



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/10680/2013

THE IMMIGRATION ACTS

Heard at Field House
On 5 November 2013

Determination Promulgated
On 25 November 2013

Before

LORD BOYD OF DUNCANSBY
UPPER TRIBUNAL JUDGE KEKIC

Between

RANJINATHAN JEGANATHAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Solomon, Counsel
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the appeal of the Secretary of State against the decision of the First-tier Tribunal Judge N M Paul heard at Taylor House and promulgated on 16 September 2013. The claimant is a citizen of Sri Lanka who first arrived in the United Kingdom

as a Tier 4 (General) Student on 21 September 2010 with entry clearance in this capacity until 7 January 2013.

2. On 13 December 2012 he made an application for leave to remain as a partner of a person present and settled in the UK but this application was then withdrawn. He then repeated the application on 4 January 2013 and his application was refused on 20 March 2013.
3. The reasons are given in the refusal letter. In short these were that the claimant had failed to meet the requirements for an individual to be granted leave to remain as a partner as outlined in R-LTRP 1.1(c) and (d) and that the requirements of E-LTRP 3.1 (a), (b) and (c) had not been met. In particular that the evidence to show the gross income had not been submitted and that there was no evidence of savings as required by subheading (b).
4. The Secretary of State stated that although in his case he had stated that he and his partner have a joint income of £24,800 and had provided six months of payslips for both himself and his partner, the partner's bank statements for the last six months showed that all incoming payments on the statements had been paid in cash and did not correspond with the amount stated in the payslips. No evidence of savings had been made in support of the application. They therefore failed to meet the requirements of the paragraph.
5. Furthermore, under the requirements of leave to remain under paragraph EX1B family life it was noted that the applicant had to have a genuine and subsisting relationship. In this case although it was noted that the claimant was married to a British citizen he had failed to provide evidence of the factors which would constitute insurmountable obstacles to family life with a partner continuing outside the United Kingdom.
6. At the outset of the appeal before the First-tier Tribunal as is recorded in paragraph 7 Mr Solomon then appearing for the claimant indicated that he had been in discussions with the Presenting Officer about the fact that the Secretary of State had apparently failed to consider Appendix FM-SE at paragraphs (e) and (f). (e) provided a discretion to allow alternative documents to be submitted. He submitted to the First-tier Tribunal that the position was that the appellant only having less than six months left in his visas had not been able to obtain a bank account and it followed therefore that the documentary evidence in relation to his finances could not include the statement. However he had provided P60s for the end of his employment. Similarly, while the appellant's wife had previously been paid by way of cash and therefore did not have payslips she nevertheless had bank statements which showed the payments into her account.
7. At paragraph 7 of the decision letter the First-tier Tribunal records that Mr Solomon submitted (and the Presenting Officer did not disagree) that this was a case where the Secretary of State had failed to exercise discretion under Appendix FM-SE

paragraph (d). The short point that the Secretary of State sought to argue in this appeal was that the Tribunal had failed to properly apply the provisions of Appendix FM-SE, D, E and F. These are set out in the grounds of appeal but in essence Mr Melvin submitted that in order for these Rules to apply there had to be a valid reason why a specified document cannot be supplied and that this was to be exercised in unusual or at least unique circumstances.

8. Mr Solomon for the claimant submitted that there was indeed a valid reason and that had been conceded by the Secretary of State through the Home Office Presenting Officer and referred us to paragraph 7 of the decision letter.
9. In our opinion, while it is clear that the presiding judge was led into error by the apparent agreement that the matter should go back to the Secretary of State we do not consider that paragraph 7 shows an unequivocal acceptance by the Presenting Officer that there was a valid reason for the non-production of the specified evidence.
10. Accordingly we do find that there is a material error of law. Furthermore we also consider that it was incumbent on the First-tier Tribunal Judge to deal with the other grounds of appeal which were before him and he failed to conclude that exercise.
11. Accordingly we shall allow the appeal and remit back to the First-tier Tribunal Judge to redetermine the application.

Signed

Date

Lord Boyd of Duncansby