



OUTER HOUSE, COURT OF SESSION

[2022] CSOH 71

P383/22

OPINION OF LORD ERICHT

delivered *ex tempore*

In Petition of

GHULAM SUGHRA

Petitioner

for

Judicial Review

Petitioner: S Winter; Drummond Miller LLP
Respondent: G Maciver; Office of the Advocate General

15 September 2022

The circumstances of the case

[1] The petitioner, who lives in Pakistan, wishes to visit her daughter and her family in Glasgow for a period of around 2 months. On 8 March 2022 the respondent's Entry Clearance Officer ("ECO") refused her application for a visitor visa. The ECO was satisfied that the petitioner's sponsor was in a position to pay for her maintenance and accommodation whilst in the UK and took that into account.

[2] However, the ECO was not satisfied of the petitioner's intention to leave the UK on completion of the visit. The reasons for this were set out in the decision letter as follows:

"you state you are retired and reside with and are supported by your sons in your home country, however the documents you have submitted do not demonstrate this.

You state that you spend £80 (PKR 18,742.60) per month and are planning on personal spending £100 (PKR 23,428.30) during your visit, however the documents you have submitted do not demonstrate that you are able to do this. Which leads me to doubt your circumstances and therefore the credibility of your application.

I have considered the documents and information you have provided about your personal and economic circumstances. However, I have noted that you declared that you have no savings, properties or other income; you intend to travel to the UK to see your immediate family, leaving behind no dependents. Therefore I am not satisfied that you have substantial ties outside of the UK to ensure you will leave at the end of your proposed visit. On balance of probabilities I am therefore not satisfied that you are genuinely seeking entry as a visitor or will leave the UK after a limited period. **Refused under paragraphs V4.2(a) (c) of the Immigration Rules."**

[3] The paragraphs of the Immigration Rules under which the application was refused are as follows:

"V4.2. The applicant must satisfy the decision maker that they are a genuine visitor, which means the applicant:

(a) will leave the UK at the end of their visit; and...

(c) is genuinely seeking entry or stay for a purpose that is permitted under the Visitor route as set out in Appendix Visitor: Permitted Activities and at V 13.3;"

Submissions for the petitioner

[4] Counsel for the petitioner submitted that the informed reader was left in real and substantial doubt as to the relevance of the ECO not being satisfied that the petitioner has substantial ties in Pakistan or not being satisfied of the petitioner's financial circumstances or other reasons when the sponsor's credibility/reliability is not challenged. Although the ECO questions the lack of documentary evidence to support certain aspects, there were no credibility or reliability issues raised as regards the sponsor's evidence. The sponsor's statement was part of the documentary evidence. The sponsor's statement demonstrated that the petitioner was retired, who she resided with and who supported her. The sponsor's evidence demonstrated that the petitioner would be financially supported. The sponsor's

statement indicated that the petitioner had substantial ties outside the UK. In light of that the ECO still required to explain, albeit briefly, the relevance of the findings when there was no challenge to the credibility or reliability of the sponsor and the information given by the sponsor. Fairness requires that adequate reasons be given. The decision is of important significance to the petitioner as it potentially adversely affects her position in terms of any future applications to be made, where a previous refusal could be held against her. The petitioner will be left with the sense that she has not been treated fairly (*HLW (China) v Secretary of State for the Home Department*, Ptr [2012] CSOH 159 at paragraphs 42-54 per Lord Kinclaven).

Submissions for the respondent

[5] Counsel for the respondent submitted that the essence of the dispute was that the Secretary of State relied upon one part of the sponsor's statement regarding maintenance in the UK, but not the other part regarding circumstances in Pakistan. The question for the court was whether that approach was legitimate and adequately reasoned. It should be assumed that the decision maker had taken the whole of the evidence into consideration (*Henderson v Foxworth Investments* 2014 SC (UKSC) 203 (para [47])). There was no absence of reasoning. The respondent placed reliance on the absence of documents to demonstrate residence with and support by sons in Pakistan, and on the absence of documents to demonstrate means. The sponsor's statement had been accepted insofar as it bears upon matters connected to the sponsor; whereas for other matters, the petitioner's failure to adduce direct documentary evidence is considered more important. The respondent was not satisfied of ties to Pakistan, because there was insufficient documentary evidence to prove residence and maintenance links to Pakistan. The petitioner cannot be in any doubt as

to why her application failed. The sponsor's statement was good enough for matters which are directly the business of the sponsor; for matters which are other people's direct business, the absence of direct material was more significant. The reason for its failure is not complicated or difficult to understand. The test in *Wordie Property Co Ltd v Secretary of State for Scotland* 1948 SLT 345 was met. It was the applicant's responsibility to provide sufficient information (*GK (India) v SSHD* 2020 SLT 1315; *CL (Argentina) v SSHD* 2021 CSOH 4).

