Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/04156/2014
IA/04170/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 27 November 2014	**On 4 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

SHARANJIT KAUR MUTTI
HARJINDER SINGH MUTTI
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr V Makol of Maalik & Co, solicitors
For the Respondent: Mr S Kandola, Specialist Appeals Team

DECISION AND REASONS

The Appellants

1. The Appellants are wife and dependent husband born respectively in 1980 and 1973. They are both citizens of India. On 20 February 2011 the wife arrived with leave to enter as a Tier 4 (General) Student Migrant expiring on 14 September 2012. Her husband had leave in line with hers. At the last possible moment, but in time, the Appellants applied for further leave.

The wife as a student for post-graduate studies and the husband as her dependant.

2. On 13 December 2013 the Respondent refused their applications. The wife's was refused under paragraph 245ZX(d) with reference to paragraph 1A(c) of Appendix C of the Immigration Rules (the IRs) because she had not shown she had sufficient funds for the requisite 28 day period to qualify for further leave. Her husband was refused in line with her. The Respondent also made decisions to remove both the Appellants by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

3. On 17 January 2014 each of the Appellants lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds are that the wife had sent with the applications of each of herself and her husband bank statements for each of them which in aggregate showed that she held sufficient funds as required by Appendix C.

The First-tier Tribunal Determination

4. By a determination promulgated on 10 September 2014 Judge of the First-tier Tribunal M Symes dismissed the appeals. He noted the admissibility of evidence in points-based system appeals was governed by Section 85A of the 2002 Act which limited the admissible evidence generally to that which was submitted in support of and at the time of making of the application leading to the decision under appeal. The exceptions provided for in Section 85A were not relevant to the appeal.

5. The appeals were determined on the basis of submissions without oral evidence as had been agreed between the parties: see paragraph 8 of the determination.

6. Paragraph 12 noted the wife's bank statement contained a shortfall of funds but if taken with funds held by the husband over the relevant period she would have had sufficient funds to meet the requirements of Appendix C. He made a finding that the husband's bank statement had not been submitted with the application for the reasons given at paragraphs 13 and 14 of the determination. Consequently he found that Rule 245AA of the IRs (evidential flexibility) was of no avail to the Appellants.

7. He went on to consider any claim under Article 8 of the European Convention and dismissed the appeals.

8. On 22 October 2014 Judge of the First-tier Tribunal Brunnen granted permission to appeal on the basis that it was an arguable error of law that the Judge had found the wife to be truthful and then, contrary to this finding, concluded she was mistaken in claiming she had submitted her husband's bank statement with her application or that her husband's application had included his bank statement. He also considered the conclusion that the Respondent had properly applied paragraph 245AA of the IRs to be an arguable error. He thought the claim that the Judge had

mis-apprehended the evidence to be the strongest ground but gave permission for all grounds to be argued.

The Upper Tribunal Hearing

9. The wife attended the hearing. I was informed the husband was in the building and I gave Mr Makol an opportunity to find out if the husband wished to be present at the hearing. In the event the hearing proceeded without the husband.

10. Mr Makol took me to the husband's application which had made reference to bank statements in that the relevant box at N23 on page 35 of his application form had been ticked. Although I noted that List B on page 40, being a list of the items submitted with the application not comprised in List A on the same page had been left completely blank in contrast to the wife's application which had referred to a single bank statement being submitted.

11. Mr Makol pointed out that sufficient funds had been transferred from the husband's account to his wife's account on 20 August to make up the deficiency in funds in her account. The husband and wife had between them sufficient money to meet the requirements of Appendix C for the requisite period of time. This was the main ground for finding that there was an error of law in the First-tier Tribunal's determination. He accepted that the ground of appeal based on evidential flexibility was weak.

12. For the Respondent Mr Kandola pointed out that the issue whether the husband's bank statement was before the Respondent at the time of the applications and so was admissible evidence had addressed at paragraphs 12 and 13 of the First-tier Tribunal's determination. The Judge had been right to find that the husband's bank statement had not been submitted with the application of either Appellant.

