



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/02225/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 16th June 2014

Determination Promulgated
On 10th July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MRS ASMAT JAVED
(ANONYMITY NOT RETAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Hashmi
For the Respondent: Mr Harrison

DETERMINATION AND REASONS

Introduction

1. The Appellant born on 3rd January 1983 is a citizen of Pakistan. The Appellant had applied for entry clearance to the United Kingdom to join her spouse, the Sponsor, Mr Javed. The Respondent had refused that application and the Appellant had

appealed and the appeal was heard by First-tier Tribunal Judge Fox on 6th December 2013. The judge had dismissed the appeal.

2. Application for permission to appeal was made and that permission was firstly refused but granted by Upper Tribunal Judge Coker on 26th February 2014. That was on the basis there appeared some inconsistency in the findings of the judge in respect of the marriage certificate. It was also said the judge may have failed to consider relevant documents produced to him.
3. The matter came before me on 8th April 2014 where having heard submissions and reserved my decision I found that an error of law had been made by the First-tier on the basis of matters referred to in paragraph 10 of that decision. Directions were issued that the decision of the First-tier Tribunal should be set aside and remade and reserved to myself in the Upper Tribunal.
4. The matter now comes before me in accordance with those directions provided.

The Proceedings - Introduction

5. I firstly identified the documents available in this case.
6. The Respondent's documents consist of:
 - the full bundle provided by the Respondent before the First-tier Tribunal.
7. The Appellant's documents consist of:
 - those documents listed at pages 1 to 176 on the index sheet to the bundle;
 - Sponsor's P45 provided at the hearing.

The Proceedings - Evidence

8. As I had noted when hearing the error of law decision there were a substantial number of documents in this case and the requirements under Appendix FM and Appendix FM-SE are not without complexity. Having considered the documents and referred myself to the error of law determination the issue in this case was the question of finance in the relevant period and the appropriate evidence in support of any claimed finance. The Appellant confirmed October 2012 was the date of application. In respect of claimed employed income as a security guard he stated that he had begun that job on 3rd October 2007 and left the job in July 2012. He had begun his self-employed work as a taxi driver on 25th May 2012. He referred to page 147 of the Appellant's bundle in respect of his P60 for the period April 2011 to April 2012 indicating his employment salary as being £16,917. Reference was made to page 78 of the Appellant's bundle which was an accountant's letter which indicated his self-employed income for the period May to October 2012 and had made reference to the addition of wages if any which provided an annual income said to be in excess of £28,000. There was an examination of bank statements within the Appellant's bundle in order to discover any income that might have been received from the employed

income. There was available the P45 which had been absent before the First-tier Tribunal. That P45 discloses the leaving date for employment as being 24th July 2012. There were no entries in terms of pay or tax contained within that document.

9. There was no cross-examination and submissions consist of discussion on the documentary evidence with relation to the specific issues that required to be considered in this case. At the conclusion I reserved my decision to consider the documents and evidence and I now provide that decision with my reasons.

Decision and Reasons

10. In this case the burden of proof lies on the Appellant and the standard of proof required for both immigration and human rights issues is a balance of probabilities.
11. The application in this case was made in October 2012. The application was therefore made post the new Immigration Rules implemented from 9th July 2012. The application therefore fell to be considered within the terms of Appendix FM and the specified evidence required as outlined in Appendix FM-SE. The Sponsor needed to demonstrate an income of £18,600 to meet the level of financial requirements applicable to his application under Appendix FM.
12. It became clear that in calculating his financial income the Appellant had relied upon two separate sources of income in the relevant period namely employed income from his job as a security guard and secondly self-employed income as a taxi driver.
13. What was not clear before the First-tier Tribunal Judge, because there was an absence of the P45 or other evidence upon the subject, was the means by which the Appellant had calculated his employed income in the relevant period. The accountant's letter at page 78 had made reference to his wages as per the P60 for the year ending 5th April 2012 as being £16,917.48. The Sponsor appears to have used for the relevant period May to October 2012 half of the annual income that he had received from employed income in the financial year April 2011 to April 2012. That would have been a fair and proper basis for calculating his earned income if he had remained in that employment at that level of income during the relevant period. However it transpired that the Sponsor had left his paid employment no later than July 2012 as evidenced by the P45. Accordingly in the relevant period May to October 2012 even on the strength of the P45 for the majority of that period of time he was no longer in paid employment. Indeed on an examination of the Appellant's Lloyds TSB Bank statements contained within the Appellant's bundle the last recorded payment from Corporate Security for whom he previously worked was a payment on 9th March 2012 in the sum of £416.40. There is no record of any receipts postdating March 2012. That final payment in the month of March is substantially less than payments he had received in previous months which while varying somewhat averaged about £1,100 per month.
14. The conclusion I have reached therefore is that throughout the relevant period under consideration the Appellant received no income from paid employment as a security guard and could not therefore rely upon earnings that he may have had previous to

the relevant period in that capacity. It is also the case in any event that in terms of the provision of evidence under Appendix FM-SE the Appellant had not provided a P60 for the relevant period, wage slips covering a period of six months prior to the date of application, a letter from the employer confirming those matters referred to in paragraph 2(d) of Appendix FM-SE.