Analysis and decision

[6] The question for me in this case is whether the decision of the ECO

“leave[s] the informed reader and the court in no real and substantial doubt as to what the reasons for it were and what were the material considerations which were taken into account in reaching it” (*Wordie Property Co Ltd v Secretary of State for Scotland* 1948 SLT 345 at 348).

[7] The ECO decided that he was not satisfied that the petitioner was a genuine visitor, which means that the petitioner (a) will leave the UK at the end of the visit and (c) is genuinely seeking entry or stay for a purpose that is permitted under the visitor route (paragraph V4.2(a) and (c)).

[8] The nub of the dispute between the parties was the following passage in the decision: “You state that you are retired and are supported by your sons in your home country, however the documents you have submitted do not demonstrate this”.

[9] The difficulty with that passage is that there was a document submitted by the petitioner which contained evidence of these matters, namely the statutory declaration by the sponsor. The sponsor is someone who could be expected to have knowledge of these matters as she was a family member of the petitioner, being the mother-in-law of the petitioner's son.

[10] The statutory declaration by the sponsor stated:

“The applicant’s family ties in Pakistan

10 [The petitioner’s] husband passed away, and she lives with her sons in their family home. The applicant has three sons and a daughter from the wedlock. Tariq Masood [ie the sponsor’s son-in-law] is the oldest and Sharoz Masood is the youngest son. Sidra Masood is the applicant’s daughter. The applicant’s family ties are stronger in Pakistan than in the UK

14 The applicant lives in her husband’s ancestral village and knows everyone living there, which is the distinguished feature of the closely connected rural community.....The applicant depends on her sons for financial support...

15 The applicant lives a simple life in a village, and being part of a larger family, her needs are modest, unlike our living needs in the UK”

[11] The ECO does not explain why he has rejected the evidence in the statutory declaration as to the applicant’s family ties in Pakistan. That leaves us in real and substantial doubt as to the reason why the ECO has come to the decision which he did.

[12] Is the reason simply that he has not taken into account the evidence in the statutory declaration as to family ties to Pakistan? That is one possible interpretation of the passage set out above. If so, it may be that that might found a challenge to his decision on the ground that he failed to take into account a material factor. I take no view as to whether such a challenge might succeed: the point is that as the petitioner does not know whether that is the reason, she cannot bring such a challenge.

[13] Is the reason that he has taken that evidence into account, but has not expressly mentioned it? If so, in what way did he take it into account and why did he reject it?

[14] Is the reason that the ECO took that evidence into account but found that it was outweighed by the lack of any other documentary evidence?

[15] Is the reason that the ECO has taken the view that there are discrepancies between the evidence in the declaration and the Entry Clearance Application Form in respect of

spending £80 a month and £100 a month during the visit? If so why has the ECO resolved the discrepancies against the sponsor?

[16] Is the reason that the ECO has accepted the evidence of the sponsor in part, and found it to be credible and reliable in respect of payment by the sponsor for her maintenance and accommodation in the UK but not credible and reliable in relation to the family ties in Pakistan?

[17] We simply do know what the reason for rejecting the sponsor's evidence was, and it is inappropriate for the court to speculate as to whether it was one of the reasons suggested above, or indeed some other reason.

[18] The petitioner is entitled to a clear statement of the reasons for rejection of the evidence. The evidence goes to the central issue which had to be decided by the ECO, which was whether the petitioner's life and family ties in Pakistan were such that the petitioner would leave the UK at the end of the visit. Without a clear statement of the reasons, the petitioner is unable to properly assess whether she has any potential remedies against the substance of the decision.

Order

[19] I shall uphold the petitioner's second plea-in-law quoad the decision of 8 March 2022 and repel the respondent's pleas-in-law and grant reduction of the Entry Clearance Office decision of 8 March 2022.