Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/08105/2013

THE IMMIGRATION ACTS

Heard at Columbus House, Newport	**Determination Promulgated**
On 1 May 2014	**On 28 May 2014**
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Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB

Between

WILFREDO PEDROSO DECHAPELLE

Appellant

and

ENTRY CLEARANCE OFFICER - HAVANA

Respondent

Representation:

For the Appellant: Ms O Rees, Sponsor
For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Cuba who was born on 27 December 1972. On 29 January 2013, he applied for entry clearance to join his wife, Orquidea Rees, a British citizen in the United Kingdom. On 21 February 2013, the Entry Clearance Officer refused the appellant's application on the basis that the appellant could not meet the financial requirement in Appendix FM, namely that the sponsor had a gross annual

income of £18,600 (see E-ECP3.1). On 13 August 2013, the Entry Clearance Manager confirmed that decision on the basis that the P60 for the tax year 2012-2013 disclosed a gross income of £15,306.12 based on the sponsor's employment as a Care Assistant with the Peninsular Care Homes Limited where she had been employed since April 2006.

2. The appellant appealed to the First-tier Tribunal and did not seek an oral hearing. On 10 December 2013, dealing with the appellant's appeal on the papers, Judge Deavin dismissed the appellant's appeal on the basis that he had not established that the sponsor's gross income was at least £18,600.

3. Judge Deavin took into account that the relevant P60 showed an income of £15,306 for the tax year 2012-2013. He also noted that the sponsor claimed to earn on average, approximately £4,000 per year extra income from the University of Exeter hosting students at her home. The judge noted that the letter from the University of Exeter, whilst recognising that the sponsor would receive £109 per week when she hosted a student, provided no evidence of actual payment. In the grounds, the appellant claimed that this would generate an additional income of approximately £4,000 per year. The judge noted that the agreement with the university could allow the sponsor to generate an annual gross income of £6,540 by hosting two students over the academic year. In addition, the sponsor claimed that she had two cleaning jobs for which she was paid £48 per week. However, Judge Deavin concluded that the evidence of her additional work beyond that of her employment by the Peninsular Care Homes Limited postdated the decision and could not be taken into account in the appeal. Consequently, on the basis of her P60 for the tax year 2012-2013, he concluded that the appellant had failed to establish that the sponsor had a gross annual income of at least £18,600 and so he dismissed the appeal under the Immigration Rules.

4. The appellant sought permission to appeal and on 13 January 2014 the First-tier Tribunal (UTJ Deans) granted the appellant permission to appeal on the basis that the judge was wrong to exclude post-decision evidence provided that it related to the circumstances appertaining at the date of decision. Thus, the appeal came before us.

5. The sponsor appeared at the hearing. She sought to argue that she had sufficient income to meet the requirements in the Rules. In particular, she relied upon the additional income which she claimed she earned by hosting students from the University of Exeter.

6. It was clear from the sponsor, and indeed from a letter from her employer dated 7 January 2014, that the sponsor has been on maternity leave since 1 April 2013 and has not returned to her employment following the birth of her and the appellant's son in April 2013. The sponsor told us that she had sent a P60 for the 2012-2013 tax year following the refusal of the appellant's visa in June 2013. In addition, the judge had no bank statements which showed any payments from the University of Exeter. The sponsor told us that she received the money in cash and that sometimes she paid it in to the bank whilst on other occasions she kept the cash to spend. She acknowledged

before us that she had not paid any tax on money received in cash. She expressed surprise that she was required to do so.

7. The only evidence before the judge (and indeed before us) that meets the requirements of the Rules was the sponsor's P60 for the tax year 2011-2012 which shows a gross employment income of £15,306 which does not demonstrate a gross income of at least £18,600. Indeed, the sponsor's more recent P60 for the tax year 2012-2013 (even if before Judge Deavin) still falls short of that figure, demonstrating only a gross income of £16,560.21. Whilst the judge was required to take into account evidence submitted after the ECO's decision, he was only required to do so to the extent that it was relevant to whether the appellant could show, on the basis of the sponsor's income, that together they could demonstrate a gross annual income of at least £18,600. The sponsor was simply unable to show actual gross income received from the University of Exeter, or directly from students that she hosted, to supplement the only evidence before Judge Deavin that satisfied the evidential requirements of the Rules, namely her P60 for 2011-2012 showing her gross income to be £15,306. There was also no documentary evidence, whether satisfying the evidential requirements of the Rules or not, in relation to any income received from her claimed cleaning jobs.

8. Consequently, on the evidence presented to the First-tier Tribunal, Judge Deavin was, in our judgment, correct to find that the evidence did not establish that the appellant met the financial requirements in Appendix FM and that therefore the appellant's appeal was correctly dismissed under the Immigration Rules.

9. At no point has the appellant relied upon Art 8 of the ECHR and given the unsatisfactory state of the evidence presented by the appellant including that of the sponsor concerning her additional claimed income, we see no basis upon which the appellant could succeed under Art 8 on the evidence presented in the appeal.

10. For these reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal stands.

Signed

A Grubb
Judge of the Upper Tribunal