



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/01465/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 5th February, 2014

Determination Promulgated
On 24th February 2014

Before

Upper Tribunal Judge Chalkley

Between

MRS SHAISTA IRAM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Aslam
For the Respondent: Mr McVeety, Home Office Presenting Officer

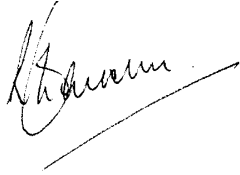
DETERMINATION AND REASONS

1. The appellant is a female citizen of Pakistan who was born on 1st January, 1987. She is married to the sponsor, Sajiid Rasool and applied for entry clearance as his wife.
2. On 21st November, 2012, the respondent refused the appellant's entry clearance application under paragraph EC-P31(d) of Appendix FM of Statement of Changes in Immigration Rules, HC 395, as amended ("the Immigration Rules"). The respondent referred to the documents specified in the Immigration Rules at Appendix FM-SE and refused the appellant's application, because

the appellant had not submitted all the required documentation to demonstrate her sponsor's income was as claimed.

3. The appellant appealed and her appeal was heard by First-tier Tribunal Judge Brookfield who, in a determination promulgated on 6th November, 2013, allowed the appellant's appeal under the Immigration Rules.
4. The judge also made a fee award of £140.
5. The respondent challenged the decision of the judge, noting that the judge had calculated the sponsor's gross annual income, as at the date of the Entry Clearance Officer's decision. However, the grounds point out that Appendices FM and FM-SE make it clear that the relevant date to be considered is not the date of the *decision* but the date of *application*. Evidence relating to the sponsor's employment and evidence of his gross annual income needed to date from May 2012. The judge went on to consider post-application and post-decision evidence at paragraph 9(v) of her determination, which was not permissible under the Immigration Rules.
6. The respondent's application referred to the date of the application being 21st November, 2012, whereas, of course, it is actually 30th September, 2012. This is clear from the copy of the printed application which appeared in the respondent's bundle.
7. I heard submissions from Mr McVeety, who explained that since the required documents had not been provided with the application, the Entry Clearance Officer had refused it. Subsequently, documents were submitted by the appellant with his grounds of appeal but, he pointed out, these were not admissible and should not have been considered by the judge.
8. For the appellant, Mr Aslam confirmed that the application was submitted online by the appellant on 30th September, 2009. He confirmed that the appellant did not provide any P60, nor did she provide wage slips for the sponsor for the six month period prior to the date of the application. In fact, Mr Aslam agreed, the wage slips provided for the sponsor were between 9th July and 1st October.
9. Mr Aslam pointed out that the sponsor had provided a contract of employment, but agreed that this had actually been submitted by the appellant with the Notice of Appeal and not with the application.
10. Mr Aslam also pointed out that the appellant did provide bank statements, but these also appear to be for a period less than six months prior to the date of the application and were only for the period 22nd June to 21st September, 2012.
11. I referred Mr Aslam to the Entry Clearance Officer's decision and to the documents required to be submitted with the application in accordance with EC-P1.1(d) of Appendix FM. He agreed that neither the appellant nor the sponsor had submitted a P60 with the application, nor the specified wage slips, nor with a letter from the sponsor's employer, nor with a copy of the signed contract of employment, nor with the required personal monthly bank statements.
12. As a result, Mr Aslam agreed that the First-tier Tribunal Judge had made errors of law and that the appellant's appeal could not have succeeded, because the appellant had failed to discharge the burden on her to show that on a balance of probabilities she met the requirements of the Immigration Rules.

13. I am satisfied that the decision of the First Tier Tribunal Judge does contain an error on a point of law. I set aside the decision of First-tier Tribunal Brookfield and remake the decision myself. The appellant's appeal is dismissed. I make no fee award.

A handwritten signature in black ink, appearing to read 'Chalkley', with a long horizontal stroke extending to the right.

Upper Tribunal Judge Chalkley