



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/12757/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11 September 2014

Determination Promulgated  
On 25 September 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NAY ZAW

Respondent

**Representation:**

For the Appellant: Mrs R Pettersen, a Senior Home Office Presenting Officer  
For the Respondent: Ms A Benfield, instructed by Soma & Co, Solicitors

**DETERMINATION AND REASONS**

1. The appellant, Nay Zaw, was born on 11 December 1976 and is a male citizen of Burma. The appellant appealed to the First-tier Tribunal (Judge Herbert OBE) against a decision of the Entry Clearance Officer dated 21 May 2013 to refuse him leave to enter the United Kingdom for settlement as the partner of Yin Mar (hereafter referred to as the sponsor). The First-tier Tribunal, in a determination promulgated

on 8 May 2014, had allowed the appeal under the Immigration Rules. The Secretary of State now appeals, with permission, to the Upper Tribunal. I shall refer to the respondent as the appellant and to the appellant as the respondent (as they appeared respectively before the First-tier Tribunal).

2. The First-tier Tribunal had found that the appellant and sponsor were in a genuine and subsisting relationship; that they intended to live together permanently in the United Kingdom; that the sponsor had an income from employment amounting to £16,380 and from self-employment of £3,720, thereby meeting the financial requirement of £18,600 over the period required under the Immigration Rules. The only issue in this appeal to the Upper Tribunal was whether the judge was correct in law in concluding that the income requirement had been satisfied. The grounds of appeal argue that the appellant had failed to satisfy the requirement to provide specified forms of evidence of the sponsor's income as required by Appendix FM: E-ECP.3.1.
3. The grounds acknowledge that "some of the documentation [required] had been submitted". It was not clear whether twelve months of payslips and bank statements had been provided and it is asserted in the grounds that the judge had "not addressed the relevant evidence from prior to the date of application."
4. Mrs Pettersen, for the respondent, made oral submissions which differed from the grounds of appeal. She recorded that the judge had accepted in evidence an HMRC tax return for the tax year April 2012 – April 2013 and a tax calculation both of which documents had been provided in July 2013 whereas the application for entry clearance had been made on 1 April 2013. She submitted that the judge should not have considered that evidence because it had not been supplied with the application itself.
5. Dealing with that argument first, I accept the oral submissions of Ms Benfield. She submitted that this was an appeal where the judge was entitled to consider the circumstances appertaining at the date of the immigration decision; this was not an appeal to which Exception 2 (see Section 85A(3) of the Nationality, Immigration and Asylum Act 2002) applies, that is a decision under the "points-based system" (PBS) of refusal of leave to enter the United Kingdom or to refuse to vary a person's leave to enter or remain (see Section 82(2)(a) and (e) of the 2002 Act). As Ms Benfield pointed out, the relevant tax year in this application was that occurring immediately prior to the date of the application, namely 2012/2013. HMRC documents relating to that tax year were not available on 1 April 2013, that is before the end of that tax year (5 April 2013). I find, therefore, that the judge was entitled to consider the HMRC documents supplied by the appellant notwithstanding the fact that the documents were not provided with the entry clearance application.
6. Concerning the grounds of appeal, which I have outlined above, I find that there was no error of law on the part of the First-tier Tribunal. The sponsor had provided unaudited accounts showing a total income from employed and self-employed earnings. She had supplied the HMRC tax return for 2012/2013 together with a tax

calculation. She had also provided a self-employed class 2 national insurance contribution letter from HMRC dated 30 March 2013. I note that the First-tier Tribunal at [11] recorded that it was “accepted that the bank statements showing those monies paid in had now been supplied.” I accept Ms Benfield’s submission that the judge had been right to conclude that the documents specified in E-ECP.3.1. had been provided accordingly. I agree also with Ms Benfield that there was no need for the judge to go on and consider Article 8 ECHR having allowed the appeal under the Immigration Rules.

7. In the circumstances, the Secretary of State’s appeal is dismissed.

**DECISION**

8. This appeal is dismissed.

Signed

Date 22 September 2014

Upper Tribunal Judge Clive Lane