



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: OA/06253/2013
OA/06254/2013
OA/06255/2013
OA/06256/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 7th October 2014**

**Determination Promulgated
On 9th October 2014**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MRS EMINE ALGUL
MASTER BERKANT ALGUL
MISS BERKANT ALGUL
MASTER NIHAT ALGUL
(Anonymity Order not made)**

Appellants

and

ENTRY CLEARANCE OFFICER - ISTANBUL

Respondent

Representation:

For the Appellants: Not Represented
For the Respondent: Mr M Shilliday (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Respondent with regard to a determination of the First-tier Tribunal (Judge Lester) promulgated on

15th July 2014. For the sake of clarity and continuity however, I shall continue to refer to the Entry Clearance Officer as the Respondent and the Algul family as the Appellants.

2. The Appellants are citizens of Turkey and are a mother and her three children. They made an application to the Entry Clearance Officer to join their husband/father in the UK.
3. The original application was refused because the Entry Clearance Officer was not satisfied that the marriage was genuine and subsisting, that they were able to meet the financial requirements of the Immigration Rules or that the first Appellant was proficient in English.
4. Before the First-tier Tribunal the Appellants were represented by counsel and the Judge heard oral evidence from the Sponsor. The Judge noted that before her the only issue was the financial requirements. The Judge noted that the payslips submitted to the entry clearance officer only went up to August 2013 and therefore did not meet the requirements of the Rules. The Judge noted at paragraph 40 of the determination that Appendix FM-SE required payslips covering a period of six months prior to the date of application if a person has been employed by their current employer for more than six months as was the case in this appeal. The Judge indicated that she was satisfied that the required number of payslips were provided and allowed the appeal.
5. The Entry Clearance Officer sought and was granted permission to appeal on the basis that the Judge, noting that the wage slips did not cover the period of six months and that there were two or three months missing, did not indicate that they were produced and did not list them when she listed the documents before her in the determination.
6. Thus the matter came before me to decide whether the First-tier Tribunal Judge had made an error of law and if so whether and to what extent her determination should be set aside.
7. There was no appearance by either the Sponsor or a representative on the Appellant's behalf. I caused my clerk to contact the Appellants' representatives. They informed her that they had not been instructed. It is clear from the court file that both the representatives, who remain on the court record, the Appellants in Turkey and the Sponsor had been served with a notice of hearing at the correct addresses. In the absence of any explanation for the Sponsor's absence or any application for an adjournment I proceeded.
8. No response to the application for permission to appeal has been received. A careful examination of the documents on the court file indicated that there were no payslips described as missing by the entry clearance officer. Accordingly on the basis that the

Judge allowed the appeal when the specified documents were not produced she made an error of law. As the Immigration Rules require the specified documents, the absence of documents is clearly material and thus the First-tier Tribunal's decision is set aside. I remake the decision and in the absence of the missing payslips or any evidence on the Appellants' behalf the appeal is dismissed.

9. I note that it is the Appellants' case that the Sponsor is employed as a shop assistant earning over £33,000 per annum. Notwithstanding the documents produced this is a matter I would have thought worthy of investigation on behalf of the Entry Clearance Officer as it seems so improbable.

Signed

Date 8th October 2014

Upper Tribunal Judge Martin