



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/12718/2013

THE IMMIGRATION ACTS

Heard at Field House
On 18th July 2014
& 25th September 2014

Determination Promulgated
On 3rd October 2014

Before
THE RT. HON. LORD BOYD OF DUNCANSBY
(sitting as a Judge of the Upper Tribunal)
UPPER TRIBUNAL JUDGE MARTIN

Between

MRS JEYASUTHA SURESH

Appellant

and

ENTRY CLEARANCE OFFICER - CHENNAI

Respondent

Representation:

For the Appellant: Mr J Chipperfield (18/07/2014) and Ms B E Jones (25/09/2014)
(instructed by A & P Solicitors)

For the Respondent: Mr C Avery (18/07/2014) and Mr P Duffy (25/09/2014) (Senior
Home Office Presenting Officers)

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 Andonian) promulgated on 9th May 2014.
2. The Appellant, a citizen of Sri Lanka, had sought leave to enter the UK as a spouse under the provisions of Appendix FM to the Immigration Rules. That application was refused by the Entry Clearance Officer in a decision dated 8th May 2013. The reason for refusal was solely that specified evidence had not been provided to show that the UK Sponsor had a gross annual income of at least £18,600.

3. The refusal listed the documents that must be produced under the Rules and stated that the letter from the Sponsor's employer (Buckingham Foods) did not provide his gross annual salary or the period over which he had been paid that salary and therefore did not meet the requirements the Rules. The second issue was that the sponsoring husband also received an additional income from another employer, Senna Stores and while there was a letter from that company which met the requirements of the Rules, the Sponsor's bank account did not show any deposits equivalent or roughly equivalent to that pay. In the absence of any explanation being given in that regard the Rules required income to be shown to have been paid into a bank account.
4. The Appellant appealed and the appeal came before the First-tier Tribunal, Judge Andonian, sitting at Taylor House on 20th April 2014. In his determination he found that the Appellant was employed by Senna Stores who paid him in cash and that the Rules were artificial in requiring payment to be reflected through a bank account. He heard evidence from the Sponsor and finding that the Sponsor's annual income exceeded the amount required by the Rules he allowed the appeal under the Rules.
5. The Entry Clearance Officer sought and was granted permission to appeal to the Upper Tribunal. In the grounds the Entry Clearance Officer said that the specified evidence is comprehensively set out in Appendix FM-SE to the Immigration Rules and those set out the evidence that is required, the period that evidence has to cover and the format that it should be in. The grounds assert that the First-tier Tribunal had no regard to that at paragraph 9 of the determination where it sets out its findings. The grounds acknowledge that while some documentation had been submitted, it did not meet the requirements set out in appendix FM-SE as set out in the refusal letter. The First-tier Tribunal Judge also seems to completely ignore the requirement that income must be shown to be paid into a bank account.
6. The grounds go on to assert that it is not clear from the determination what the Sponsor's actual gross income was at the date of the application.
7. The matter came before me first on 18th July 2014 when I considered the error of law question. On that occasion the Entry Clearance Officer was represented by Mr Avery who submitted that the Entry Clearance Officer had not been satisfied with the evidence provided to him. The Sponsor maintains two jobs and money which is paid in cash is not reflected in his bank statements. The specified evidence set out in Appendix FM is in the Rules and not simply guidance. Compliance with the Rules is mandatory. At paragraph 9 the Judge refers to his opinion on the requirement for salaries to be reflected in bank statements but his opinion is immaterial to the matter to be determined.
8. On the Appellant's behalf Mr Chipperfield submitted that the Judge had to consider the primary requirement of the Rules (that the couple could maintain themselves) not the evidential requirements. The Judge identified the evidence that satisfies the primary requirement.

9. There were two issues before the Entry Clearance Officer that represented a problem for him; one was the letter from Buckingham Foods and the other was the bank statements. I indicated that whilst, if satisfied from the other specified evidence that a person was genuinely an employee who is paid in cash and is paying tax on that income there is discretion to excuse those monies being reflected in the bank statements. However, so far as the letter from Buckingham Foods is concerned, the letter produced to the Entry Clearance Officer did not meet the requirements of Appendix FM. It would have been a simple matter to produce a letter from Buckingham Foods that did meet those requirements to the Judge and yet they did not. The Judge did not address the evidence in the context of the requirements of Appendix FM and, I agreed with Mr Avery that the Judge appears to have decided the case on the overall picture rather than the requirements of the Rules and certainly appears to disapply those requirements of the Rules with which he disagreed. In allowing the appeal under the Immigration Rules when clearly the Appellant did not meet the Rules was an error of law.
10. Having expressed my views with regards to the bank statements and the letter from Buckingham Foods, I adjourned the matter to a resumed hearing to give the Appellant's representatives opportunity to produce such a letter from Buckingham Foods and I also indicated that if such a letter was not produced on the next occasion they were unlikely to succeed.
11. The matter then came before us for a resumed hearing on 25th September. As indicated on the previous occasion, on the basis that the specified evidence was present to show that the Appellant worked for Senna Stores, payslips were produced, evidence of tax paid was produced, confirmation from the firm itself that all wages were paid in cash and the evidence of the Sponsor that he used the cash to pay for various outgoings directly rather than pay it into his bank, we accepted that so far as that employment is concerned the Rules are met. We accepted the Sponsor's explanation for the money not passing through his bank account.
12. The other matter is the letter from Buckingham Foods. The Appellant's representatives attended the hearing with a letter from Adelle Foods Group Limited, formally Buckingham Foods, which contained all of the specified information required by the Rules.
13. Mr Duffy accepted that the Appellant has now produced the requisite evidence to succeed under the Rules.
14. Having allowed the Entry Clearance Officer's appeal to the Upper Tribunal on the basis that the First-tier Tribunal made an error of law, in re-deciding the appeal we allow the Appellant's appeal against the Entry Clearance Officer's decision.

Signed

Date 3rd October 2014

Upper Tribunal Judge Martin