



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/10546/2013
ORAL JUDGEMENT

THE IMMIGRATION ACTS

Heard at Field House
On 3 July 2014

Determination Promulgated
On 15 July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR SUMIR SHRESTHA

Respondent

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer
For the Respondent: Mr P Uar, Counsel instructed by N.C. Brothers & Co Solicitors

DECISION AND REASONS

1. The respondent, whom I shall refer to as the appellant as he was before the First-tier Tribunal, is a citizen of Nepal and his date of birth is 28 May 1985. The appellant made an application under paragraph 281 of the Immigration Rules to join his wife Rojina Sah Teli in the UK. The application was made on 6 July 2012 and it was refused by the Entry Clearance Officer in a decision dated 22 October 2012. It was

refused because the ECO was not satisfied that the appellant would be able to meet the maintenance and accommodation requirements of the Rules.

2. The appellant appealed against the decision of the ECO and his appeal was allowed by Judge of the First-tier Tribunal Page in a determination which was promulgated on 23 April 2014. The Judge heard evidence from the sponsor and found that her evidence was compelling and he recorded that it was not challenged throughout the hearing by the Presenting Officer.
3. The Judge went on to make findings relating to the sponsor's income. At [11] the Judge found as follows:

“During 2012 she [the sponsor] was receiving £800 per month in rent from her tenants at the address in Reading. She was renting a shared property in Canterbury where she was doing her NHS training paying £320 per month. She had £480 per month after that was paid. She also had a student bursary of £384 per month. In addition to this she had savings that are proved with her bank statements for 2012. At the time of the respondent's decision she had £3,569 in a Halifax savings account. In addition to this she had in her Hong Kong branch of the HSBC Bank the sterling equivalent of £4,440. All of this cash was accessible by her at the time of the respondent's decision. She also had available to her part-time employment in the restaurant above which was paid cash.”

On the basis of the Judge's findings he went on to allow the appeal under the Immigration Rules.

4. The permission application argues that at the hearing it was agreed by both representatives that there was a shortfall of £24 a month. However, the Judge made no findings on this point and failed to resolve a matter of conflict.
5. In oral submissions Mr Bramble said that he had looked again at the determination and the error in his view is not material (the error being that the Judge did not mention the shortfall that was agreed between the representatives at the hearing). In his view even if there is a shortfall it would not be material because the appellant had significant savings as found by the Judge.
6. Mr Uar argued that in his view there was no error of law. The income threshold was £111.45 for a couple and in his view it appears that the representatives at the hearing before the First-tier Tribunal doubled this amount in error and this led to them concluding that there would be a shortfall. However, the calculation made by the Judge was correct. Mr Uar submitted that in addition to the savings held by the sponsor and identified by the Judge she had an ISA of £4,500 and £5,500 in a current account. This evidence was before the First-tier Tribunal.

7. Whilst it may be that case that the parties at the hearing before the First-tier Tribunal appeared to agree that there was a shortfall and the Judge did not record this, the fact is that any agreement was on an erroneous basis which now appears to be accepted by the Secretary of State. There is no challenge to the figures used by the Judge in order to calculate the sponsor's income and it is obvious that the income would exceed the income support level at that time. In these circumstances there is no error of law and the decision of the First-tier Tribunal to allow the appeal under the Immigration Rules stands.

Signed Joanna McWilliam

Date 15 July 2014

Deputy Upper Tribunal Judge McWilliam