



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/05377/2013

THE IMMIGRATION ACTS

Heard at : Field House
On : 25 February 2014

Determination Promulgated
On : 27 February 2014

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

ENTRY CLEARANCE OFFICER

Appellant

and

MAHESH CHATHURANGA KUMARAWADUGE

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer

For the Respondent: Mr J Martin, instructed by Nag Law Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Entry Clearance Officer (ECO). However, for the purposes of this decision, I shall refer to the ECO as the respondent and Mr Kumarawaduge as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

2. The appellant is a citizen of Sri Lanka, born on 22 August 1986. He applied for entry clearance as a partner under Appendix FM of the immigration rules, in order to settle in the United Kingdom with his wife. His application was refused on 30 January 2013, solely with respect to the rules relating to the financial requirements of Appendix FM, under paragraphs EC-P.1.1(d) and E-ECP.3.1 of Appendix FM. The respondent was satisfied that the relationship between the appellant and his wife was genuine, noting that his wife had recently given birth to their child, and that he met the accommodation and English language requirements of the rules. The respondent noted that the appellant was relying on income from his wife's employment to confirm her gross income of at least £18,600 per annum as required under the rules. With respect to the specified evidence required under Appendix FM-SE the respondent noted that the appellant had not provided bank statements with his application and his wife had provided only five months of payslips. Accordingly he had failed to show that his application met the financial requirements of the rules.
3. The appellant appealed against that decision and enclosed further evidence with his grounds of appeal, including his wife's bank statements, P60 and payslips and a letter from her employer.
4. The application was then reviewed by an Entry Clearance Manager (ECM) who conceded, in the light of the additional payslip submitted, that the requirements of paragraph 2(a) of FM-SE had been met. However the ECM maintained the refusal decision on the grounds that the bank statements did not correspond to the same period as the payslips and that they were not in the correct format since they were online statements.
5. The appellant's appeal against that decision was heard in the First-tier Tribunal on 25 November 2013. It was conceded, on behalf of the respondent, that the bank statements provided in the respondent's appeal bundle corresponded with the formal bank statements provided in the appellant's bundle. The original documents were produced at the hearing. The judge found that the appellant had met the requirements of the immigration rules and allowed the appeal, noting also that the appellant's case fell squarely within the principles in MM, R (On the Application Of) v The Secretary of State for the Home Department [2013] EWHC 1900.
6. Permission to appeal against that decision was sought by the respondent on the grounds that the judge had failed to explain how the payslips complied with the rules of specified evidence and what level of gross income was received by the sponsor; and that he had failed to explain how the principles in MM applied to the appellant.
7. Permission was granted on 27 January 2014 on the grounds raised.

Appeal hearing

8. At the hearing Mr Avery agreed that he was in some difficulty in supporting the grounds of appeal on the basis upon which they had been drafted. He conceded that the

ECM was wrong in considering that the bank statements did not cover the same period as the payslips: they clearly did. He was unable to confirm whether or not the bank statements in the appellant's appeal bundle had been before the ECM although he accepted that the judge's determination confirmed that it had been agreed that the statements in the respective appeal bundles corresponded with each other.

9. Mr Martin submitted that the bank statements had been before the ECM and the judge had accordingly been entitled to allow the appeal. His determination was short, but that was because there had been agreement between the parties at the hearing.

Consideration and findings.

10. The respondent's grounds of appeal are plainly misconceived: they assert that the judge had failed to consider how the sponsor's payslips complied with the rules of specified evidence and what level of gross income the sponsor received, but those were not matters in dispute. The sponsor's employment and level of income, as confirmed by her employer, had never been challenged by the respondent as such. There was no question of the sponsor's credibility in that regard or of the reliability of the documentary evidence. The payslips had been accepted by the ECM. The basis for the application being refused was simply that the financial documents produced in relation to the sponsor's employment, specifically her bank statements, were not in the format required by the rules. Accordingly Mr Avery accepted that he was in some difficulty in supporting the grounds of appeal.

11. With regard to the format of the documents, the ECM was plainly in error in concluding that the sponsor's bank statements produced with the Notice of Appeal did not cover the same period as her payslips, when they clearly did. The respondent's appeal bundle contains a copy of those bank statements, covering a period from 23 January 2012 to 23 September 2012, which clearly correspond to the payslips accepted by the ECM as covering the required six month period, from 23 March 2012 to 23 August 2012.

12. The only remaining issue, therefore, was the format of the bank statements. There is no dispute that the sponsor's bank statements contained in the appellant's appeal bundle before the First-tier Tribunal complied with the requirements of Appendix FM-SE as regards their format. It was agreed on behalf of the respondent that those bank statements were an accurate reflection of the bank statements in the respondent's appeal bundle which had been produced to the ECM together with the Notice of Appeal. The sponsor claims that the bank statements in the appellant's appeal bundle were before the ECM and Mr Avery was not in a position to dispute (or confirm) that that was the case. Judge Fox plainly accepted that they were and it was for that reason that his determination was so short. It seems to me that he was perfectly entitled to reach that conclusion. In any event, I find nothing in the format of the NatWest headed bank statements contained in the respondent's appeal bundle to suggest that they were not sufficient to meet the requirements of the specified documents in Appendix FM-SE.

13. Accordingly, Judge Fox was entitled to conclude that the appellant had provided the required documentary evidence to confirm the sponsor's gross annual income of £26,000 and to conclude that he had therefore been able to meet the requirements of paragraphs EC-P.1.1(d) and E-ECP.3.1 of Appendix FM. His reference to the principles in MM did not form a material part of his reasoning and the grounds of appeal in that respect are not of relevance. He was entitled to allow the appeal on the basis that the requirements of the immigration rules had been met and his decision does not contain any errors of law requiring it to be set aside.

DECISION

14. The making of the decision of the First-tier Tribunal did not involve the making of an error of law. I do not set aside the decision. The decision of the First-tier Tribunal, to allow Mr Kumarawaduge's appeal, therefore stands.

15. The Entry Clearance Officer's appeal is accordingly dismissed.

Signed
Upper Tribunal Judge Kebede

Date