15. Therefore in terms of meeting the financial requirements the Appellant could only rely upon self-employed income during the relevant period. The Appellant's evidence was that he had only begun as a self-employed taxi driver in May 2012.
16. The application form completed in October 2012 by the Appellant and Sponsor has claimed total income from self-employment in the twelve month period October 2011 to October 2012 a sum of £14,000. As indicated above and confirmed within the accountant's letter and by the Appellant he only began self-employment in May 2012. The claimed income from self-employment within the accountant's letter is a sum of £11,680 inconsistent with that claimed within the application form. The accountant's letter at page 78 is supported by accounts at pages 158 to 166 of the Appellant's bundle.
17. In respect to the requirements under paragraph 7 of Appendix FM-SE in respect of the Appellant's self-employment there has been no evidence produced of the amount of tax payable or paid at any stage. Whilst I accept such evidence may not be available within a few months of an individual beginning self-employment, the Appellant began in May 2012 and the date of this hearing is June 2014. There has further been no up-to-date accounts produced by the accountants on the Appellant's behalf that could have been prepared to demonstrate the Appellant's annual income from self-employment in the period April 2012 to April 2013. The directions sent out with the error of law decision gave both parties liberty to file any additional documents not contained within the bundles before the First-tier Tribunal. That was an opportunity for the Appellant to have served additional documentation to have assisted his case in terms of providing evidence required under Appendix FM-SE. There are further so far as I can see no self-assessment tax returns covering the relevant period or indeed thereafter. There is in this case an absence of evidence relating to any tax paid or due which is a significant omission. Given the time that has elapsed I would have expected such evidence. Further the accountant's letter at page 78 which essentially is the whole basis for the Appellant's claimed self-employed income provides information only for that six month period and is to that extent speculative as to the annual come. Sufficient time has elapsed that would have allowed further accountant's reports to have provided accurate figures. The absence of any information in that respect coupled with the absence of any evidence of tax paid or payable leaves a not insubstantial question mark over the Appellant's income particularly bearing in mind the circumstances surrounding his claimed employed income as described above.
18. In terms of paragraph 7(g) regarding evidence of ongoing self-employment through the payment of class 2 national insurance contributions the Sponsor had separately handed in a request for national insurance contributions due dated 6th October 2012.

That I believe had been available to the First-tier Tribunal Judge. There had been no evidence of payments made although the Appellant did provide to me a Post Office receipt for 14th January 2013 in the sum due and I accept on balance that is in respect of the payment due no later than 31st January 2013. That is the only payment that has been exhibited although clearly there would have been similar notices and payments due thereafter. The absence of ongoing payments provides no evidence of ongoing self-employment.

19. In summary therefore I find that in the relevant period the Appellant had no earned income from employment as a security guard despite the completion of forms and assertions to the contrary. In terms of income from self-employment as a taxi driver whilst there is the basics of such evidence for the period May to October 2012 it does not provide for that which is required under paragraph 7 of FM-SE. I have also highlighted above the concern that despite the passage of time and ability to file additional documents that would have provided evidence of tax paid, up-to-date accountant's reports to demonstrate an annual income rather than speculation and evidence of ongoing self-employment through the payment of national insurance contributions are all factors which are absent. This is not a case where the Appellant in the absence of such documentation can turn to a separate self-employed business account or verifiable receipts as he maintains one account for all purposes and payments in cash. That is not to say those features are not acceptable but where other required documentation is absent and there are additional concerns about veracity such absence does not assist in answering questions.
20. I find therefore that the Appellant fails to meet the financial requirements in this case and the Sponsor has failed to produce the necessary evidence required under Appendix FM-SE.
21. For the avoidance of doubt I do not find there are any issues regarding the validity of this marriage.
22. I do not find that a refusal of this case under the terms of the Immigration Rules leads to a disproportionate breach of Article 8. I further do not find that the circumstances in this case are sufficiently compelling or that there are good reasons for a need to examine this case outside of the Rules under Article 8 of the ECHR. The Appellant is entirely at liberty to make a fresh application. If the Sponsor is genuinely in self-employment as a taxi driver earning above the required level then there has been a sufficient passage of time for him to be able to provide all the financial documentation required under Appendix FM and Appendix FM-SE and to some extent the Sponsor is put on notice on the importance of providing the information in the required form.

Decision

23. I dismiss this appeal under the Immigration Rules and under the Human Rights Act.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge