at Columbus House, Newport
On 31 July 2013

Determination Promulgated
On 5 August 2013

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

SAIFUR RAHMAN

Appellant

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellant: Mr T Shah of Taj Solicitors

For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh who was born on 19 February 1981. On 1 April 2012, the Entry Clearance Officer refused his application for entry clearance as a spouse under para 281 of Statement of Changes in Immigration Rules (HC 395 as amended).
2. The appellant appealed to the First-tier Tribunal and in a determination promulgated on 7 February 2013 Judge Whiting dismissed the appellant's appeal. On 15 April

2013, the First-tier Tribunal (Judge Cruthers) granted the appellant permission to appeal to the Upper Tribunal.

3. The appellant's case was that he had married a British citizen, Alibon Nessa who was born on 29 January 1991. They underwent an Islamic marriage ceremony on 5 July 2009 and subsequently obtained a Nikah Nama as evidence of the registration of their marriage in Bangladesh on 29 January 2012.
4. In his decision, the Entry Clearance Officer did not accept that the appellant and sponsor's marriage was a genuine one. In addition, the ECO did not accept that the appellant would be able to maintain himself and the sponsor without recourse to public funds. He did not accept that the sponsor was employed as she claimed by a restaurant, the Bombay Blue in Nantgarw, Cardiff as a secretary earning £185.59 per week.
5. In the First-tier Tribunal, Judge Whiting accepted that the parties' marriage was genuine and that matter is now not in dispute and I need say no more about it. However, Judge Whiting did not accept that the appellant could meet the maintenance requirements and, in particular, he was not satisfied of the sponsor's employment at the Bombay Blue Restaurant.
6. On 1 July 2013, the appeal was initially listed before me. In a decision dated 5 July 2013, I concluded that Judge Whiting had materially erred in law in finding that the appellant had not met the maintenance requirement in para 281(v) of the Rules. I set aside the decision and the appeal was relisted before me on 31 July 2013 in order to remake the decision under the Immigration Rules.
7. At the hearing, Mr Richards, who represented the ECO accepted that the only issue was whether the sponsor was employed as she claimed at the Bombay Blue Restaurant in Nantgarw. He accepted that if that was established then the appellant had met the maintenance requirement in the Rules.
8. Mr Shah, who represented the appellant sought permission to adduce further evidence contained in an appeal bundle together with a supplementary statement of the sponsor dated 31 July 2013. Mr Richards did not object to the admission of this evidence under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698). I admitted the evidence under rule 15(2A).
9. The applicable Immigration Rule is para 281, and so far as relevant to this appeal, provides in para 281(v) the requirement that:

"the parties will be able to maintain themselves and dependants adequately without recourse to public funds ...".
10. The burden of proof is upon the appellant to establish on a balance of probabilities that he met the requirements of the Rules at the date of decision, namely 1 April 2012.

11. The sponsor gave oral evidence before me. She adopted her witness statement which was before the First-tier Tribunal and also her supplementary statement dated 31 July 2013 prepared for the purposes of this hearing. The sponsor also briefly gave evidence-in-chief.
12. The sponsor's evidence is that she works at the Bombay Blue Restaurant in Nantgarw as a secretary. She told me that her work involved paperwork and dealing with orders from the kitchen for supplies each week and that she helped out "as and when needed" as a waitress in the restaurant. She told me that this was her first job after she moved from London where she had been living with her parents at their home when she was a student. Her evidence before the First-tier Tribunal was that she started work on 2 May 2011 and was paid "cash in hand". She told me that she had obtained the job on coming to live in Cardiff with her uncle (Mr Karim) after he had told her that there was a vacancy at the Bombay Blue Restaurant. The evidence before the First-tier Tribunal was that Mr Karim also worked at that restaurant which is owned by another uncle of the appellant, Mr Kalam. The sponsor's evidence is that she lives rent-free with her uncle, Mr Karim and, as she is family, she does not pay any rent.
13. Having given her evidence-in-chief, Mr Richards did not cross-examine the sponsor. Her evidence is, therefore, not challenged in this appeal. I invited Mr Richards to indicate his position in relation to the appeal. He acknowledged that there was a "wealth of evidence" that the sponsor was employed as she claimed and he made no submissions seeking to persuade me that the appeal should be dismissed. In these circumstances, I did not call upon Mr Shah.
14. I have no hesitation in accepting the evidence of the sponsor. She was clearly, in my view, a truthfully witness. Her evidence was not subject to challenge before me. There is also supporting evidence that she is employed as she claims. There are a number of photographs at pages 37-42 of the bundle, clearly showing the Bombay Blue Restaurant with the sponsor serving customers and sitting at a desk which the sponsor told me was her office. In the appeal bundle that was before the First-tier Tribunal, there is a P60 form (at page 144) for the tax year to 5 April 2012. That is in the sponsor's name with the Bombay Blue Restaurant as her employer, showing her annual income for that tax year as £8,045.24. Further, there is a P60 form for the tax year to 5 April 2013 showing that the sponsor earned £9,653.28 and showing the employer as being the "Bombay Blue (Wales) Ltd" at the restaurant's address in Nantgarw.
15. I was also provided at the hearing with a number of letters from individuals who stated that they were customers at the Bombay Blue Restaurant and knew the sponsor as someone who worked there. This evidence is also not challenged and I see no basis upon which I can find it other than reliable in the light of all the evidence in this appeal.
16. In addition, there are detailed bank statements (at pages 55-83) in the sponsor's name covering various periods between 8 November 2011 and 7 June 2013, showing

regular cash credits around £180 which is the sponsor's claimed weekly income. In particular, there are bank statements for a period covering 8 March 2012 to 5 April 2012 showing cash deposits around the date of decision. In addition, at pages 95-112 there are a number of payslips in the sponsor's name with the stated employer being "Bombay Blue (Wales) Ltd" covering the period September 2011 until January 2012. There are also supporting letters from Ms Karim at pages 51B-52 of the bundle and from a firm of chartered accountants, Ahmed & Co (at pages 49-50) stating that the sponsor commenced employment for Bombay Blue on 2 May 2011 working 30 hours a week with gross weekly wages of £185.70.

17. As Mr Richards candidly accepted, there is a wealth of supporting documentation that confirms the sponsor's own evidence that she has been employed by the Bombay Blue Restaurant since May 2011; that she was so employed at the date of decision and, indeed, remains employed there at the date of this hearing.
18. Having considered all the evidence, I am satisfied on a balance of probabilities that the sponsor is employed as she claims, earning approximately £180 per week at the Bombay Blue Restaurant in Nantgarw.
19. I am satisfied on the basis of that income that the appellant met the maintenance requirement in para 281(iv) of the Rules at the date of decision.
20. The appellant established before the First-tier Tribunal that his marriage was a genuine and subsisting one and that the parties intended to live together permanently in the UK. No other requirement of para 281 being in issue, I am satisfied that the appellant met (and continues to meet) all the requirements of para 281.

Decision

21. The appeal is allowed under the Immigration Rules, namely para 281.
22. In the circumstances of this appeal, I direct that entry clearance be granted to the appellant under para 281.

Signed

A Grubb
Judge of the Upper Tribunal