



First-tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/29873/2009

THE IMMIGRATION ACTS

Heard at Taylor House

Determination Promulgated

On 9th March 2010

.....26 March 2010

Before

IMMIGRATION JUDGE
K S H MILLER

Between

GHULAM AZAM

Appellant

and

ENTRY CLEARANCE OFFICER, DHAKA

Respondent

Representation:

For the Appellant: Mr M Hussein, Representative
For the Respondent: No attendance

DETERMINATION AND REASONS

1. The Appellant, born on the 7th November 1922, is a citizen of Bangladesh.
2. He appeals against a decision made on the 11th May 2009, refusing him entry clearance to the United Kingdom as a family visitor.

3. The background to the case is, to put it mildly, unusual. - The most recent application for entry clearance made by the Appellant is dated 28th January 2008. The application was refused on the 1st June 2008, not under paragraph 41 of the Immigration Rules, but under paragraph 320(19), on the ground that exclusion of the Appellant from the United Kingdom was conducive to the public good. It was alleged in the refusal letter that during the 1971 liberation war in Bangladesh, the Appellant was one of the leaders of the Razakars military force, which was associated with war crimes and/or crimes against humanity.
4. The Appellant appealed against the refusal notice dated 1st June 2008 and, following a hearing before Immigration Judge Lucas on the 21st November 2008, the appeal was allowed.
5. Thereafter, despite the fact that IJ Lucas directed the ECO to grant entry clearance to the Appellant, the Respondent neither did so, nor did he appeal against the decision of the Immigration Judge. Instead, another notice of refusal was issued on the 11th May 2009, again relying on paragraph 320(19) of the Immigration Rules. The refusal notice refers to the earlier successful appeal of the Appellant, and continues:

"However there has been a significant change in the political environment in Bangladesh since your appeal was allowed. On the 29th December 2008 a general election was held which was won by the Awami League, which is now the governing party. According to sources and historical records you are a prominent leader of the Jamaat-e-Islami party which is in opposition to the Awami League. I also note that you were a prominent figure during the war of 1971 in which you fought against the liberation forces and were associated with the Razakar para-military group. The Awami League government has announced plans to prosecute those accused of war crimes during the liberation war. Recent press reports have stated that your name has been included on an immigration watch list which prevents you from leaving the country on the grounds that you may be liable for prosecution for war crimes...

You have four children who reside in the United Kingdom. I note that you have travelled to the UK a number of times and that you appear to have complied with the terms and conditions of your previous visas. However, in view of the significant change in political circumstances that has occurred since the Immigration Judge heard your appeal, and in view of your strong family ties to the UK, I am not satisfied that you are genuinely seeking entry as a visitor and that you intend to leave the United Kingdom at the end of the period of the visit as required by paragraph 41(i) and (ii) of HC395".

The Hearing

6. Mr Hussein submitted written submissions and, in view of the fact that the same were concise, to the point, and the issues would appear to be straightforward in any event, I found no need for him to address me orally.
7. I had before me a copy of the Appellant's application dated 28th April 2008, the refusal notice dated 1st June 2008, the Determination of IJ Lucas, the further refusal notice dated 11th May 2009, and ancillary documentation including correspondence with BHC, Dhaka relating to the failure to grant entry clearance.
8. At the end of the hearing, I reserved my decision.

My Conclusions

9. I am aware that care must be taken before interfering with the decision of an ECO, who has regard to local conditions. Nevertheless, this is an appeal of the ECO's decision and I therefore look at the application afresh, and to this end, I have also included in my considerations the documents to which I have referred above. I also bear in mind that the burden of proof is on the Appellant, and that the standard of proof required is the balance of probabilities.
10. Notwithstanding this, it is important to consider the background to this case. - The last application which the Appellant made for entry clearance was dated 28th April 2008. A decision on that application was made on the 1st June 2008, and an appeal by the Appellant against the decision was heard and was successful on the 21st November 2008. I agree with the submission made at paragraph 12 of the Appellant's notes to the effect that, in order for there to be a fresh decision, there has to be a fresh application. If this were not the case, it would mean that an Applicant who has once lodged an application could go on seeking a review of a decision without making any further application. Equally, it would mean that an Applicant who won an appeal could be repeatedly refused entry clearance, by being issued with further refusal notices. I accordingly find that, the Appellant having made no further application, the Respondent had no jurisdiction to issue the refusal notice dated 11th May 2009, but was instead bound to grant entry clearance, having failed to seek reconsideration of IJ Lucas's decision.
11. Even if I were wrong in reaching this conclusion, however, it is patently clear that the Respondent has failed to provide any evidence to support the very serious allegations which have been made against the Appellant. - At paragraph 4 of his Determination, IJ Lucas refers to having been told by the representative for the Respondent at the hearing on the 21st November 2008 that evidence to support the allegations against the Appellant was "imminent but unfortunately had not been submitted in time for this hearing". - I find it incredible that, more than fifteen months after that hearing, and ten months after the refusal notice dated 11th May

2009, containing even more serious allegations, not a shred of evidence has been produced to substantiate them!

12. In the light of the above, I find that there is no evidence at all before me to support the contention of the ECO that the exclusion of the Appellant from the United Kingdom is conducive to the public good, and I likewise find that, the Appellant having apparently previously visited the United Kingdom on no less than twenty nine occasions, I am satisfied that he complies with all the requirements of paragraph 41 of the Immigration Rules. Accordingly, I find that this appeal must succeed.

Decision

13. The appeal is allowed.

Signed



Date

6 : 11 : 2010

Judge of the First-tier Tribunal