



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number OA/14052/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 25 September 2014

Decision and Reasons promulgated  
On 12 December 2014

**Before**

**Deputy Judge of the Upper Tribunal I. A. Lewis**

**Between**

**Entry Clearance Officer, Beijing**

**and**

**Jinzhu Su**

(Anonymity order not made)

**Appellant**

**Respondent**

**Representation**

For the Appellant: Mr. S. Kandola, Home Office Presenting Officer.

For the Respondent: Mr. A. Slatter of Counsel instructed by Maxwell Alves.

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Chamberlain promulgated on 8 May 2014, allowing Ms Su's appeal against the decision of the Entry Clearance Officer ('ECO') dated 29 May 2013 to refuse entry clearance as a partner.
2. Although before me the ECO is the appellant and Ms Su the respondent, for the sake of consistency with the proceedings before the First-tier

Tribunal I shall hereafter refer to Ms Su as the Appellant and the ECO as the Respondent.

### **Background**

3. The Appellant is a national of China born on 28 October 1967. On 18 February 2013 she completed an on-line application form seeking entry clearance to join her husband, Zhihua Wang (the sponsor), in the UK.
4. The Appellant's application was refused for reasons set out in a Notice of Immigration Decision dated 29 May 2013 with particular reference to paragraphs E-ECP.2.7 and 3.1 of Appendix FM of the Immigration Rules.
5. The Appellant appealed to the IAC. The First-tier Tribunal Judge allowed the Appellant's appeal under the Rules for reasons set out in his determination.
6. The Respondent sought permission to appeal which was granted by First-tier Tribunal Judge Holmes on 15 August 2014.

### **Consideration**

7. Although the Notice of Immigration Decision raised issues both in respect of the relationship requirements and the financial requirements of the Rules, the Respondent does not now seek to challenge the favourable finding of the First-tier Tribunal Judge in respect of the relationship requirements (see determination at paragraph 15).
8. The issue raised by the Respondent in the grounds in support of the application for permission to appeal relates to the financial requirements of the Rules, and in particular the specified evidence requirements of Appendix FM-SE.
9. The First-tier Tribunal Judge sets out his analysis in respect of the sponsor's income at paragraphs 16-21 of his determination. The Judge makes a number of relevant findings:

(i) "*[T]he sponsor has been working at the China Garden restaurant from July 2010, and is still working there*" (paragraph 16).

(ii) Although there had been a change of ownership of the restaurant all business obligations had been transferred with that ownership, and in particular there were no changes in respect of the relationship between employer and employees (paragraphs 17-18).

(iii) The sponsor had produced supporting evidence in respect of his income - none of which had been disputed by the Respondent as being not genuine. The documents comprised: payslips showing basic pay of £450 gross per week; a confirmatory letter from the employer's manager confirming that the Appellant was paid in cash; P60s for the tax years ending 2011 to 2014 showing that the sponsor had been paying tax on his cash income. Although the sponsor's bank statements did not reflect his pay, the Judge commented that he "*would not expect to see regular deposits*" given that the sponsor was paid in cash. (Paragraph 19.)

(iv) "*I find on the balance of probabilities that the [sponsor] does earn £450 gross per week working at the China Garden, and that he did so for the relevant six month period prior to the application*" (paragraph 19).

(v) "*I find that the sponsor earns over the minimum required by the immigration rules as he earns £23,400 per annum. I find that he has provided the necessary documentation to show this. I find that he is paid in cash, which explains why there are not regular deposits into his bank account.... I find on the balance of probabilities that the Appellant meets the financial requirements of the immigration rules*" (paragraph 21).

10. The Judge also resolved to his satisfaction issues over different stylisations of the sponsor's name by reference to alternative uses of a Cantonese and Mandarin pinyin (paragraph 20). Further, the Judge expressed satisfaction in respect of the accommodation available to the Appellant (paragraph 22).
11. The Respondent's challenge before the Upper Tribunal is essentially one of form rather than substance. There is no express challenge to the clear findings of the First-tier Tribunal Judge - findings which were plainly open to him on the available evidence. Rather, the grounds of challenge are rooted in the 'specified evidence' requirements of Appendix FM-SE: in particular it is contended that the Appellant failed to demonstrate deposits into a bank account that matched the sponsor's income from employment (paragraph 2(c) of Appendix FM-SE); moreover, the Judge failed to have proper regard to the requirements of the Rules in this context.
12. In resisting the Respondent's challenge, Mr Slatter makes a number of attractive points:
  - (i) Whilst acknowledging that issues were raised in respect of the financial requirements in the Notice of Immigration Decision, the Respondent did not place express reliance upon the evidential requirements of Appendix FM-SE so much as reach a conclusion as

to quantum. Nor was there any such focus on Appendix FM-SE at the hearing before the First-tier Tribunal.

(ii) In any event, the strictness of the Rules was mitigated by the Respondent's 'Immigration Directorate Instructions' which recognised that in circumstances where a sponsor was paid in cash, bank statements might not exactly reflect income from employment. In such a circumstance income from employment was not to be completely disregarded, but rather an applicant could rely upon such income as was reflected in the bank statements. See April 2013 IDIs, 'Family Members under Appendix FM of the Immigration Rules', at 3.1.15. A copy of the relevant IDIs has been placed on file; the pertinent passage is in these terms "*But, where that person's specified bank statements only show a proportion of that post-tax income, only the amount shown on the bank statements can be counted towards the financial requirement*".

(iii) Although there was no exact correlation between weekly wages and the deposits in the sponsor's bank account, an analysis of the bank statements at pages 96-107 of the Appellant's bundle showed that between 23 July 2012 and 21 January 2013 there had been cash deposits of £18,826 which was in excess of the annual income required under the Rules. Adopting the approach under the IDIs, this was adequate to satisfy the financial requirements.

13. Mr Slatter was frank in acknowledging that the First-tier Tribunal Judge had not expressly directed himself to the requirements of Appendix FM-SE, and had not undertaken the sort of analysis pursuant to the IDIs to which my attention was now drawn.
14. In light of the contents of the IDIs, the findings of the First-tier Tribunal Judge, and the supporting evidence that had been before the First-tier Tribunal Judge, Mr Kandola was reticent in pressing the Respondent's challenge: he did not expressly withdraw the challenge, but stated that he would do little more than rely on the grounds.
15. In all of the circumstances I am not minded to interfere with the conclusion of the First-tier Tribunal that the Appellant's appeal should be allowed under the Rules. I acknowledge that the Judge was in error not to have express regard to the evidential requirements of Appendix FM-SE. However, in circumstances where the Respondent's challenge is essentially one of form rather than substance, and where the findings as to the sponsor's income were so clear, and yet further where the supporting evidence met the requirements of immigration control imposed by a combination of the Rules and the Respondent's policy

under those Rules as represented by the IDIs, it would be unjust now to interfere with what was essentially the right outcome to the appeal.

16. In the circumstances I find that the decision of the First-tier Tribunal Judge was not flawed for any material error of law, and so stands.

**Notice of Decision**

17. The decision of the First-tier Tribunal Judge contained no material error of law and stands.

18. The ECO's appeal is dismissed.

**Deputy Judge of the Upper Tribunal I. A. Lewis**

**11 December 2014**