13. Mr Makol in response referred to the husband having ticked the relevant box at N23 on page 35 of the application and submitted this was sufficient. In any event looking at the two bank statements in aggregate the wife had shown she had held sufficient funds for the duration of the requisite period. He referred me to Appendix E of the IRs.

14. I considered Appendix E of the IRs. I drew Mr Makol's attention to the fact it specifies requirements to be met by "the family of Relevant Points-Based Systems Migrants." Paragraph 3(c) of Appendix E provided that:-

> Where the applicant is applying as the Partner of a Relevant Points-Based System Migrant the relevant amount of funds must be available to either the applicant or the Relevant Points-Based System Migrant.

Appendix E related only to the application of the husband as the wife's dependant but did not relate to the wife's application since in this case she was the Relevant Points-Based System Migrant and had to meet the requirements of Appendix C. Paragraph 1A(k) of Appendix C provided that:-

> If the applicant wishes to rely on a joint account as evidence of available funds, the applicant .... must be named on the account as one of the account holders.

The bank accounts on which the Appellants rely are separate accounts in each of their individual names. Since the wife is not named as a joint account holder with her husband even if the husband's bank statement had been submitted it would not have enabled her to meet the requirements of Appendix C.

15. Further, paragraph 1(B)(3)(iii)(1) of Appendix C sets out what the wife's bank statement needed to show. It had to show either the name of the Appellant wife or the names of her parents or the name of the Relevant Points-Based System Migrant if the applicant is applying as a partner of a Relevant Points-Based System Migrant. Again separate bank accounts in the individual names of each of the Appellants would not meet these requirements for the wife's application.

16. I adjourned the hearing into chambers for a general discussion between the parties and myself, given that I had indicated my view of the issues raised by the appeal.

17. On resuming the hearing I announced that I was minded to find there was no error of law for the reasons which I outlined and which are set out below.

Findings

18. There is an apparent inconsistency between the Judge's finding at paragraph 10 of his determination that the Appellant was a witness of truth and at paragraph 13 that her claim her husband's bank statement was submitted with the application form was incorrect. He attempted to address this in the last sentence of paragraph 13 of his determination. However, it is questionable whether this was sufficient, bearing in mind that the First-tier Tribunal determination turned very much on whether the husband's bank statement had been submitted or should properly have been called for by the Respondent pursuant to paragraph 245AA of the IRs. If this was an error of law, it would be open to the Upper Tribunal to consider any other error of law in the First-tier Tribunal's determination, even if it had not been specifically referred to in the application for permission to appeal which I now proceed to do.

19. The wife's application was bound to fail because under the provisions of Appendix C she was not able to claim that the funds available to her should be assessed on the aggregation of her and her husband's separate bank accounts. As a dependant, he could rely on her bank account or the aggregation of her account and his account but she could not rely on his funds by reason of the way the IRs are drafted. The late transfer of funds from her husband to herself could not avail her because it would not remedy the deficit on her account for the period before those funds were transferred. She needed to show a minimum balance for the 28 day

period ending 14 September 2012. The Judge dealt fully with this at paragraph 12 of his determination.

20. Had the husband transferred the funds to the wife before the start of the relevant period covered by the wife's bank statements this problem would not have arisen. In light of this and the Judge's finding as to the wife's general honesty, the Respondent may wish to look again at the Appellants' position. It should be noted the Judge did not find the wife to have deliberately misrepresented the position: see the last sentence of paragraph 13 of his determination. The Judge did not consider the points in this and the preceding paragraph. They show that the appeals under the IRs were doomed to fail.

21. There was no challenge to the Judge's treatment of any claim under Article 8 of the European Convention.

22. My conclusion is that any error of law in the First-tier Tribunal's determination is not material such that it should be set aside because for the reasons given the appeal of each Appellant would be bound to fail before any differently constituted Tribunal. It follows that the determination should stand and not be set aside.

Anonymity

23. There was no request for any anonymity order or direction and having heard the appeal find that none is warranted.

NOTICE OF DECISION

The determination of the First-tier Tribunal did not contain an error of law such that it should be set aside in whole or in part and therefore it shall stand.

No anonymity order or direction is made.

Signed/Official Crest Date 04. xii. 2014

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal