Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA 35672 2013

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court	**Determination Promulgated**
On 25 March 2014	**On 17 April 2014**
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Before

UPPER TRIBUNAL JUDGE PERKINS

Between

EBANEHITA CHRISTINE OLUMESE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr O Atuegbe, Solicitor, from Lesley Charles Solicitors
For the Respondent: Mr N Hussain, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria who appealed unsuccessfully to the First-tier Tribunal against a decision of the respondent refusing her leave to remain as the wife of a person present and settled in the United Kingdom. The First-tier Tribunal Judge found that the appellant did meet the requirements of the Rules relating to competence in the English language but dismissed the appeal because the judge was not satisfied that the appellant could be maintained in accordance with the Rules.

2. It is important to appreciate that the Immigration Rules as presently drafted are little to do with a person's actual ability to maintain a person or to be maintained by them but to do with their ability to produce prescribed evidence in a particular way at a particular time. I can only make sense of the rules by assuming that that this rough and ready approach is sufficiently accurate to produce a fair result. It

clearly has the advantage of making applications easy to decide and, in any event, the rules have to be applied regardless of whether I understand them.

3. It was an obligation on the appellant when she made her application to support it with various documents and she did not do that. In fact she could not do that because her husband had not been working for long enough to have the necessary money. He produced evidence that he had worked in the two months preceding the application and in the second of those months, according to the evidence, he earned quite sufficient money to support the appellant in accordance with the Rules if that sum had been earned in every month over the previous year but it had not.

4. The issue identified in the permission to appeal to the Upper Tribunal was whether the appellant had to produce a full six months' worth of documentation when it was everyone's case that the husband had not worked for six months and so could not possibly produce the necessary documents. In fact the Rules are a little more sophisticated than the grants of permission suggested and I have been shown by Mr Hussain a copy of Appendix FM-SE, in particular paragraph 13 headed "Calculating gross annual income under Appendix FM". This provides for proof of the necessary funds in certain ways. The easiest way is if the person can show sufficient money earned over the last six months immediately prior to the application in the sense that the six months salary grossed up to an annual level would meet the requirements of the Rules. It is not challenged that this is not such a case.

5. There is an alternative under 13(b) where a person has been employed for less than six months and in those circumstances other matters can be taken into account. In particular account can be taken of private pensions, other forms of private income (for example rental income although this may not be covered by the Rules) and income from previous employment. A person will only be able to satisfy the requirements of the Rules based on less than six months' income when they have earned sufficient money in a shorter period to exceed the target figure, I think, of £18,600 in this case.

6. It is common ground that this appellant cannot do that.

7. It was Mr Atuegbe's case that this reading of the Rules was wrong and that the shorter period of employment could be multiplied by 6 or 12 as the case may be to indicate the gross annual income based on the previous month's figure and that would have shown sufficient money to meet the requirements of the Rules. This is an attractive interpretation, wholly unsupported by anything in the Rules that I or Mr Hussain have been able to find. Clearly something has planted the idea there but we cannot ascertain anything that supports this contention. It would be rather surprising if this approach was right because it would mean that a person who contrived a job just for the one month before the application would be in as good a position as a person who had got a full six months' working history behind him, and it seems unlikely that this is what the Rules intend to do. Indeed, if that was the policy of the Rules, one would see no point whatsoever in looking at six months at all, but any income grossed up would be sufficient.

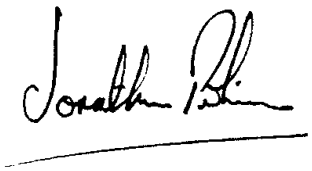
8. I therefore found Mr Atuegbe's arguments interesting but fundamentally misconceived and I have to I dismiss the appeal on that point.

9. Human rights always have to be considered and particularly in a case where the parties are partners to a marriage but Mr Atuegbe did not feel able to advance the case on human rights grounds and I commend him for not wasting the Tribunal's time with points that would most charitably be described as extremely optimistic. This is not a case where there are, for example, minor children involved or where the decision could be expected to lead to the long term separation of a family.

10. It may well be that the appellant could now make an application that did meet the requirements of the Rules and that is something she may want to consider but it is not for me to advise her.

11. I am quite satisfied that the approach of the First-tier Tribunal was correct and that no material error of law has been identified before me and I dismiss the appellant's appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 17 April 2014