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Asylum and Immigration Tribunal

Appeal Numbers: IA/05339/2008 90
IA/05332/2008 91
IA/05335/2008 92

THE IMMIGRATION ACTS

Heard at: Walsall
On: 2nd April 2009

Determination Promulgated

..... 20 APR 2009

Before

IMMIGRATION JUDGE KIRVAN

Between

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: , Counsel.
For the Respondent: None present.

DETERMINATION AND REASONS

1. The Appellants are citizens of India and were born on 1976, 1976 and 2003 respectively. The first Appellant applied for leave to remain in the United Kingdom as a Tier 1 (General) Migrant and the second and third Appellants applied for leave to remain as his dependent wife and child. They were refused the leave they sought and given notices of that decision dated 16th February 2009.

2. The first Appellant was granted leave to remain in the United Kingdom as a post graduate doctor on 11th November 2004 and further leave has been given for him to remain as a work permit holder, a post graduate doctor and the last leave from 12th January 2007 to 12th January 2009 as a highly skilled migrant.
3. The Appellant was awarded 30 points for his qualifications, 45 points for his previous earnings, 5 points for his UK experience, 0 points for his age and 10 points for his English language ability.
4. The difficulty in this application has arisen in relation to maintenance, where he has claimed 10 points but been awarded 0 points.
5. He has therefore not met the requirements of paragraph 245C (e) of the Immigration Rules which requires that he must score 10 points under Appendix C (maintenance (funds)) and provide the specified documents.
6. The Secretary of State noted that the Appellant had stated he was in possession of at least £800 of personal savings for himself and £533 for each dependant. The evidence supplied did not establish he had been in possession of these savings for the specified three month period immediately before the application, which would be from 7th September 2008 until 6th December 2008. The supplied HSBC Cash ISA statement covers the period between 16th October 2008 and 6th December 2008 and does not therefore cover the required three months period. The HSBC current account statements with the application do not cover the specified three month period. However, between 7th September 2008 and 25th September 2008, 14th October 2008 and 27th October and between 5th November 2008 and 27th November 2008 his current account fell below the required £800 minimum.
7. In relation to the second Appellant the Secretary of State was not satisfied that the Appellant met the requirements for leave to remain as the partner of a Tier 1 Migrant under paragraph 319C of the Immigration Rules. She had not met the requirement at 319C (b). in that her husband had not qualified..
8. The third Appellant, the daughter of the first two Appellants was refused on the basis that her father had not been awarded any points for maintenance. The third Appellant did not therefore satisfy the requirements of paragraph 319H (b) of the Immigration Rules,
9. At the hearing the Secretary of State was not able to be represented by a Home Office Presenting Officer. Having considered paragraph 19 of the Asylum and Immigration Tribunal (Procedure) Rules 2005 I was satisfied that this was a case where I should proceed with the Appeals in the absence of a representative for the Respondent. I have however received a standard submission in no P O appeals and I have taken this into account.
10. At the hearing I heard oral evidence from the first Appellant and received submission from who was representing the Appellants. I have also

taken into account all of the documentary evidence placed before me in the form of:

- a) the Respondent's bundle; and
 - b) the Appellant's bundle.
11. In considering these Appeals I have taken into account the circumstances as at the date of hearing. The burden of proof rests on the Appellants to establish their cases on the balance of probabilities.
 12. I note that the first Appellant has submitted a Grounds of Appeal and I have taken these into account in full. These essentially cover all three Appeals. The Appellant states that his spouse and daughter have been in the United Kingdom for more than twelve months and the maintenance funds required are therefore £800 for the Appellant and £533 for his wife and £533 for his daughter.
 13. The Appellant's personal Cash ISA bank account at HSBC account no. 11645587 on each day from 30th April 2008 until 6th December 2008 has had a balance which did not fall below £2,313.52. The Appellant attaches the copies of the consecutive sheet numbers 4 and 5 of his bank statement as evidence of this. The Appellant therefore did have in excess of the required £800 funds for himself and £533 for his spouse and £533 for his daughter at the material time.
 14. The Appellant apologises that he omitted to send sheet 4 of the above mentioned bank statement, only providing the Secretary of State with sheet 5.
 15. The Appellant's wife had included in her application statements for her personal bank account, HSBC account no. _____ for the period of 10th August to 7th December 2008 which on each day from 29th August to 7th December has had a balance which did not fall below £2,000.50. Copies of these statements are attached to the Notice of Appeal.
 16. At the hearing the first Appellant gave evidence. He adopted his written statement of 4th March 2009 in support of his Appeal. I heard representations from the Appellants' representative with regard to the question of the burden of proof and the relevant Rules and guidance in this case.
 17. Turning now to my consideration of the evidence in this case. I have at the Tribunal been able to examine the first Appellant's original HSBC Cash ISA account statements. I have before me the statements from 16th April 2008 to 16th March 2009. I note that on 16th April 2008 the account stood at £2,015.14 and has not fallen below that amount throughout the period. At 16th March 2009 it stood at £2,177.41.
 18. The first Appellant was frank that he had neglected to send sufficient pages of the HSBC statement to establish that he met the requirements of the Rules with regard to maintenance for the three month period prior to the application as is indicated in the guidance.

19. I am satisfied now that in fact the Appellant did meet the requirements of that guidance at the date of decision and continues to meet the requirements at the date of hearing. I am satisfied therefore that he gains full points with regard to maintenance.
20. As a consequence the first Appellant has met the requirements of the Immigration Rules for further leave to remain as a Tier 1 (General) Migrant under paragraph 245C of the Immigration Rules.
21. The second and third Appellants therefore have also met all the requirements of the Immigration Rules for leave to remain as the dependants of a Tier 1 (General) Migrant.

Decision

The Appeals in respect of the Immigration Rules are allowed.

Immigration Judge Kirvan

Dated: 15th April 2009