



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/16162/2013

THE IMMIGRATION ACTS

Heard at Field House
On 12 March 2014

Determination Promulgated
On 3 April 2014

Before

UPPER TRIBUNAL JUDGE ALLEN
DEPUTY UPPER TRIBUNAL FRANCES

Between

RALPH LEON MARX III

Appellant

and

ENTRY CLEARANCE OFFICER - SHEFFIELD

Respondent

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer
For the Respondent: Mr S Grosvenor of Waldrons Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the respondent, the Entry Clearance Officer Sheffield, against a decision of the First-tier Judge following a hearing at Birmingham on 16 January 2014

who allowed the appeal of Mr Marx. We will continue to refer to him as the appellant for simplicity's sake, and the Entry Clearance Officer as the respondent hereafter.

2. Without going into matters in great detail, the judge had before him an appeal in relation to the refusal of an application for entry clearance as a partner under Appendix FM of the Immigration Rules. The relevant issue as it has crystallised before us is the question of available savings and whether the savings that the appellant and his wife had were sufficient to meet the requirements of the Rules.
3. The judge in relation to this noted first of all an account of slightly over £19,000 in the Yorkshire Building Society in the sponsor's name, £27,000 in an ISA with Aberdeen, very significant savings and investments with Hargreaves Lansdowne of a sum in excess of £450,000 and also referred to details of two accounts held with Charles Schwab and Co, and the judge concluded that the appellant had shown that he met the financial requirements.
4. The Entry Clearance Officer sought and was granted permission to appeal against this decision on the basis that the judge had had no regard to the Rules as to the specified evidence which are comprehensively set out in Appendix FM-SE to the Immigration Rules which set out what types of evidence are required, the period they cover and the format they should be in.
5. It is common ground that the amount of savings required in a case such as this where there is no employment income is £62,500 and the question is therefore whether the judge was entitled to find that the level of savings was met on the basis of the evidence that he assessed. It seems to us that we can leave out of account, because we do not need to go into it, the Aberdeen ISA and the holdings with Hargreaves Lansdowne and concentrate on the Yorkshire Building Society Account and the first of the two Charles Schwab & Co accounts. As regards these accounts, Rule 11 and Rule 11A of Appendix FM-SE are applicable.
6. Paragraph 11 provides a definition of what must be provided in respect of cash savings, subparagraph

“(a) monthly personal bank statements showing the cash savings have been held in an account in the name of the person or of the person and their partner for at least six months prior to the date of application.”

In relation to this the Yorkshire Building Society showed a minimum of £19,000 during a period between 1 October 2012 to 31 March 2013. Also, under paragraph 11(b) there must be a declaration by the account holder of the source of the cash savings. That can be found in Mr Marx's statement at paragraph 5 where he refers to the way in which the savings had been accrued which is clearly satisfactory for the purpose of subparagraph (b) of Rule 11 as to the declaration by the account holder of the source of the cash savings.

7. Rule 11A goes on to say that the savings may be held in any form of bank or savings account provided that the account allows the savings to be accessed immediately with or without a penalty for withdrawing funds without notice, and the rest of that subparagraph and the following subparagraph are irrelevant.
8. In relation to this we turn to the Charles Schwab account. This is what we might call the first account since it is the one set out first in the bundle. This covers the period 30 September 2012 to 30 June 2013. The lowest balance is slightly over \$107,000 and it is made clear at the bottom of this page in the bundle that Charles Schwab does not restrict access to available funds and securities in the above referenced account and an account holder or authorised agent can request withdrawal from an account on demand. In Mr Marx's statement at paragraph 17 he refers to the way in which the savings with Charles Schwab & Co had been gained which again conforms to paragraph 11(b).
9. So taking these matters together we have a sum fairly close to £100,000 which is clearly therefore well above the £62,500 which in our view the judge properly took into account and which conformed to the requirements of paragraphs 11 and 11A in particular of the Immigration Rules. Mr Bramble has very helpfully assessed these matters and I think essentially agrees with our conclusion that no error of law in the judge's decision has been shown and therefore the decision allowing Mr Marx's appeal stands.

Signed

Date

Upper Tribunal Judge Allen