



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/10303/2013

THE IMMIGRATION ACTS

Heard at Field House
On 7th May 2014

Determination Promulgated
On 2nd June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

MRS MANDEEP KAUR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Malik - Counsel

For the Respondent: Mr S Walker - Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge Lobo issued on 3rd March 2014 allowing under the Immigration Rules

and on human rights grounds the Appellant's appeal against the decision of the Respondent made on 15th April 2013 to refuse entry clearance as a partner under Appendix FM of the Immigration Rules.

2. On 26th March 2014 a First-tier Tribunal Judge granted permission to appeal. She said:

"2. The grounds of application assert that the First-tier Tribunal Judge made arguable material errors of law by firstly accepting insufficient evidence from the Appellant's Sponsor to demonstrate that he was in receipt of an income of at least £18,600 per year and secondly by allowing the appeal under the provisions of Article 8 of the European Convention on Human Rights outside the Immigration Rules. The Respondent maintains that the First-tier Tribunal Judge had not set out any reasons for finding that there were 'compelling circumstances' that would engage Article 8 and that the approach to Article 8 was erroneous.

3. I have considered the First-tier Tribunal Judge's findings with regard to the Sponsor's income and note that at paragraph 8 of the determination the First-tier Tribunal Judge recorded that in order to meet the requirements of the Immigration Rules the applicant must provide specified evidence to demonstrate a gross annual income of at least £18,600. At paragraph 27(c) the First-tier Tribunal Judge recorded that -

'The Appellant had provided evidence that the Sponsor enjoyed two employments, namely with Rodmatic Ltd and with Spice Gardens. In relation to the specified documents the Appellant had provided them in respect of Rodmatic but not in respect of Spice Gardens.'

Then at paragraph 31(e) the First-tier Tribunal Judge recorded that -

'The Appellant in her application provided evidence in the form of a P60 from the Sponsor that the Sponsor in the year ending April 2012 received an income from Rodmatic of £18,907.60.'

4. I am therefore satisfied that it is not simply the case that the Sponsor produced a P60 as the only form of documentary evidence with regard to his employment - he also produced a series of payslips together with a copy of a letter from his employers.

5. The First-tier Tribunal Judge found that it was not necessary for him to go on to consider the income from the Sponsor's secondary source of employment because he was satisfied based upon the evidence of the P60 that he earned over £18,600 per annum from that source.

6. I find that the First-tier Tribunal Judge may have made a material error of law in that regard because the payslips do not demonstrate that the Sponsor was earning as much as the P60 has recorded and the letter from

his employer states that he is earning £7 an hour and working 36 hours a week which equates to £13,104 per annum. I am satisfied that this is indicative of an error of fact which may have led the First-tier Tribunal Judge to make an unsustainable finding based upon the evidence and accordingly I find that permission to appeal should be granted.”

3. At the hearing before me Mr Walker conceded that on the evidence the Appellant does earn over £18,600 gross per annum. The Judge only had payslips before him.
4. The P60 from Rodmatic Ltd for the year to 5th April 2012 shows a gross income of £18,907.60. There was also confirmation of his job with Manrose Quality Ventilation with a gross annual salary of £10,876.32 and there are payslips for that job.
5. Having taken account of the submissions of both representatives I find that there is no material error of law in the determination of the First-tier Tribunal with regard to the grant of leave under the Immigration Rules and I uphold that decision. For completeness I note that Judge Lobo allowed the appeal on human rights grounds on the basis that on the assumption that the Immigration Rules are human rights compliant it follows that the appeal should also succeed on human rights grounds even though the Appellant would not have succeeded on Article 8 grounds under the Immigration Rules. This seems to me to be incorrect.

Decision

The appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal shall stand.

Signed

Date: 27th May 2014

N A Baird
Deputy Upper Tribunal Judge Baird