



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/04288/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 31 July 2014

Determination Promulgated
On 8 August 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

ENTRY CLEARANCE OFFICER - NEW DELHI

Appellant

and

GHOUTAM DAS

Respondent

Representation:

For the Appellant: Mr M Diwnycz, a Senior Home Office Presenting Officer
For the Respondent: Mr T Hussain, instructed by Patel & Bhatoa, Solicitors

DETERMINATION AND REASONS

1. The respondent, Ghoutam Das, was born on 1 November 1974 and is a citizen of India. I shall hereafter refer to the appellant as the respondent and to the respondent as the appellant (as they were respectively before the First-tier Tribunal).
2. The appellant applied for entry clearance to the United Kingdom as the spouse of a person present and settled in this country but his application was refused on 3

January 2013. The appellant appealed to the First-tier Tribunal (Judge Hindson) which, in a determination promulgated on 8 January 2014, allowed the appeal under the Immigration Rules. The Entry Clearance Officer now appeals, with permission, to the Upper Tribunal.

3. The Entry Clearance Officer's notice of refusal records that the United Kingdom sponsor had an annual income of £11381.76 which was below the required gross income of £18600 per annum. The refusal notice reads:

The guidance (5.3.1) states to work out a sponsor's salary you need to take the lowest level of her salary of the most current six months' salary slips that have been submitted. In your wife's case this is £948.48 (04/2012), to get your wife's yearly income we multiply this by 12. According to this your wife's annual income would be £11381.76.

4. Judge Hindson [15] asked the Presenting Officer to explain to him what was meant by the expression "Guidance 5.3.1" but she was unable to assist. The judge appears to have concluded that this guidance, whatever it may constitute, did not form a "statement of the law" and that he was not in any way bound by it. The judge then set out in his determination what he understood to be the relevant Immigration Rule and concluded that the sponsor had an income of £19094.40 per annum. That calculation was based upon the monthly salary which the sponsor had received throughout the period of six months prior to the application; her salary had increased during that period.
5. The respondent now asserts that the Entry Clearance Officer was applying the relevant Rule which appears at paragraph 13(a)(i) of Appendix FM-SE:
 - (a) *where the person is in salaried employment in the UK at the date of application and has been employed by that current employer for at least six months, their gross annual income will be a total of:*
 - (i) *the gross annual salary from their employment as it was at its lowest level in the six months prior to the date of application.*

6. Mr Hussain, who appeared for the appellant at the Upper Tribunal hearing, did not seem to persuade me that paragraph 13(a)(i) was not the Rule which applies in this instance. I make the following observations: (i) Paragraph 13(a)(i) is not well expressed but, on its proper construction, I find that it must have the meaning given to it by the ECO, namely that, where a sponsor produces six salary slips over a period of six months, then the annual gross salary should be calculated by reference to the lowest wage figure shown on any of the salary slips; (ii) Judge Hindson was not assisted by the mysterious reference in the refusal notice "Guidance 5.3.1", which neither the ECO nor the Presenting Officer could explain satisfactorily to the judge. However, the reference to the guidance is nugatory given that the requirement appears in the Immigration Rule; (iii) Any analysis of the spouse's annual gross income by reference to these principles would show that her income fell below the required figure of £18600; (iv) It follows that the appeal should have been dismissed by Judge Hindson.

7. It may well be the case that the sponsor, who enjoys a higher salary now than at the time of the appellant's last application, may now satisfy the Rules and the appellant will, no doubt, make a further application to the ECO, if so advised.

DECISION

I find that the determination of the First-tier Tribunal should be set aside. I have remade the decision. The appeal against the immigration decision dated 3 January 2013 is dismissed.

Signed

Date 1 August 2014

Upper Tribunal Judge Clive Lane