

Asylum and Immigration Tribunal

Appeal Number: IA/08699/2009
IA/08710/2009
IA/08707/2009
IA/08705/2009

THE IMMIGRATION ACTS

Heard at HATTON CROSS

On 1 MAY 2009

Prepared 4 MAY 2009

Determination Promulgated

08 MAY 2009
600Z 14W 80

Before

MR R L WALKER

Immigration Judge

Between

Appellants

And

SECRETARY OF STATE

Respondent

Representation:

For the Appellant:

OF COUNSEL

INSTRUCTED BY

For the Respondent: NONE

DETERMINATION AND REASONS

Details of Appellants and Nature of Appeals

1. The Appellants, who are husband, wife and 2 minor dependent children and are Citizens of India, appeal against the decisions of the Respondent given on 4 March 2009 to refuse leave to remain in the United Kingdom as a Tier 1 (General) Migrant under paragraph 245C of the Immigration Rules. They have brought these Appeals under the provisions of Section 82 (1) of the Nationality, Immigration and Asylum Act 2002.

Immigration History

2. The lead Appellant was granted leave to enter the United Kingdom as a work permit holder on 22 April 2005 until 8 April 2007. On 22 February 2007 he was granted leave to remain as a Highly Skilled Migrant until 22 February 2009. On 13 January 2009 he made his current application for leave to remain as a Tier 1 (General) Migrant.

Documentary Evidence

3. The Respondent's documentary evidence consists of the following:
 - 1) Application for further leave to remain and supporting documents.
 - 2) Reasons for Refusal letter dated 4 March 2009.
 - 3) Notice of Appeal.
4. The Appellants' documentary evidence consists of the following:
 - 1) Notice of Appeal.
 - 2) Appellants' bundle indexed on its face.
 - 3) Statement of lead Appellant.
 - 4) Copy bank statement.

The Burden and Standard of Proof

5. I directed myself from the outset that the burden is on the Appellants and that the standard of proof is on the balance of probabilities. Additionally the Appellants are required to show the above standard of proof that they have satisfied the requirements under paragraph 245C of the Immigration Rules. The Tribunal may consider evidence about any matter which it thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision.

The Respondent's Reasons for Refusal

6. The detailed Reasons for Refusal of the Appellants' Applications are set out in the Reasons for Refusal letter dated 4 March 2009. A summary of the reasons for refusal is as follows:
 - 1) The Appellant had claimed 10 points for funds under Appendix C of the Immigration Rules but the documents he had provided did not demonstrate that he had been in possession of £800 for the period specified in the Guidance.
 - 2) The Appellant had provided his HSBC Flexible Saver Account bank statements the most recent of which was dated 4 December 2008. As his application was submitted on 13 January 2009 the bank statement does not show his balance in the month prior to submitting his application.
 - 3) The lead Appellant had also provided bank statements for his HSBC Graduate bank account up to 10 December 2008. The balance in this account fell below £800 and did not show his balance in the month prior to submitting his application.

The Appeal Grounds and Appellants' Cases

7. The Appellants are Citizens of India and have been in the UK since 2005. The first Appellant has been resident as a Highly Skilled Migrant and his wife and 2 minor

children are here as his dependents.

8. The lead Appellant had applied for further leave to remain on 10 November 2008 but was refused on 21 November on the basis that he had not provided sufficient evidence of means. He then reapplied within leave on 23 December enclosing bank statements up to 4 and 10 December 2008. He was notified that the application form had changed so on 13 January 2009 the lead Appellant resubmitted his application with the same supporting evidence.
9. The lead Appellant has always had substantial funds in his 2 bank accounts. His HSCB Flexible Saver account has in the last year held balances varying between £15,000 and £3,500. In the 3 month period from 13 October 2008 the minimum balance was £5,115.36.
10. The Appellants consider they have satisfied the maintenance requirements under Appendix C and so are entitled to the 10 points.

