



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/32809/2014

THE IMMIGRATION ACTS

Heard at Field House
On 17th April 2015

Decision & Reasons Promulgated
On 23rd April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MR MAROUANE SETTAR
(ANONYMITY DIRECTION NOT RETAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hoshi
For the Respondent: Miss Savage

DECISION AND REASONS

Introduction

1. The Appellant born on 3rd July 1985 is a citizen of Morocco. The Appellant who was present was represented by Mr Hoshi. The Respondent was represented by Miss Savage a Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had applied for leave to remain as a spouse of a British citizen on 9th September 2013. The Respondent refused that application on 30th July 2014. The Appellant had appealed that decision and his appeal was heard by First-tier Tribunal Judge Clark sitting at Taylor House on 5th January 2015. The judge had allowed the Appellant's appeal under the Immigration Rules.
3. The Respondent had made application to appeal that decision and permission was granted by First-tier Tribunal Judge Landes on 23rd February 2015. It was said that the grounds were arguable in that at the date of application the Appellant and Sponsor did not meet the income threshold required and the judge had found post-application salary increases to be determinative. Directions were issued for the Upper Tribunal to decide firstly whether an error of law had been made or not and the matter comes before me in accordance with those directions.

Submissions on Behalf of the Respondent

4. Miss Savage referred me to the grounds contained within the Respondent's application to appeal.

Submissions on Behalf of the Appellant

5. Mr Hoshi referred to Section 85(4) of the 2002 Act and said the judge was entitled to consider circumstances at the date of hearing.
6. I now provide my decision with reasons.

Decision and Reasons

7. There was a single basis of refusal in this case namely that the Appellant and his Sponsor wife did not meet the income threshold as at the date of application. There is no dispute on that fact and the Appellant's application form discloses that at the date of application his wife earned a salary of £18,000 per annum and one month prior had additionally earned £160 in a self-employed capacity. The Rules of Appendix FM and FM-SE applied in this case and in particular it was necessary for the Appellant to demonstrate the income threshold over the appropriate period of time in accordance with paragraph 3.1 of Appendix FM. The Appellant could not meet the income threshold at the date of application. Although the Appellant's wife had had a pay increase taking her salary to £19,000 per annum that had only come into effect on 1st July 2014 whilst the Appellant's application had been made in September 2013. Further the Respondent's refusal had also been made in July 2014. It was not a case therefore that even at the date of refusal the Appellant was able to show the appropriate income threshold over the required period of time and with the necessary documentation required by Appendix FM and FM-SE.
8. It is clear that the judge, understandably, had sympathy with the position of the Appellant but nevertheless the requirements of the Immigration Rules are clear and

whilst perhaps in some respects very prescriptive, that is the legal framework under which cases must be decided. It was a material error of law for the judge to have taken account of the increased salary that postdated the date of application and in any event was not in itself evidenced by the necessary documents and period of time as prescribed within the Immigration Rules. In reality the judge had little choice in this case other than to have dismissed the appeal under the Immigration Rules and the remedy for the Appellant, if he wished, was to make a fresh application where, presuming the salary increase had remained on the face of it, he would have had no difficulty in providing the evidence and documents to demonstrate that the income threshold was met.

9. There are no further documents before me and given the nature of the error in this case as referred to above, having found a material error of law was made in remaking that decision, I would dismiss the Appellant's appeal. However I would perhaps indicate to the Appellant the remedy available to him in terms of a fresh application in a case where there were clearly no other concerns other than his failure to meet the income threshold.

Notice of Decision

I find a material error of law was made by the judge in this case and set aside the decision of the First-tier Tribunal and for reasons given above in remaking that decision I dismiss the Appellant's appeal.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Lever

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Lever