The Hearing

11. The Respondent has for operational reasons been unable to provide a presenting officer to cover these Appeals. Standard Home office submissions were filed. These stated that the Secretary of State wished to make it clear that she was anxious to defend the decisions under Appeal and asked that in the absence of a presenting officer the written submissions should be taken into account before the Appeals are determined.
12. The lead Appellant produced his original bank statements for his Flexible Saver HSBC account under account number (). These cover the period 23 April 2008 to 26 April 2009. These showed a closing balance of £15,381 and a minimum credit balance during the requisite 3 month period of £5,115.56.

Submissions

13. Ms. submitted the Appellants' written outline submissions. These were that the lead Appellant has always had sufficient funds to maintain and accommodate his family without recourse to public funds. He has always held far in excess of £800 in savings for the relevant time.

Findings of Fact and of Credibility

14. I have carefully considered and taken into account all the evidence and documentation filed on behalf of both the Appellant and the Respondent. I have also considered the oral evidence of the lead Appellant and Ms Phelan's submissions.
15. The relevant Immigration Rule is paragraph 245C which states:

To qualify for entry clearance or leave to remain as a Tier 1 (General) Migrant, an applicant must meet the requirements listed below. If the applicant meets these requirements, entry clearance or leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

- (a) DELETED.
- (b) The applicant must not fall for refusal under the general grounds for refusal, and if applying for leave to remain, must not be an illegal entrant.
- (c) The applicant must have a minimum of 75 points under paragraphs 1 to 31 of Appendix A.
- (d) The applicant must have 10 points under paragraphs 1 to 2 of Appendix B.
- (e) The applicant must have 10 points under paragraphs 1 to 3 of Appendix C.
- (f) An applicant who is applying for leave to remain must have, or have last been granted, entry clearance, leave to enter or remain:
 - (i) as a Highly Skilled Migrant,
 - (ii) as a Tier 1 (General) Migrant,
 - (iii) as an Innovator,
 - (iv) as a Participant in the Fresh Talent: Working in Scotland Scheme,

(v) as a Participant in the International Graduates Scheme (or its predecessor, the Science and Engineering Graduates Scheme),

(vi) as a Postgraduate Doctor or Dentist,

(vii) as a Student,

(viii) as a Student Nurse,

(ix) as a Student Re-Sitting an Examination,

(x) as a Student Writing-Up a Thesis,

(xi) as a Work Permit Holder,

(xii) as a Businessperson,

(xiii) as a Self-employed Lawyer,

(xiv) as a Tier 1 (Entrepreneur) Migrant,

(xv) as a Tier 1 (Investor) Migrant,

(xvi) as a Tier 1 (Post-Study Work) Migrant,

(xvii) as a Writer, Composer or Artist,

(xviii) as a Tier 2 Migrant, or

(xix) as a Tier 4 Migrant.

(g) *An applicant who has, or was last granted, leave as a Student, Postgraduate Doctor or Dentist, Student Nurse, Student Re-Sitting an Examination, Student Writing-Up a Thesis or as a Tier 4 Migrant and:*

(i) is currently being sponsored by a government or international scholarship agency, or

(ii) was being sponsored by a government or international scholarship agency, and that sponsorship came to an end 12 months ago or less,

must provide the unconditional written consent of the sponsoring Government or agency to the application and must provide the specified documents to show that this consent has been obtained.

16. The one and only reason for refusal here was that the Appellants did not have in their possession the required £800 for the period specified in the Guidance, i.e. 3 months. It is quite clear from the documentation produced that the Appellants have always had substantially more than this. This has been evidenced by the original bank statements

of the lead Appellant's Flexible Saver account. This clearly satisfies the Rules and there is no need to consider any other aspect of the Appellant's finances.

The Decision

1. The Appellants have discharged the burden of proof on them to the required standard in cases of this nature.
2. I find that the decisions of the Respondent were not in accordance with the law and relevant Immigration Rule.
3. The Appellants' Appeals against refusal of leave to remain are allowed.

Signed



Date:

R L WALKER
Immigration Judge